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S. 1770

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2011

Mrs. GILLIBRAND (for herself, Mr. KERRY, Mr. SANDERS, Mrs. MURRAY, Mr. FRANKEN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Every Child Deserves a Family Act''.

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) There is a shortage of qualified individuals willing to adopt or foster a child in the child welfare system. As a result, thousands of foster children lack a permanent and safe home.

(2) In order to open more homes to foster children, child welfare agencies should work to eliminate sexual orientation, gender identity, and marital status discrimination and bias in adoption and foster care recruitment, selection, and placement procedures.

(3) Of the estimated 400,000 children in the United States foster care system, more than 107,000 cannot return to their original families and are legally free for adoption.

(A) 52,891 children were adopted in 2010, while 27,854 youth ''aged out'' of the foster care system.

(B) Research shows that youth who ''age out'' of the foster care system are at a high risk for poverty, homelessness, incarceration, and early parenthood.

(C) Increasing adoption rates, in addition to establishing permanency and decreasing risk factors for foster youth, can yield annual na-

tional cost savings between $3,300,000,000 and $6,300,000,000.

(4) Experts agree that in many States, lesbian, gay, bisexual, and transgender youth experience discrimination, harassment, and violence in the foster care system because of their sexual orientation or gender identity.

(5) Approximately 60 percent of homeless lesbian, gay, bisexual, and transgender youth were previously in foster care. According to the Urban Justice Center, many of these young people reported that living on the streets felt ''safer'' than living in their group or foster home.

(6) According to data taken from the 2010 Census and reviewed by the Williams Institute, an estimated 17 percent of same-sex couples have at least 1 child under 18 years of age living in the home.

(7) According to Gary Gates of the Williams Institute, there are approximately 1,000,000 lesbian, gay, bisexual, and transgender couples throughout the United States who are raising approximately 2,000,000 children.

(8) As of 2007, gay, lesbian, and bisexual parents were raising 4 percent of all adopted children

and fostering for 3 percent of all foster children. A report from the Williams Institute found that an additional 2,000,000 gay, lesbian, and bisexual individuals are interested in adoption.

(9) According to the Williams Institute/Urban Institute, same-sex couples raising adopted children tend to be older than, just as educated as, and have access to the same economic resources as other adoptive parents. Studies confirm that children with same-sex parents have the same advantages and same expectations for health, social, and psychological adjustment, and development as children whose parents are heterosexual.

(10) An Evan B. Donaldson Adoption Institute study found that one-third of child welfare agencies in the United States currently reject gay, lesbian, and bisexual applicants.

(A) The practice of prohibiting applicants from becoming foster parents or adopting children solely on the basis of sexual orientation or marital status has resulted in reducing the number of qualified adoptive and foster parents overall and denying gay, lesbian, bisexual, and unmarried relatives the opportunity to become foster parents for their own kin, including

grandchildren, or to adopt their own kin, including grandchildren, from foster care.

(B) According to the Williams Institute, more than 14,000 children are currently in foster placements with gay, lesbian, and bisexual parents. Another 65,000 children are being raised by their adoptive parents. If other States followed the minority of States and discriminated against qualified individuals because of their sexual orientation or marital status, foster care expenditures would increase between $87,000,000 and $130,000,000 per year in order to pay for additional institutional and group care, as well as to recruit and train new foster and adoptive parents.

(11) Some States allow 1 member of a same-sex couple to adopt, but do not recognize both members of the couple as the child's legal parents. Recognition of joint adoption provides children with the same rights and security that children of heterosexual parents enjoy. These protections include access to both parents' health benefits, survivor's, Social Security, and child support entitlements, legal grounds for either parent to provide consent for medical care, education, and other important deci-

sions, as well as the establishment of permanency for both parents and child.

(12) Professional organizations in the fields of medicine, psychology, law, and child welfare have taken official positions in support of the ability of qualified gay, lesbian, bisexual, and unmarried couples to foster and adopt, as supported by scientific research showing sexual orientation as a nondeterminative factor in parental success.

(13) Discrimination against potential foster or adoptive parents based on sexual orientation, gender identity, or marital status is not in the best interests of children in the foster care system.

(b) PURPOSES.—The purposes of this Act are to decrease the length of time that children wait for permanency with a loving family and to promote the best interests of children in the child welfare system by preventing discrimination in adoption and foster care placements based on sexual orientation, gender identity, or marital status.

SEC. 3. EVERY CHILD DESERVES A FAMILY.

(a) ACTIVITIES.—

(1) PROHIBITION.—An entity that receives Federal assistance or contracts with an entity that re-

ceives Federal assistance, and is involved in adoption or foster care placements may not—

(A) deny to any person the opportunity to become an adoptive or a foster parent on the basis of the sexual orientation, gender identity, or marital status of the person, or the sexual orientation or gender identity of the child involved;

(B) delay or deny the placement of a child for adoption or into foster care on the basis of the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child; or

(C) require different or additional screenings, processes, or procedures for adoptive or foster placement decisions on the basis of the sexual orientation, gender identity, or marital status of the prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

(2) DEFINITION OF PLACEMENT DECISION.—In this section, the term ''placement decision'' means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive

home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(b) EQUITABLE RELIEF.—Any individual who is aggrieved by an action in violation of subsection (a) may bring an action seeking relief in a United States district court of appropriate jurisdiction.

(c) FEDERAL GUIDANCE.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned entities with respect to compliance with this section.

(d) TECHNICAL ASSISTANCE.—In order to ensure compliance with, and ensure understanding of the legal, practice, and culture changes required by, this Act in making foster care and adoption placement decisions, the Secretary shall provide technical assistance to all entities covered by this Act, including—

(1) identifying laws and regulations inconsistent with this Act and providing guidance and training to ensure the laws and regulations are brought into compliance within the prescribed period of time;

(2) identifying casework practices and procedures inconsistent with this Act and providing guid-

ance and training to ensure the practices and procedures are brought into compliance within the prescribed period of time;

(3) providing guidance in expansion of recruitment efforts to ensure consideration of all interested and qualified prospective adoptive and foster parents regardless of the sexual orientation, gender identity, or marital status of the prospective parent;

(4) comprehensive cultural competency training for covered entities and prospective adoptive and foster parents; and

(5) training judges and attorneys involved in foster care and adoption cases on the findings and purposes of this Act.

(e) DEADLINE FOR COMPLIANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), an entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this section not later than 6 months after publication of the guidance referred to in subsection (c), or 1 year after the date of enactment of this Act, whichever occurs first.

(2) AUTHORITY TO EXTEND DEADLINE.—If a State demonstrates to the satisfaction of the Secretary of Health and Human Services that it is nec-

essary to amend State statutory law in order to change a particular practice that is inconsistent with this section, the Secretary may extend the compliance date for the State and any entities in the State that are involved with adoption or foster care placements a reasonable number of days after the close of the 1st State legislative session beginning after the date the guidance referred to in subsection (c) is published.

(3) AUTHORITY TO WITHHOLD FUNDS.—If a State fails to comply with this section, the Secretary may withhold payment to the State of amounts otherwise payable to the State under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq., 670 et seq.), to the extent the Secretary deems the withholding necessary to induce the State into compliance with this section.

(f) GAO STUDY.—

(1) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study to determine whether the States have substantially complied with this Act, including specifically whether the States have—

(A) eliminated policies, practices, or statutes that deny to any otherwise qualified person the opportunity to become an adoptive or foster parent on the basis of the sexual orientation, gender identity, or marital status of the person, or the sexual orientation or gender identity of the child involved;

(B) removed all program, policy, or statutory barriers that delay or deny the placement of a child for adoption or into foster care on the basis of the sexual orientation, gender identity, or marital status of any qualified, prospective adoptive or foster parent, or the sexual orientation or gender identity of the child; and

(C) eliminated all different or additional screenings, processes, or procedures for adoptive or foster placement decisions based on the sexual orientation, gender identity, or marital status of the prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after completing the study required by paragraph (1), the Comptroller General shall submit

to Congress a written report that contains the results of the study.

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