

112TH CONGRESS
1ST SESSION

S. 859

To prohibit sexual harassment by individuals administering programs and activities receiving Federal assistance.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2011

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit sexual harassment by individuals administering programs and activities receiving Federal assistance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Agency Ac-
5 countability for Sexual Harassment Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ANY 1-YEAR PERIOD.—The term “any 1-
9 year period”—

1 (A) means a continuous period that com-
2 mences not earlier than 12 months before the
3 commission of an offense or that ends not later
4 than 12 months after the commission of the of-
5 fense; and

6 (B) may include time both before and after
7 the commission of the offense.

8 (2) AGENT.—The term “agent” means a person
9 authorized to act on behalf of another person or a
10 government and, in the case of an organization or
11 government, includes a servant or employee, and a
12 partner, director, officer, manager, and representa-
13 tive.

14 (3) GOVERNMENT AGENCY.—The term “govern-
15 ment agency” means a subdivision of the executive,
16 legislative, or judicial branch, or another branch, of
17 government, including a department, independent es-
18 tablishment, commission, administration, authority,
19 board, and bureau, and a corporation or other legal
20 entity established, and subject to control, by a gov-
21 ernment for the execution of a governmental or
22 intergovernmental program or activity.

23 (4) LOCAL.—The term “local” means of or per-
24 taining to a political subdivision within a State.

1 (5) PROGRAM OR ACTIVITY.—The term “pro-
2 gram or activity” means all of the operations of—

3 (A)(i) a department, agency, special pur-
4 pose district, or other instrumentality of a State
5 or of a local government; or

6 (ii) the entity of such State or local gov-
7 ernment that distributes such assistance and
8 each such department or agency (and each
9 other State or local government entity) to which
10 the assistance is extended, in the case of assist-
11 ance to a State or local government;

12 (B)(i) an entire corporation, partnership,
13 or other private organization, or an entire sole
14 proprietorship—

15 (I) if assistance is extended to such
16 corporation, partnership, private organiza-
17 tion, or sole proprietorship as a whole; or

18 (II) which is principally engaged in
19 the business of providing health care, hous-
20 ing, social services, or parks and recre-
21 ation; or

22 (ii) the entire plant or other comparable,
23 geographically separate facility to which Fed-
24 eral financial assistance is extended, in the case

1 of any other corporation, partnership, private
2 organization, or sole proprietorship; or

3 (C) any other entity which is established
4 by 2 or more of the entities described in sub-
5 paragraph (A) or (B),

6 any part of which is extended Federal financial as-
7 sistance.

8 (6) STATE.—The term “State” includes a State
9 of the United States, the District of Columbia, and
10 any commonwealth, territory, or possession of the
11 United States.

12 **SEC. 3. SEXUAL HARASSMENT BY INDIVIDUALS ADMIN-**
13 **ISTERING PROGRAMS AND ACTIVITIES RE-**
14 **CEIVING FEDERAL FINANCIAL ASSISTANCE.**

15 (a) IN GENERAL.—An individual who is an agent of
16 an organization or government covered by subsection (b)
17 and who administers a program or activity, shall not com-
18 mit sexual harassment, as defined under title VII of the
19 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

20 (b) CIRCUMSTANCE.—An organization or government
21 described in this subsection is an organization, or a State
22 or local government, including any government agency
23 thereof, that receives, in any 1-year period, benefits in ex-
24 cess of \$5,000 from a program or activity.

1 (c) ORGANIZATION DUTIES.—An organization or a
2 government covered by subsection (b) shall terminate the
3 agency relationship with an agent described in subsection
4 (a) who engages in sexual harassment prohibited by such
5 subsection.

6 (d) DISCLOSURE.—Any organization or government
7 covered by subsection (b) that enters into any settlement
8 resulting from sexual harassment prohibited under sub-
9 section (a) by an agent administering a program or activ-
10 ity, shall disclose the settlement, and any fines, penalties,
11 damages, insurance premium increases, and other settle-
12 ments resulting from sexual harassment by such agent,
13 to—

14 (1) any Federal department or agency with
15 whom the organization has an agreement for dis-
16 bursing Federal financial assistance; and

17 (2) the Members of Congress representing each
18 State in which the agent administers the program or
19 activity.

20 **SEC. 4. ENFORCEMENT.**

21 (a) IN GENERAL.—Each Federal department and
22 agency that is empowered to extend Federal financial as-
23 sistance to any program or activity, by way of grant, con-
24 tract, subsidy, loan, guarantee, insurance, or other form
25 of Federal assistance, is authorized and directed to effec-

1 tuate the provisions of subsections (a) and (c) of section
2 3 with respect to such program or activity by issuing rules,
3 regulations, or orders of general applicability which shall
4 be consistent with achievement of the objectives of the
5 statute authorizing the financial assistance in connection
6 with which the action is taken. No such rule, regulation,
7 or order shall become effective unless and until approved
8 by the President.

9 (b) COMPLIANCE.—

10 (1) VIOLATION BY AGENT.—In order to effect
11 compliance with any requirement adopted pursuant
12 to this section, an agent who violates section 3(a)
13 shall be liable to the Federal Government for a civil
14 fine, notwithstanding any other provision of law.

15 (2) VIOLATION BY ORGANIZATION OR GOVERN-
16 MENT.—

17 (A) CIVIL FINE.—In order to effect com-
18 pliance with any requirement adopted pursuant
19 to this section, an organization or government
20 that violates section 3(c) shall be liable to the
21 Federal Government for a civil fine.

22 (B) TERMINATION OF PARTICIPATION.—In
23 the case of a violation of section 3(c) by an or-
24 ganization or government, the department or
25 agency extending Federal financial assistance to

1 the organization or government shall effect
2 compliance by terminating, or refusing to grant
3 or continue, assistance for such program or ac-
4 tivity to any recipient as to whom there has
5 been an express finding on the record, after op-
6 portunity for hearing, of a failure to comply
7 with such requirement, but such termination or
8 refusal shall be limited to the particular polit-
9 ical entity, or part thereof, or other recipient as
10 to whom such a finding has been made and,
11 shall be limited in its effect to the particular
12 program or activity, or part thereof, in which
13 such noncompliance has been so found.

14 (3) OTHER MEANS.—In addition to the actions
15 described in paragraphs (1) and (2), compliance
16 with any requirement adopted pursuant to this sec-
17 tion shall be effected by any other means authorized
18 by law.

19 (c) PROCESS.—No action under subsection (b) shall
20 be taken until the department or agency concerned has
21 advised the appropriate person or persons of the failure
22 to comply with the requirement and has determined that
23 compliance cannot be secured by voluntary means. In the
24 case of any action terminating, or refusing to grant or con-
25 tinue, assistance because of failure to comply with a re-

1 quirement imposed pursuant to this section, the head of
2 the Federal department or agency shall file with the com-
3 mittees of the House of Representatives and the Senate
4 having legislative jurisdiction over the program or activity
5 involved a full written report of the circumstances and the
6 grounds for such action. No such action shall become ef-
7 fective until thirty days have elapsed after the filing of
8 such report.

9 **SEC. 5. STATE IMMUNITY.**

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

13 (b) WAIVER.—A State’s receipt or use of Federal fi-
14 nancial assistance for any program or activity of a State
15 shall constitute a waiver of sovereign immunity, under the
16 11th Amendment or otherwise, to any suit brought for a
17 violation of subsection (a) or (c) of section 3.

18 **SEC. 6. RULES OF CONSTRUCTION.**

19 (a) NO EFFECT ON RIGHTS AND REMEDIES FOR
20 SEXUAL HARASSMENT.—Nothing in this Act affects any
21 right, obligation, or liability under title VII of the Civil
22 Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other
23 law, in a case involving sexual harassment.

24 (b) NO DUPLICATION OF TITLE IX.—Nothing in this
25 Act (except for subsection (a)) shall be construed to apply

1 to an organization or government described in section
2 3(b), including an agent of such an organization or gov-
3 ernment, if the organization or government is a recipient
4 of Federal financial assistance from a program or activity
5 covered by title IX of the Education Amendments of 1972.

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