

AMENDMENT TO RULES COMM. PRINT 113-58

OFFERED BY MR. POLIS OF COLORADO

At the end of title X, page 582, after line 10, add
the following new subtitle:

1 **Subtitle H—Employment Non-**
2 **Discrimination Act**

3 **SEC. 1081. SHORT TITLE.**

4 This subtitle may be cited as the “Employment Non-
5 Discrimination Act of 2014”.

6 **SEC. 1082. PURPOSES.**

7 The purposes of this subtitle are—

8 (1) to address the history and persistent, wide-
9 spread pattern of discrimination on the bases of sex-
10 ual orientation and gender identity by private sector
11 employers and local, State, and Federal Government
12 employers;

13 (2) to provide an explicit, comprehensive Fed-
14 eral prohibition against employment discrimination
15 on the bases of sexual orientation and gender iden-
16 tity, including meaningful and effective remedies for
17 any such discrimination;

18 (3) to invoke congressional powers, including
19 the powers to enforce the 14th Amendment to the

1 Constitution, and to regulate interstate commerce
2 pursuant to section 8 of article I of the Constitution,
3 in order to prohibit employment discrimination on
4 the bases of sexual orientation and gender identity;
5 and

6 (4) to reinforce the Nation's commitment to
7 fairness and equal opportunity in the workplace con-
8 sistent with the fundamental right of religious free-
9 dom.

10 **SEC. 1083. DEFINITIONS.**

11 (a) IN GENERAL.—In this subtitle:

12 (1) COMMISSION.—The term “Commission”
13 means the Equal Employment Opportunity Commis-
14 sion.

15 (2) COVERED ENTITY.—The term “covered en-
16 tity” means an employer, employment agency, labor
17 organization, or joint labor-management committee.

18 (3) DEMONSTRATES.—The term “dem-
19 onstrates” means meets the burdens of production
20 and persuasion.

21 (4) EMPLOYEE.—

22 (A) IN GENERAL.—The term “employee”
23 means—

1 (i) an employee as defined in section
2 701(f) of the Civil Rights Act of 1964 (42
3 U.S.C. 2000e(f));

4 (ii) a State employee to which section
5 302(a)(1) of the Government Employee
6 Rights Act of 1991 (42 U.S.C. 2000e-
7 16b(a)(1)) applies;

8 (iii) a covered employee, as defined in
9 section 101 of the Congressional Account-
10 ability Act of 1995 (2 U.S.C. 1301) or sec-
11 tion 411(c) of title 3, United States Code;
12 or

13 (iv) an employee or applicant to which
14 section 717(a) of the Civil Rights Act of
15 1964 (42 U.S.C. 2000e-16(a)) applies.

16 (B) EXCEPTION.—The provisions of this
17 subtitle that apply to an employee or individual
18 shall not apply to a volunteer who receives no
19 compensation.

20 (5) EMPLOYER.—The term “employer”
21 means—

22 (A) a person engaged in an industry affect-
23 ing commerce (as defined in section 701(h) of
24 the Civil Rights Act of 1964 (42 U.S.C.
25 2000e(h)) who has 15 or more employees (as

1 defined in subparagraphs (A)(i) and (B) of
2 paragraph (4)) for each working day in each of
3 20 or more calendar weeks in the current or
4 preceding calendar year, and any agent of such
5 a person, but does not include a bona fide pri-
6 vate membership club (other than a labor orga-
7 nization) that is exempt from taxation under
8 section 501(c) of the Internal Revenue Code of
9 1986;

10 (B) an employing authority to which sec-
11 tion 302(a)(1) of the Government Employee
12 Rights Act of 1991 applies;

13 (C) an employing office, as defined in sec-
14 tion 101 of the Congressional Accountability
15 Act of 1995 or section 411(c) of title 3, United
16 States Code; or

17 (D) an entity to which section 717(a) of
18 the Civil Rights Act of 1964 applies.

19 (6) EMPLOYMENT AGENCY.—The term “em-
20 ployment agency” has the meaning given the term in
21 section 701(c) of the Civil Rights Act of 1964 (42
22 U.S.C. 2000e(c)).

23 (7) GENDER IDENTITY.—The term “gender
24 identity” means the gender-related identity, appear-
25 ance, or mannerisms or other gender-related charac-

1 teristics of an individual, with or without regard to
2 the individual's designated sex at birth.

3 (8) LABOR ORGANIZATION.—The term “labor
4 organization” has the meaning given the term in
5 section 701(d) of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e(d)).

7 (9) PERSON.—The term “person” has the
8 meaning given the term in section 701(a) of the
9 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

10 (10) SEXUAL ORIENTATION.—The term “sexual
11 orientation” means homosexuality, heterosexuality,
12 or bisexuality.

13 (11) STATE.—The term “State” has the mean-
14 ing given the term in section 701(i) of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000e(i)).

16 (b) APPLICATION OF DEFINITIONS.—For purposes of
17 this section, a reference in section 701 of the Civil Rights
18 Act of 1964—

19 (1) to an employee or an employer shall be con-
20 sidered to refer to an employee (as defined in sub-
21 section (a)(4)) or an employer (as defined in sub-
22 section (a)(5)), respectively, except as provided in
23 paragraph (2) of this subsection; and

1 (2) to an employer in subsection (f) of that sec-
2 tion shall be considered to refer to an employer (as
3 defined in subsection (a)(5)(A)).

4 **SEC. 1084. EMPLOYMENT DISCRIMINATION PROHIBITED.**

5 (a) EMPLOYER PRACTICES.—It shall be an unlawful
6 employment practice for an employer—

7 (1) to fail or refuse to hire or to discharge any
8 individual, or otherwise discriminate against any in-
9 dividual with respect to the compensation, terms,
10 conditions, or privileges of employment of the indi-
11 vidual, because of such individual's actual or per-
12 ceived sexual orientation or gender identity; or

13 (2) to limit, segregate, or classify the employees
14 or applicants for employment of the employer in any
15 way that would deprive or tend to deprive any indi-
16 vidual of employment or otherwise adversely affect
17 the status of the individual as an employee, because
18 of such individual's actual or perceived sexual ori-
19 entation or gender identity.

20 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
21 an unlawful employment practice for an employment agen-
22 cy to fail or refuse to refer for employment, or otherwise
23 to discriminate against, any individual because of the ac-
24 tual or perceived sexual orientation or gender identity of
25 the individual or to classify or refer for employment any

1 individual on the basis of the actual or perceived sexual
2 orientation or gender identity of the individual.

3 (c) LABOR ORGANIZATION PRACTICES.—It shall be
4 an unlawful employment practice for a labor organiza-
5 tion—

6 (1) to exclude or to expel from its membership,
7 or otherwise to discriminate against, any individual
8 because of the actual or perceived sexual orientation
9 or gender identity of the individual;

10 (2) to limit, segregate, or classify its member-
11 ship or applicants for membership, or to classify or
12 fail or refuse to refer for employment any individual,
13 in any way that would deprive or tend to deprive any
14 individual of employment, or would limit such em-
15 ployment or otherwise adversely affect the status of
16 the individual as an employee or as an applicant for
17 employment because of such individual's actual or
18 perceived sexual orientation or gender identity; or

19 (3) to cause or attempt to cause an employer to
20 discriminate against an individual in violation of this
21 section.

22 (d) TRAINING PROGRAMS.—It shall be an unlawful
23 employment practice for any employer, labor organization,
24 or joint labor-management committee controlling appren-
25 ticeship or other training or retraining, including on-the-

1 job training programs, to discriminate against any indi-
2 vidual because of the actual or perceived sexual orientation
3 or gender identity of the individual in admission to, or em-
4 ployment in, any program established to provide appren-
5 ticeship or other training.

6 (e) ASSOCIATION.—An unlawful employment practice
7 described in any of subsections (a) through (d) shall be
8 considered to include an action described in that sub-
9 section, taken against an individual based on the actual
10 or perceived sexual orientation or gender identity of a per-
11 son with whom the individual associates or has associated.

12 (f) NO PREFERENTIAL TREATMENT OR QUOTAS.—
13 Nothing in this subtitle shall be construed or interpreted
14 to require or permit—

15 (1) any covered entity to grant preferential
16 treatment to any individual or to any group because
17 of the actual or perceived sexual orientation or gen-
18 der identity of such individual or group on account
19 of an imbalance which may exist with respect to the
20 total number or percentage of persons of any actual
21 or perceived sexual orientation or gender identity
22 employed by any employer, referred or classified for
23 employment by any employment agency or labor or-
24 ganization, admitted to membership or classified by
25 any labor organization, or admitted to, or employed

1 in, any apprenticeship or other training program, in
2 comparison with the total number or percentage of
3 persons of such actual or perceived sexual orienta-
4 tion or gender identity in any community, State, sec-
5 tion, or other area, or in the available work force in
6 any community, State, section, or other area; or

7 (2) the adoption or implementation by a cov-
8 ered entity of a quota on the basis of actual or per-
9 ceived sexual orientation or gender identity.

10 (g) **NO DISPARATE IMPACT CLAIMS.**—Only disparate
11 treatment claims may be brought under this subtitle.

12 (h) **STANDARDS OF PROOF.**—Except as otherwise
13 provided, an unlawful employment practice is established
14 when the complaining party demonstrates that sexual ori-
15 entation or gender identity was a motivating factor for any
16 employment practice, even though other factors also moti-
17 vated the practice.

18 **SEC. 1085. RETALIATION PROHIBITED.**

19 It shall be an unlawful employment practice for a cov-
20 ered entity to discriminate against an individual because
21 such individual—

22 (1) opposed any practice made an unlawful em-
23 ployment practice by this subtitle; or

1 (2) made a charge, testified, assisted, or partici-
2 pated in any manner in an investigation, proceeding,
3 or hearing under this subtitle.

4 **SEC. 1086. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.**

5 This subtitle shall not change the requirements of
6 title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e
7 et seq.), pursuant to section 702(a) or 703(e)(2) of such
8 Act (42 U.S.C. 2000e–1(a), 2000e–2(e)(2)), applicable to
9 a religious corporation, association, educational institu-
10 tion, or society with respect to the employment of individ-
11 uals of a particular religion to perform work connected
12 with the carrying on by such corporation, association, edu-
13 cational institution, or society of its activities. Such orga-
14 nizations are not exempt from the requirements of this
15 subtitle to refrain from discrimination based on sexual ori-
16 entation or gender identity, in the same manner as is re-
17 quired with respect to discrimination based on race, color,
18 sex and national origin under such title.

19 **SEC. 1087. NONAPPLICATION TO MEMBERS OF THE ARMED**
20 **FORCES; VETERANS' PREFERENCES.**

21 (a) ARMED FORCES.—

22 (1) EMPLOYMENT.—In this subtitle, the term
23 “employment” does not apply to the relationship be-
24 tween the United States and members of the Armed
25 Forces.

1 (2) ARMED FORCES.—In paragraph (1) the
2 term “Armed Forces” means the Army, Navy, Air
3 Force, Marine Corps, and Coast Guard.

4 (b) VETERANS’ PREFERENCES.—This title does not
5 repeal or modify any Federal, State, territorial, or local
6 law creating a special right or preference concerning em-
7 ployment for a veteran.

8 **SEC. 1088. CONSTRUCTION.**

9 (a) DRESS OR GROOMING STANDARDS.—Nothing in
10 this subtitle shall prohibit an employer from requiring an
11 employee, during the employee’s hours at work, to adhere
12 to reasonable dress or grooming standards not prohibited
13 by other provisions of Federal, State, or local law, pro-
14 vided that the employer permits any employee who has un-
15 dergone gender transition prior to the time of employment,
16 and any employee who has notified the employer that the
17 employee has undergone or is undergoing gender transi-
18 tion after the time of employment, to adhere to the same
19 dress or grooming standards as apply for the gender to
20 which the employee has transitioned or is transitioning.

21 (b) ADDITIONAL FACILITIES NOT REQUIRED.—
22 Nothing in this subtitle shall be construed to require the
23 construction of new or additional facilities.

1 **SEC. 1089. COLLECTION OF STATISTICS PROHIBITED.**

2 The Commission and the Secretary of Labor shall
3 neither compel the collection of nor require the production
4 of statistics on actual or perceived sexual orientation or
5 gender identity from covered entities pursuant to this sub-
6 title.

7 **SEC. 1090. ENFORCEMENT.**

8 (a) **ENFORCEMENT POWERS.**—With respect to the
9 administration and enforcement of this subtitle in the case
10 of a claim alleged by an individual for a violation of this
11 subtitle—

12 (1) the Commission shall have the same powers
13 as the Commission has to administer and enforce—

14 (A) title VII of the Civil Rights Act of
15 1964 (42 U.S.C. 2000e et seq.); or

16 (B) sections 302 and 304 of the Govern-
17 ment Employee Rights Act of 1991 (42 U.S.C.
18 2000e–16b and 2000e–16c),

19 in the case of a claim alleged by such individual for
20 a violation of such title, or of section 302(a)(1) of
21 the Government Employee Rights Act of 1991 (42
22 U.S.C. 2000e–16b(a)(1)), respectively;

23 (2) the Librarian of Congress shall have the
24 same powers as the Librarian of Congress has to ad-
25 minister and enforce title VII of the Civil Rights Act
26 of 1964 (42 U.S.C. 2000e et seq.) in the case of a

1 claim alleged by such individual for a violation of
2 such title;

3 (3) the Board (as defined in section 101 of the
4 Congressional Accountability Act of 1995 (2 U.S.C.
5 1301)) shall have the same powers as the Board has
6 to administer and enforce the Congressional Ac-
7 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
8 the case of a claim alleged by such individual for a
9 violation of section 201(a)(1) of such Act (2 U.S.C.
10 1311(a)(1));

11 (4) the Attorney General shall have the same
12 powers as the Attorney General has to administer
13 and enforce—

14 (A) title VII of the Civil Rights Act of
15 1964 (42 U.S.C. 2000e et seq.); or

16 (B) sections 302 and 304 of the Govern-
17 ment Employee Rights Act of 1991 (42 U.S.C.
18 2000e–16b and 2000e–16c);

19 in the case of a claim alleged by such individual for
20 a violation of such title, or of section 302(a)(1) of
21 the Government Employee Rights Act of 1991 (42
22 U.S.C. 2000e–16b(a)(1)), respectively;

23 (5) the President, the Commission, and the
24 Merit Systems Protection Board shall have the same
25 powers as the President, the Commission, and the

1 Board, respectively, have to administer and enforce
2 chapter 5 of title 3, United States Code, in the case
3 of a claim alleged by such individual for a violation
4 of section 411 of such title; and

5 (6) a court of the United States shall have the
6 same jurisdiction and powers as the court has to en-
7 force—

8 (A) title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.) in the case of
10 a claim alleged by such individual for a viola-
11 tion of such title;

12 (B) sections 302 and 304 of the Govern-
13 ment Employee Rights Act of 1991 (42 U.S.C.
14 2000e–16b and 2000e–16c) in the case of a
15 claim alleged by such individual for a violation
16 of section 302(a)(1) of such Act (42 U.S.C.
17 2000e–16b(a)(1));

18 (C) the Congressional Accountability Act
19 of 1995 (2 U.S.C. 1301 et seq.) in the case of
20 a claim alleged by such individual for a viola-
21 tion of section 201(a)(1) of such Act (2 U.S.C.
22 1311(a)(1)); and

23 (D) chapter 5 of title 3, United States
24 Code, in the case of a claim alleged by such in-

1 dividual for a violation of section 411 of such
2 title.

3 (b) PROCEDURES AND REMEDIES.—Except as pro-
4 vided in section 1084(g), the procedures and remedies ap-
5 plicable to a claim alleged by an individual for a violation
6 of this subtitle are—

7 (1) the procedures and remedies applicable for
8 a violation of title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.) in the case of a
10 claim alleged by such individual for a violation of
11 such title;

12 (2) the procedures and remedies applicable for
13 a violation of section 302(a)(1) of the Government
14 Employee Rights Act of 1991 (42 U.S.C. 2000e–
15 16b(a)(1)) in the case of a claim alleged by such in-
16 dividual for a violation of such section;

17 (3) the procedures and remedies applicable for
18 a violation of section 201(a)(1) of the Congressional
19 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in
20 the case of a claim alleged by such individual for a
21 violation of such section; and

22 (4) the procedures and remedies applicable for
23 a violation of section 411 of title 3, United States
24 Code, in the case of a claim alleged by such indi-
25 vidual for a violation of such section.

1 (c) OTHER APPLICABLE PROVISIONS.—With respect
2 to a claim alleged by a covered employee (as defined in
3 section 101 of the Congressional Accountability Act of
4 1995 (2 U.S.C. 1301)) for a violation of this subtitle, title
5 III of the Congressional Accountability Act of 1995 (2
6 U.S.C. 1381 et seq.) shall apply in the same manner as
7 such title applies with respect to a claim alleged by such
8 a covered employee for a violation of section 201(a)(1) of
9 such Act (2 U.S.C. 1311(a)(1)).

10 (d) NO DOUBLE RECOVERY.—An individual who files
11 claims alleging that a practice is an unlawful employment
12 practice under this subtitle and an unlawful employment
13 practice because of sex under title VII of the Civil Rights
14 Act of 1964 (42 U.S.C. 2000e et seq.) shall not be per-
15 mitted to recover damages for such practice under both
16 of—

17 (1) this subtitle; and

18 (2) section 1977A of the Revised Statutes (42
19 U.S.C. 1981a) and title VII of the Civil Rights Act
20 of 1964.

21 (e) MOTIVATING FACTOR DECISIONS.—On a claim in
22 which an individual proved a violation under section
23 1084(h) and a respondent demonstrates that the respond-
24 ent would have taken the same action in the absence of
25 the impermissible motivating factor, the court—

1 (1) may grant declaratory relief, injunctive re-
2 lief (except as provided in paragraph (2)), and attor-
3 ney's fees and costs demonstrated to be directly at-
4 tributable only to the pursuit of a claim under sec-
5 tion 1084(h); and

6 (2) shall not award damages or issue an order
7 requiring any admission, reinstatement, hiring, pro-
8 motion, or payment.

9 **SEC. 1091. STATE AND FEDERAL IMMUNITY.**

10 (a) **ABROGATION OF STATE IMMUNITY.**—A State
11 shall not be immune under the 11th Amendment to the
12 Constitution from a suit brought in a Federal court of
13 competent jurisdiction for a violation of this subtitle.

14 (b) **WAIVER OF STATE IMMUNITY.**—

15 (1) **IN GENERAL.**—

16 (A) **WAIVER.**—A State's receipt or use of
17 Federal financial assistance for any program or
18 activity of a State shall constitute a waiver of
19 sovereign immunity, under the 11th Amend-
20 ment to the Constitution or otherwise, to a suit
21 brought by an employee or applicant for em-
22 ployment of that program or activity under this
23 subtitle for a remedy authorized under sub-
24 section (d).

1 (B) DEFINITION.—In this paragraph, the
2 term “program or activity” has the meaning
3 given the term in section 606 of the Civil
4 Rights Act of 1964 (42 U.S.C. 2000d–4a).

5 (2) EFFECTIVE DATE.—With respect to a par-
6 ticular program or activity, paragraph (1) applies to
7 conduct occurring on or after the day, after the date
8 of enactment of this Act, on which a State first re-
9 ceives or uses Federal financial assistance for that
10 program or activity.

11 (c) REMEDIES AGAINST STATE OFFICIALS.—An offi-
12 cial of a State may be sued in the official capacity of the
13 official by any employee or applicant for employment who
14 has complied with the applicable procedures of section
15 1090, for equitable relief that is authorized under this
16 subtitle. In such a suit the court may award to the pre-
17 vailing party those costs authorized by section 722 of the
18 Revised Statutes (42 U.S.C. 1988).

19 (d) REMEDIES AGAINST THE UNITED STATES AND
20 THE STATES.—Notwithstanding any other provision of
21 this subtitle, in an action or administrative proceeding
22 against the United States or a State for a violation of this
23 subtitle, remedies (including remedies at law and in eq-
24 uity, and interest) are available for the violation to the
25 same extent as the remedies are available for a violation

1 of title VII of the Civil Rights Act of 1964 (42 U.S.C.
2 2000e et seq.) by a private entity, except that—

3 (1) punitive damages are not available; and

4 (2) compensatory damages are available to the
5 extent specified in section 1977A(b) of the Revised
6 Statutes (42 U.S.C. 1981a(b)).

7 **SEC. 1092. ATTORNEYS' FEES.**

8 (a) DEFINITION.—For purposes of this section, the
9 term “decisionmaker” means an entity described in sec-
10 tion 1090(a) (other than paragraph (4) of such section),
11 acting in the discretion of the entity.

12 (b) AUTHORITY.—Notwithstanding any other provi-
13 sion of this subtitle, in an action or administrative pro-
14 ceeding for a violation of this subtitle, a decisionmaker
15 may allow the prevailing party, other than the Commission
16 or the United States, a reasonable attorney’s fee (includ-
17 ing expert fees) as part of the costs, to the same extent
18 as is permitted under title VII of the Civil Rights Act of
19 1964 (42 U.S.C. 2000e et seq.), sections 302 and 304 of
20 the Government Employee Rights Act of 1991 (42 U.S.C.
21 2000e–16b and 2000e–16c), the Congressional Account-
22 ability Act of 1995 (2 U.S.C. 1301 et seq.), or chapter
23 5 of title 3, United States Code, whichever applies to the
24 prevailing party in that action or proceeding. The Com-

1 mission and the United States shall be liable for the costs
2 to the same extent as a private person.

3 **SEC. 1093. POSTING NOTICES.**

4 A covered entity who is required to post a notice de-
5 scribed in section 711 of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e–10) may be required to post an amended
7 notice, including a description of the applicable provisions
8 of this subtitle, in the manner prescribed by, and subject
9 to the penalty provided under, section 711 of the Civil
10 Rights Act of 1964. Nothing in this subtitle shall be con-
11 strued to require a separate notice to be posted.

12 **SEC. 1094. REGULATIONS.**

13 (a) IN GENERAL.—Except as provided in subsections
14 (b), (c), and (d), the Commission shall have authority to
15 issue regulations to carry out this subtitle.

16 (b) LIBRARIAN OF CONGRESS.—The Librarian of
17 Congress shall have authority to issue regulations to carry
18 out this subtitle with respect to employees and applicants
19 for employment of the Library of Congress.

20 (c) BOARD.—The Board referred to in section
21 1090(a)(3) shall have authority to issue regulations to
22 carry out this subtitle, in accordance with section 304 of
23 the Congressional Accountability Act of 1995 (2 U.S.C.
24 1384), with respect to covered employees, as defined in
25 section 101 of such Act (2 U.S.C. 1301).

1 (d) PRESIDENT.—The President shall have authority
2 to issue regulations to carry out this subtitle with respect
3 to covered employees, as defined in section 411(c) of title
4 3, United States Code, and applicants for employment as
5 such employees.

6 **SEC. 1095. RELATIONSHIP TO OTHER LAWS.**

7 This subtitle shall not invalidate or limit the rights,
8 remedies, or procedures available to an individual claiming
9 discrimination prohibited under any other Federal law or
10 regulation or any law or regulation of a State or political
11 subdivision of a State.

12 **SEC. 1096. SEVERABILITY.**

13 If any provision of this subtitle, or the application
14 of the provision to any person or circumstance, is held to
15 be invalid, the remainder of this subtitle and the applica-
16 tion of the provision to any other person or circumstances
17 shall not be affected by the invalidity.

18 **SEC. 1097. EFFECTIVE DATE.**

19 This subtitle shall take effect on the date that is 6
20 months after the date of enactment of this subtitle and
21 shall not apply to conduct occurring before the effective
22 date.

