

Legal Sidebar

Omnibus Gay Rights Bill Introduced in Congress

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Less than a month after the Supreme Court legalized [same-sex marriage](#), several Members of Congress have introduced legislation that would offer sweeping legal protections for lesbian, gay, bisexual, and transgender (LGBT) individuals in a broad array of areas, including public accommodations, employment, and housing. Although the primary focus of the bill, entitled the [Equality Act](#), appears to be expanding legal rights for LGBT individuals, the proposed legislation would add sex discrimination to several existing civil rights laws as well.

Under current federal law, a variety of civil rights statutes are available to protect individuals from discrimination. Although these laws share similar features, the type of discrimination that they prohibit and the circumstances under which they operate vary from statute to statute. In general, these laws have traditionally barred discrimination against a select group of protected categories, including, but not limited to, race, color, national origin, sex, religion, age, and disability. In contrast, sexual orientation and gender identity discrimination have never been expressly prohibited by federal statute, although there may be [some circumstances](#) under which discrimination against LGBT individuals may violate current law.

The Equality Act would alter the current legal landscape by amending existing civil rights laws in order to explicitly protect LGBT individuals as well. For example, the bill would amend multiple titles within the Civil Rights Act of 1964 (CRA), which is perhaps the most prominent and comprehensive civil rights legislation enacted in modern times, as well as the model for subsequent anti-discrimination laws.

Specifically, the Equality Act would amend the CRA by adding sex, sexual orientation, and gender identity to [Title II](#), which currently prohibits discrimination on the basis of race, color, religion, or national origin in public accommodations. Defined as establishments that serve the public and that have a connection to interstate commerce, public accommodations include hotels and motels, restaurants and bars, and entertainment venues such as movie theaters or sports arenas. The bill would also clarify that public accommodations include any establishment that provides goods and services, such as retail stores, or establishments that provide health care, accounting, or legal services. Thus, it would be illegal for such establishments to deny goods or services to customers who were gay.

The Equality Act would also amend [Titles III](#) and [IV](#) of the CRA. Title II, which currently prohibits discrimination on the basis of race, color, religion, or national origin in public facilities, would be amended to include sex, sexual orientation, and gender identity. Likewise, Title IV, which authorizes the Department of Justice to file suit in federal court in response to complaints about discrimination in public schools, would be amended to forbid sexual orientation and gender identity discrimination in addition to the current prohibition against segregating public schools on the basis of race, color, religion, sex, or national origin.

In addition, the Equality Act would amend both [Title VI](#) and [Title VII](#) of the CRA. Currently, Title VI prohibits discrimination in federally funded programs or activities on the basis of race, color, or national origin, while Title VII prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. The Equality Act would add sex, sexual orientation, and gender identity discrimination to the list of prohibited practices under Title VI and sexual orientation and gender identity to Title VII. The bill would also make corresponding changes to related laws that bar discrimination against certain government and congressional employees.

Beyond the CRA, the Equality Act would amend several other civil rights statutes, including the [Fair Housing Act](#)

([FHA](#)) and the [Equal Credit Opportunity Act](#) (ECOA). Currently, the FHA prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, national origin, sex, disability, or familial status, while the ECOA forbids discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, or source of income. The Equality Act would add sexual orientation and gender identity as protected classes under both statutes. The bill would also bar discrimination on these grounds in jury selection. Under current law, only discrimination based on race, color, religion, sex, national origin or economic status is prohibited when [choosing a jury](#).

It is important to note that the changes that would be made under the Equality Act appear to be broader in scope than previous legislative efforts to prohibit discrimination against LGBT individuals. For example, in the context of federal funding programs or employment, the bills that have been routinely introduced in earlier congressional sessions—namely the [Student Non-Discrimination Act](#) (SNDA) and the [Employment Non-Discrimination Act](#) (ENDA)—were more narrowly drawn. (Although [SNDA](#) was recently rejected by the Senate when offered as an amendment to legislation that would reauthorize the [Elementary and Secondary Education Act](#), ENDA has not been reintroduced in the 114th Congress.) Meanwhile, bills to prohibit sexual orientation or gender identity discrimination in other areas, such as housing or jury selection, have previously been introduced, but never as an omnibus package. It is this comprehensive approach that appears to distinguish the Equality Act from other legislation that would protect the legal rights of LGBT individuals. Also notable is a provision clarifying that the [Religious Freedom Restoration Act](#) could not be cited as a defense against a discrimination claim filed under the new law. This latter provision appears likely to stoke the [continuing controversy](#) over how to resolve the current tension between laws that protect religious freedom versus laws that prohibit discrimination against LGBT individuals.