

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3685)  
TO PROHIBIT EMPLOYMENT DISCRIMINATION ON THE  
BASIS OF SEXUAL ORIENTATION

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NOVEMBER 5, 2007.—Referred to the House Calendar and ordered to be printed

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Mr. CASTOR, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 793]

The Committee on Rules, having had under consideration House Resolution 793, by a record vote of 9-3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3685, the Employment Non-Discrimination Act of 2007, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI. The rule provides that the bill shall be considered as read. All points of order against provisions of the bill are waived. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The rule makes in order only those amendments printed in this report. The amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. All points of order against the amendments except for clauses 9 and 10 of rule XXI are waived. The rule provides one motion to recommit with or without instructions. Finally the rule provides that, notwithstanding the operation of the previous question, the Chair

may postpone further consideration of the bill to a time designated by the Speaker.

#### EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI) and waives all points of order against the provisions of the bill, the Committee is not aware of any points of order. The waivers of all points of order are prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee record vote No. 378*

Date: November 5, 2007.

Measure: H.R. 3685.

Motion by: Mr. Dreier.

Summary of motion: To grant an open rule.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

##### *Rules Committee record vote No. 379*

Date: November 5, 2007.

Measure: H.R. 3685.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Souder (IN), #4, which would strike “perceived” from each place it occurs in the bill.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

##### *Rules Committee record vote No. 380*

Date: November 5, 2007.

Measure: H.R. 3685.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Souder (IN), #6, which would prohibit employers from discriminating against an employee because the employee refused to consent to an employer’s anti-discrimination or anti-harassment policy, or refused to participate in a diversity training program, because of their religious beliefs regarding sexual orientation.

Results: Defeated 3–9.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Welch—Nay; Castor—Nay; Arcuri—Nay; Sutton—Nay; Dreier—Yea; Diaz-Balart—Yea; Hastings (WA)—Yea; Slaughter—Nay.

*Rules Committee record vote No. 381*

Date: November 5, 2007.

Measure: H.R. 3685.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 9-3.

Vote by Members: McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Cardoza—Yea; Welch—Yea; Castor—Yea; Arcuri—Yea; Sutton—Yea; Dreier—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Slaughter—Yea.

## SUMMARY OF AMENDMENTS MADE IN ORDER

1. Miller, George (CA)/Stupak (MI): The amendment (1) provides explicitly that any religious corporation, school, association or society that is exempt under either Section 702(a) or 703(e)(2) of Title VII's religious exemptions is exempt under ENDA. It clarifies that the scope of Title VII's exemption is exactly the scope of ENDA's exemption (if a school is exempt from Title VII's religious discrimination prohibitions, it will also be exempt from ENDA); and (2) it clarifies that ENDA does not alter the Defense of Marriage Act (DOMA) in any way. It strikes language referencing "a same-sex couple who are not married" in the Employee Benefits section of ENDA. It also inserts language clarifying that the term "married" has the meaning given such term in DOMA, directly incorporating DOMA's definition of marriage. (20 minutes)

2. Souder (IN): The amendment would strike paragraph (3) of section 8(a), which prohibits employers from conditioning employment on a person being married or being eligible to be married. (10 minutes)

3. Baldwin (WI): The amendment would expand ENDA's protections to persons discriminated against based on gender identity, defined as 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. The amendment includes language concerning shared facilities, dress, and grooming standards, as well as a paragraph stating that the construction of additional facilities are not required. (10 minutes)

## TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GEORGE MILLER OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

Strike paragraph (8) of section 3(a) (and redesignate paragraphs (9) and (10) of such section as paragraphs (8) and (9), respectively).

Strike section 6 and insert the following:

**SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.**

This Act shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Acts of 1964 pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e-1(a); 2000e-2(e)(2)).

In section 8(b), strike " , including a same-sex couple who are not married,".

At the end of section 8, insert the following:

(c) DEFINITION OF MARRIAGE.—As used in this Act, the term “married” or “marry” refer to marriage as such term is defined in section 7 of title I, United States Code (referred to as the Defense of Marriage Act).

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SOUDER OF INDIANA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike paragraph (3) of section 8(a).

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BALDWIN OF WISCONSIN, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Throughout the Act, insert “or gender identity” after “sexual orientation” each place it appears.

In section 3(a), after paragraph (5) insert the following (and redesignate succeeding paragraphs accordingly):

(6) 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.

In section 8(a), insert after paragraph (2) the following (and redesignate succeeding paragraph accordingly):

(3) CERTAIN SHARED FACILITIES.—Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee’s gender identity as established with the employer at the time of employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.

(4) ADDITIONAL FACILITIES NOT REQUIRED.—Nothing in this Act shall be construed to require the construction of new or additional facilities.

(5) DRESS AND GROOMING STANDARDS.—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee’s hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards for the gender to which the employee has transitioned or is transitioning.