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S. 555

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2011

Mr. FRANKEN (for himself, Mr. HARKIN, Mr. KERRY, Mrs. MURRAY, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. DURBIN, Mr. LAUTENBERG, Mr. BENNET, Mr. BLUMENTHAL, Mr. UDALL of Colorado, Ms. MIKULSKI, Mr. LEAHY, Mr. SANDERS, Mr. BINGAMAN, Mr. WHITEHOUSE, Mr. CARDIN, Mrs. BOXER, Mrs. GILLIBRAND, Mr. MENENDEZ, Mr. AKAKA, Mr. SCHUMER, Mr. WYDEN, Mr. BEGICH, Mr. CASEY, Ms. CANTWELL, Mr. BROWN of Ohio, Mrs. SHAHEEN, Mr. REED, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

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 ''Student Non-Discrimination Act of 2011''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Public school students who are lesbian, gay, bisexual, or transgender (referred to in this Act as ''LGBT''), or are perceived to be LGBT, or who associate with LGBT people, have been and are subjected to pervasive discrimination, including harassment, bullying, intimidation, and violence, and have been deprived of equal educational opportunities, in schools in every part of the Nation.

(2) While discrimination, including harassment, bullying, intimidation, and violence, of any kind is harmful to students and to the education system, actions that target students based on sexual orientation or gender identity represent a distinct and especially severe problem.

(3) Numerous social science studies demonstrate that discrimination, including harassment, bullying, intimidation, and violence, at school has contributed to high rates of absenteeism, dropping out, adverse health consequences, and academic underachievement, among LGBT youth.

(4) When left unchecked, discrimination, including harassment, bullying, intimidation, and violence, in schools based on sexual orientation or gender

identity can lead, and has led, to life-threatening violence and to suicide.

(5) Public school students enjoy a variety of constitutional rights, including rights to equal protection, privacy, and free expression, which are infringed when school officials engage in or are indifferent to discrimination, including harassment, bullying, intimidation, and violence, on the basis of sexual orientation or gender identity.

(6) While Federal statutory provisions expressly address discrimination on the basis of race, color, sex, religion, disability, and national origin, Federal civil rights statutes do not expressly address discrimination on the basis of sexual orientation or gender identity. As a result, students and parents have often had limited recourse to law for remedies for discrimination on the basis of sexual orientation or gender identity.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure that all students have access to public education in a safe environment free from discrimination, including harassment, bullying, intimidation, and violence, on the basis of sexual orientation or gender identity;

(2) to provide a comprehensive Federal prohibition of discrimination in public schools based on actual or perceived sexual orientation or gender identity;

(3) to provide meaningful and effective remedies for discrimination in public schools based on actual or perceived sexual orientation or gender identity;

(4) to invoke congressional powers, including the power to enforce the 14th Amendment to the Constitution and to provide for the general welfare pursuant to section 8 of article I of the Constitution and the power to make all laws necessary and proper for the execution of the foregoing powers pursuant to section 8 of article I of the Constitution, in order to prohibit discrimination in public schools on the basis of sexual orientation or gender identity; and

(5) to allow the Department of Education to effectively combat discrimination based on sexual orientation or gender identity in public schools, through regulation and enforcement, as the Department has issued regulations under and enforced title IX of the Education Amendments of 1972 and other nondiscrimination laws in a manner that effectively addresses discrimination.

SEC. 3. DEFINITIONS AND RULE.

(a) DEFINITIONS.—For purposes of this Act:

(1) EDUCATIONAL AGENCY.—The term ''educational agency'' means a local educational agency, an educational service agency, and a State educational agency, as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(3) HARASSMENT.—The term ''harassment'' means conduct that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from a program or activity of a public school or educational agency, or to create a hostile or abusive educational environment at a program or activity of a public school or educational agency, including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility, if such conduct is based on—

(A) a student's actual or perceived sexual orientation or gender identity; or

(B) the actual or perceived sexual orientation or gender identity of a person with whom a student associates or has associated.

(4) PROGRAM OR ACTIVITY.—The terms ''program or activity'' and ''program'' have the same meanings given such terms as applied under section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a) to the operations of public entities under paragraph (2)(B) of such section.

(5) PUBLIC SCHOOL.—The term ''public school'' means an elementary school (as the term is defined in section 9101 of the Elementary and Secondary Education Act of 1965) that is a public institution, and a secondary school (as so defined) that is a public institution.

(6) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(7) STUDENT.—The term ''student'' means an individual who is enrolled in a public school or who, regardless of official enrollment status, attends classes or participates in the programs or activities of a public school or educational agency.

(b) RULE.—Consistent with Federal law, in this Act the term ''includes'' means ''includes but is not limited to''.

SEC. 4. PROHIBITION AGAINST DISCRIMINATION.

(a) IN GENERAL.—No student shall, on the basis of actual or perceived sexual orientation or gender identity of such individual or of a person with whom the student associates or has associated, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) HARASSMENT.—For purposes of this Act, discrimination includes harassment of a student on the basis of actual or perceived sexual orientation or gender identity of such student or of a person with whom the student associates or has associated.

(c) RETALIATION PROHIBITED.—

(1) PROHIBITION.—No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination, retaliation, or reprisal under any program or activity receiving Federal financial assistance based on the person's opposition to conduct made unlawful by this Act.

(2) DEFINITION.—For purposes of this subsection, ''opposition to conduct made unlawful by this Act'' includes—

(A) opposition to conduct reasonably believed to be made unlawful by this Act;

(B) any formal or informal report, whether oral or written, to any governmental entity, including public schools and educational agencies and employees of the public schools or educational agencies, regarding conduct made unlawful by this Act or reasonably believed to be made unlawful by this Act;

(C) participation in any investigation, proceeding, or hearing related to conduct made unlawful by this Act or reasonably believed to be made unlawful by this Act; and

(D) assistance or encouragement provided to any other person in the exercise or enjoyment of any right granted or protected by this Act,

if in the course of that expression, the person involved does not purposefully provide information known to be false to any public school or educational agency or other governmental entity regarding con-

duct made unlawful, or reasonably believed to be made unlawful, by this Act.

SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; REPORT TO CONGRESSIONAL COMMITTEES.

(a) REQUIREMENTS.—Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 4 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

(b) ENFORCEMENT.—Compliance with any requirement adopted pursuant to this section may be effected—

(1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof,

or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found; or

(2) by any other means authorized by law,

except that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means.

(c) REPORTS.—In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House of Representatives and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until 30 days have elapsed after the filing of such report.

SEC. 6. CAUSE OF ACTION.

(a) CAUSE OF ACTION.—Subject to subsection (c), an aggrieved individual may bring an action in a court of competent jurisdiction, asserting a violation of this Act. Aggrieved individuals may be awarded all appropriate re-

lief, including equitable relief, compensatory damages, and costs of the action.

(b) RULE OF CONSTRUCTION.—This section shall not be construed to preclude an aggrieved individual from obtaining remedies under any other provision of law or to require such individual to exhaust any administrative complaint process or notice of claim requirement before seeking redress under this section.

(c) STATUTE OF LIMITATIONS.—For actions brought pursuant to this section, the statute of limitations period shall be determined in accordance with section 1658(a) of title 28, United States Code. The tolling of any such limitations period shall be determined in accordance with the law governing actions under section 1979 of the Revised Statutes (42 U.S.C. 1983) in the State in which the action is brought.

SEC. 7. STATE IMMUNITY.

(a) STATE IMMUNITY.—A State shall not be immune under the 11th Amendment to the Constitution from suit in Federal court for a violation of this Act.

(b) WAIVER.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment or otherwise, to a suit brought by an aggrieved individual for a violation of section 4.

(c) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

SEC. 8. ATTORNEY'S FEES.

Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended by inserting ''the Student Non-Discrimination Act of 2011,'' after ''Religious Land Use and Institutionalized Persons Act of 2000,''.

SEC. 9. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE NONDISCRIMINATION LAWS.—Nothing in this Act shall be construed to preempt, invalidate, or limit rights, remedies, procedures, or legal standards available to victims of discrimination or retaliation, under any other Federal law or law of a State or political subdivision of a State, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the Revised Statutes (42 U.S.C. 1983). The obligations imposed by this Act are in addition to those imposed by title

VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of the Revised Statutes (42 U.S.C. 1983).

(b) FREE SPEECH AND EXPRESSION LAWS AND RELIGIOUS STUDENT GROUPS.—Nothing in this Act shall be construed to alter legal standards regarding, or affect the rights available to individuals or groups under, other Federal laws that establish protections for freedom of speech and expression, such as legal standards and rights available to religious and other student groups under the First Amendment and the Equal Access Act (20 U.S.C. 4071 et seq.).

SEC. 10. SEVERABILITY.

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provision to any other person or circumstance shall not be impacted.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date of this Act.

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