



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 13, 2002

S. 1284
Employment Non-Discrimination Act of 2002

*As ordered reported by the Senate Committee on
Health, Education, Labor, and Pensions
on April 24, 2002*

SUMMARY

S. 1284 would prohibit employment discrimination based on sexual orientation. Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1284 would cost \$22 million over the 2003-2007 period for the Equal Employment Opportunity Commission (EEOC) to handle additional discrimination cases. This estimate assumes adjustments for anticipated inflation. The bill could affect direct spending, so pay-as-you-go procedures would apply, but we estimate that any such effects would be less than \$500,000 annually.

S. 1284 would prohibit state, local, and tribal governments from discriminating against employees and applicants for employment based on sexual orientation, and it would require those governments to post notices regarding such prohibitions. Those requirements would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). However, CBO estimates that the costs of complying with those mandates would not be significant and would not exceed the threshold established in UMRA (\$58 million in 2002, adjusted annually for inflation).

The bill also would impose a number of mandates on private-sector employers, employment agencies, and labor organizations. CBO estimates that the direct cost of those requirements would not exceed the annual threshold specified in UMRA (\$115 million in 2002, adjusted annually for inflation) in any of the first five years the mandates would be effective.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1284 is shown in the following table. For this estimate, CBO assumes that the necessary amounts will be appropriated by the start of each fiscal year and that outlays will follow the historical spending pattern of these activities. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION^a						
EEOC Spending Under Current Law						
Estimated Authorization Level ^b	311	325	336	348	360	373
Estimated Outlays	310	324	335	347	359	372
Proposed Changes						
Estimated Authorization Level	0	4	5	5	5	5
Estimated Outlays	0	3	4	5	5	5
EEOC Spending Under S.1284						
Estimated Authorization Level ^b	311	329	341	353	365	378
Estimated Outlays	310	327	339	352	364	377

a. In addition to the bill's discretionary cost, S. 1284 could affect direct spending, but CBO estimates that any such effects would be less than \$500,000 annually.

b. The 2002 level is the amount appropriated for that year for the EEOC. The estimated authorization levels for 2003 through 2007 are CBO baseline estimates, assuming adjustments for anticipated inflation.

The EEOC expects that implementing S. 1284 would increase its annual caseload (currently about 80,000 cases) by 5-to-7 percent and would require an additional 60 to 90 staff. CBO estimates that the costs to hire an additional 75 employees would reach \$5 million annually by fiscal year 2004, subject to the appropriation of the necessary amounts. CBO expects that enacting S. 1284 also would increase the workload for a few other agencies, such as the Merit Systems Protection Board, but any increase in costs for the agencies would not be significant because of the small number of additional cases.

The additional cases resulting from S. 1284 also would increase the workload of the Department of Justice's Civil Rights Division and the federal judiciary. However, CBO estimates that increased costs for these agencies would not be significant because of the relatively small number of cases referred to them.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emerging Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending and receipts. Enacting S. 1284 could increase payments from the Treasury's Judgment Fund for settlements against federal agencies in discrimination cases based on sexual orientation. However, CBO estimates that any increases in direct spending would be less than \$500,000 annually.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1284 would prohibit state, local, and tribal governments from discriminating against employees and applicants for employment based on sexual orientation, and it would require those governments to post notices regarding such prohibitions. Those requirements would be intergovernmental mandates as defined in UMRA. The costs of the mandates would include the costs of posting notices and modifying employment procedures to avoid discriminatory practices. CBO assumes that the costs of notices would likely be relatively minor and would probably be made in the course of other routine updates. Similarly, changes to employment procedures likely would build on practices such as ongoing training and personnel manual updates. Thus, CBO estimates that compliance costs would not be significant and would not exceed the threshold established in UMRA (\$58 million in 2002, adjusted annually for inflation).

By accepting federal financial assistance for any program, states would waive their sovereign immunity under the 11th Amendment and would be subject to suit for discriminatory practices. Because UMRA excludes conditions of federal assistance from the definition of an intergovernmental mandate, the costs resulting from any potential suits would not be the result of complying with an intergovernmental mandate as defined in UMRA. In any event, the number of such cases likely would be very small, and states would not be subject to any punitive damages.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill would impose a number of mandates on private-sector employers, employment agencies, and labor organizations by requiring them not to discriminate against workers on the basis of sexual orientation and by requiring them to post notices of the new law where they would be accessible to workers. The direct cost of complying with the mandates would equal the value of the resources used by employers and other affected entities to become familiar with the new law, the cost of posting notices, and the cost, if any, of modifying their

employment procedures to conform with the new rules. CBO estimates that the aggregate amount of this direct cost would not exceed the annual threshold specified in UMRA (\$115 million in 2002, adjusted annually for inflation) in any of the first five years the mandates would be effective.

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