The Terms of the Equality Act

Section	Current Law	What the Bill Says
§2 Findings	NA	*Inter alia*, finding (7) describes "conversion therapy" as "a form of discrimination."
§3 Public Accommodations	*Title II of Civil Rights Act (42 USC 2000a)* Places of "public accommodation" (hotel, theater, stadium, gas station, restaurant) may not discriminate on the basis of race, color, religion, or national origin.	§3 adds "sex (including sexual orientation and gender identity)" to the list of protected classes. It also expands the definition of "public accommodation," including to places of "public gathering" or "any establishment that provides a good, service, or program," virtually every consumer or charitable establishment or service – tangible or intangible. Among the most notable explicit additions are shelters and health care.
§4 Public Facilities	*Title III of the Civil Rights Act (42 USC 2000b)* Enforces requirement that state and local government facilities, other than schools and colleges, must grant equal use regardless of race, color, religion, or national origin.	§4 would add "sex (including sexual orientation and gender identity)" to the list of protected classes.
§5 Public Education	*Title IV of the Civil Rights Act (42 USC 2000c)* Implements desegregation among and within public schools, K-12 and higher education, on bases of race, color, religion, sex, and national origin. Some courts have used this title in desegregation cases to advance changes in school curriculum with regard to race.	§5 would add "(including sexual orientation and gender identity)" to "sex."
§6 Fed. Financial Assistance	*Title VI of the Civil Rights Act (42 USC 2000d)* Any program or activity that receives federal funds or financial assistance may not discriminate based on race, color, or national origin. This applies to a whole entity, not just a particular program or activity therein. It is very broad, affecting countless charities and social service entities (*e.g.*, adoption/foster care agencies by Social Security Act IV funds), health care providers, public schools, higher ed. private schools, potentially many K-12 private schools (if judged to be fed. funding recipients), etc.	§6 would add "sex (including sexual orientation and gender identity)" to the list of protected classes.
§7 Employment	*Title VII of the Civil Rights Act (42 USC 2000e et seq.), Civil Service Reform Act (2 USC 1301 et seq.), Cong. Accountability Act (5 USC 2301 et seq.)* *Re* Title VII, employers with ≥15 employees may not take an adverse employment action or create or allow a hostile work environment based on someone's race, color, religion, sex, or national origin. Under *Bostock*, "sex" includes "sexual orientation" and "transgender status."	§7 would expressly add "(including sexual orientation and gender identity)" to "sex." It also specifies, in §7(b)(3) and (c)(2), that where sex is a bona fide occupational qualification, individuals must be treated in accord with their "gender identity" as if it is their sex.
§8 Intervention	*Title IX of the Civil Rights Act (42 USC 2000h-2)* The Attorney General may intervene in a lawsuit by someone that's filed on Equal Protection grounds of race, color, religion, sex, or national origin.	§8 would add "(including sexual orientation and gender identity)" to "sex."
§9 Definitions and Rules	*Title XI of the Civil Rights (42 USC 2000h et seq.)* Contains "Miscellaneous Provisions" of the Civil Rights Act.	*Inter alia*, §9(2) adds a definition of "sex" in laws amended by the Equality Act (EA) to include "(A) a sex stereotype; (B) pregnancy, childbirth, or a related medical condition; (C) sexual orientation or gender identity; and (D) sex characteristics, including intersex traits." It establishes that "pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions." It defines "sexual orientation" as "homosexuality, heterosexuality, or bisexuality" and "gender identity" as "the gender-related identity, appearance, mannerism, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth." (2) further states that "an individual shall not be denied access to a shared facility, including a restroom, a locker room, and dressing room, that is in accordance with the individual's gender identity." §9(3) self-exempts the EA from the Religious Freedom Restoration Act of 1993, the first statute known to do so.
§10 Fair Housing Act	*Fair Housing Act (42 USC 3601 et seq.)* Prohibits discrimination in housing based on race, color, national origin, religion, sex, disability, or family status. Applies, *inter alia*, to faith-based retirement homes, some homeless and transitional shelters (depending on case-by-case factors), and potentially dorms. Some courts and HUD interpret "sex" in the FHA to include "sexual orientation" and "gender identity."	§10 would add "(including sexual orientation and gender identity)" to "sex" throughout the Fair Housing Act.
§11 Equal Credit Opportunity Act	*Equal Credit Opportunity Act (15 USC 1691)* Prohibits discrimination in credit based on race, color, religion, national origin, sex, marital status, age, public assistance, or exercise of certain rights.	§11 would add "(including sexual orientation and gender identity)" to "sex."
§12 Jury Selection	*(28 USC 1862, 1867, 1869)* Judicial procedure law prohibits people being excluded from federal jury service on the basis of race, color, religion, sex, national origin, or economic status.	§12 would add "(including sexual orientation and gender identity)" to "sex."

The Harms of the Equality Act

Who/What	Nature of the Harms	Explanations
Human Sexuality	Imposition of acceptance of same-sex conduct and "gender" divorced from and superseding sex, with broad social harms.	*Sic passim*
Unborn Children	Threatens existing prohibitions on the use of federal funds for abortion and will likely pressure, or even mandate, that health care providers perform, and health plans cover, abortion.	[*see below on Health Care Providers and Employers (Benefits)*]
Persons who identify as "transgender" or with same-sex attraction	Despite the uncertainties of long-term benefits, "transgender"-identifying persons will have health care options limited to those that promote body-changing medical interventions and have no body-affirming counseling. Same-sex attracted people who want to live chastely will have no option for professional counseling.	The undefined finding that "conversion therapy" is "discrimination" (§2(7)), which is vulnerable to being overly broad, and the expansion of "public accommodation" nondiscrimination requirements to health care and "sexual orientation and gender identity" (SOGI) (§3) create health care and mental health care mandates on providers to affirm LGBT identities and conduct and to facilitate "transition." [*see also below*]
Health Care Providers	Individual and institutional health care providers of competence will likely be pressured or even required to perform abortions and "gender confirmation" procedures, regardless of objections based on their professional judgment, religious beliefs, or moral convictions.	§3 makes health care establishments "public accommodations" under nondiscrimination law and "sex (including [SOGI])" a protected class. §9 defines "sex" to include various terms regarding pregnancy that track with terms elsewhere in law that some courts and agencies have interpreted to include abortion. Thus, without language to specify that the provisions are *not* meant to include abortion, which has also been done in other law (such as Pregnancy Discrimination Act), the EA could be construed to mandate the provision of abortion. Compounded with the same obligation under §6, on fed. financial assistance (which includes not just funded health services but Medicare/Medicaid providers), this could also be a challenge to existing abortion funding limitations (*e.g.*, Hyde Amdt.) and conscience protections in federal law depending on how they are read in relation to EA. A similar situation would likely apply to provision of contraception. With respect to "gender confirmation" procedures, though treating different conditions differently should not properly be regarded as "discrimination," some agencies and lower courts disagree, making it possible that SOGI nondiscrimination in health care (via §3 on public accommodation and §6 on fed. financial assistance) will require the provision of "gender transition" procedures.
Mental Health Care Providers	Individual and institutional professional mental health providers (inc. religiously affiliated, though likely not pastors as such) mandated to affirm "LGBT" identities and conduct, regardless of religious, conscience-based, or professional judgment objections.	The undefined finding that "conversion therapy" is "discrimination" (§2(7)), which is vulnerable to being construed overly broadly, and the expansion of "public accommodation" nondiscrimination requirements to health care and SOGI (§3), would likely result in a mandate on licensed mental health professionals to affirm "LGBT" identities, conduct, and "transition."
Employers (Benefits)	Employers likely mandated to cover abortion, contraception, and "gender confirmation" in health insurance, and to provide benefits to same-sex "spouses" (with no religious exemption).	The explicit addition of SOGI to Title VII on employment nondiscrimination (§7) and the redefinition of "sex" to include terms related to pregnancy without needed abortion-neutral language (§9) [*see above on Health Care Providers*], together with agency and lower court precedents on all of these components, would likely result in a requirement for all employers with over 14 employees and health insurance plans to cover abortion, contraception, and "gender confirmation." To any extent not already doing so, employers would also need to provide benefits to employees' same-sex "spouses."
Employers (Employment Actions and Practices)	Religious employers may be required to retain (non-ministerial) employees who, by their same-sex conduct or cross-sex presentation, contradict the former's faith. Employers generally will be mandated to treat people in accord with their "gender identity," such as with respect to restroom access and preferred pronouns, and religious employers may also be forced to do the same.	Employers with ≥15 employees are already required under Title VII, per *Bostock*, to not discriminate in hiring or retention based on "sexual orientation" or "transgender status." EA §7 would use the term "gender identity" instead, likely suggesting treatment according to whatever "gender" an individual claims, rather than just not taking adverse action based on the fact that someone *is* "transgender." §7(b)(3) and (c)(2) regarding bona fide occupational qualifications indicate this, as employers are directed to treat someone's asserted "gender" as their sex. §9(2) also makes clear that this means a cross-sex restroom access mandate. Preferred pronoun mandates are also likely via VII's harassment / "hostile work environment" prohibition. §7 would also include religious employers, which *Bostock* left open, which could be construed to require them to hire and retain people whose beliefs and conduct contradict the employer's faith, and to treat employees' "gender identity" as their sex. Some EA proponents claim that the EA has a religious exemption via Title VII; but the meaning and scope of that exemption beyond employing coreligionists is unsettled. The constitutional ministerial exception protects religious employers only with respect to ministerial employees.
Women's Sports, Dorms, Scholarship	Women and girls' school sports (and likely other sport leagues for any age), dormitories, and academic opportunities will be open to men identifying as women. This applies to K-12 and higher ed., public and (esp. if receiving fed. funds) private schools.	§6 adds "sex" (including SOGI) to nondiscrimination in fed. financial assistance, mandating that essentially all public schools and any private schools that are judged to receive federal funds, K-12 and higher ed., treat people in accord with "gender identity" in sex-specific spaces, activities, and scholarships. While whether adhering to biological sex in athletics or dorms is "discrimination" should be arguable, the context of EA indicates almost certain intent to deem it as such. §9(2) fortifies this logic with respect to restrooms and locker rooms. §10, on the Fair Housing Act, may also apply to dorms.

		In religious schools, these provisions would apply to almost all colleges via student aid, and could apply to many K-12 schools if, *e.g.*, school lunch or COVID relief is deemed fed. financial assistance. Colleges would also likely have to house same-sex "married" couples together. Some claim that many schools could fit into the broadened definition of "public accommodations" in §3, bypassing the federal funding requirement. Some EA proponents claim it does not affect school sports as it does not touch Title IX of the Ed. Amdts. of 1972. This is misleading because §6's adding "sex" to Title VI of the Civil Rights Act covers more than all the ground that Title IX (prohibiting "sex" discrimination in fed. funded education programs) would, and does so without the latter's religious exemption or established nuance for sex-separate spaces and activities. Other rec. sports leagues would likely be affected under the §3 "public accommodation" expansion.
Restrooms / Locker rooms	Restrooms, locker rooms, and such intimate spaces in schools, workplaces, stores, hospitals, and more would be required to open to people of the opposite sex.	§9(2) states that access to restrooms, locker rooms, and the like, in any place covered by the Civil Rights Act, must be granted in accord with "gender identity" (and does not say that "transgender"-identifying people cannot also use that which would be in accord with their sex).
Women's Programs / Shelters / Prisons	Shelters, secular or religious, would be mandated to offer women's sleeping and shower quarters to men identifying as women. Other sex-specific social programs, needed for safe spaces among vulnerable populations, would also likely be opened to the opposite sex. Women in prison may also be required to share space with men.	§3 turns "shelters" into "public accommodations" and requires nondiscrimination on the basis of sex (including SOGI). This is further fortified where fed. funding is involved (§6) or shelters are longer-term under the Fair Housing Act (§10). This will almost certainly be construed to require sleeping and showering spaces in accord with "gender identity," esp. in light of §9. Similar logic (in §§3 or 6) would apply to other social programs. §4, *re* public facilities, could do similarly to state and local prisons and jails. Less likely, these provisions could be read to open such spaces to both sexes entirely, regardless of "gender identity."
Foster Care / Adoption	Children in need of homes will have fewer options, as child welfare providers who cannot place with same-sex couples or affirm "transgender" identities are shut down, and as foster [and prospective adoptive] parents who cannot affirm same-sex relationships or "transgender" identities may be made ineligible.	Foster care and adoption agencies generally receive funds under Social Security Act Title IV, and would thus be subject to the SOGI nondiscrimination requirements of §6. This means they would have to place with same-sex couples and, particularly in light of finding §7(2) against "conversion therapy," likely have to affirm "transgender" identities and same-sex conduct. Foster parents, who also receive government money, could also be subject to these same rules. This forces out many parents and faith-based agencies.
Speech	In settings where discrimination is banned (*e.g.*, workplaces, public accommodations, schools, or facilities receiving fed. funds), use of non-"preferred" pronouns, prefixes, and such by students and personnel (and possibly clients by extension) is likely prohibited.	As discrimination laws often cover not only adverse action but also harassment (*e.g.*, "hostile work environment"), it is likely that in settings under EA (*e.g.*, in §3 public accommodations; §6 federally assisted programs like schools; §7 workplaces), people's truthful speech with respect to pronouns, prefixes, and more will be limited, esp. but not necessarily exclusively if in positions of responsibility or being supervised.
Small Businesses	Vendors and venues who serve weddings or events will be mandated to serve same-sex ceremonies, "Pride" events, etc.	§3, by expanding what counts as "public accommodations" and adding SOGI to protected classes in them, would require this of vendors and venues.
Religious Property	Religiously-owned property open to the public (*i.e.*, halls for community service, events, or receptions; and some claim sectarian funeral homes and houses of worship) required to serve events contradicting their faith (*e.g.*, same-sex "weddings") or in a manner contradicting their faith (*e.g.*, cross-sex restroom access).	The expansion of "public accommodation" in §3 to any place of "public gathering" or "that provides a good, service, or program" and is open to the public could be read broadly enough to include even religious facilities, especially those available for public community use. The addition of "sex" (including SOGI) and §9 on restrooms would impact events and intimate facilities at these establishments. Possibly sex-separated prayer service affected. Those "not in fact open to the public" or a "private club" would not be included.
Single-sex Schools	Any single-sex schools, esp. if deemed to receive fed. funds, could be forced to become co-ed, not for "transgender" students, but for *all* of the opposite sex.	Esp. as Titles II and VI of the Civil Rights Act lack the details for sex-separate programs that Title IX of the Ed. Amdts. has, §§3 and 6's prohibition on sex-discrimination could ban single-sex schools that are judged to receive fed. funds or possibly be public accommodations. [*see above on Women's Sports for more* re *ed.*]
Public School Curriculum	"LGBT"-affirming lessons could be mandated in public school sex ed., history, English, etc., with limited opportunity for opt-outs.	Title IV of the Civil Rights Act, on public school desegregation, was used by some courts to require curricula to undo the harms of racial discrimination. The same logic could apply upon §5's adding SOGI to that title. Less likely, there could arguably be a similar impact on private schools through expansions of §§3 and 6.
Parental Rights	Parents, in addition to being made to endure changes in children's schools and health care options [*see multiple entries above*], could be at risk of losing custody if they do not affirm their own children's "gender identity" or same-sex attraction and conduct.	Though not directly in the EA, the extensive federal signal throughout the bill that the only legitimate way to address gender dysphoria and same-sex attraction is to facilitate and further it could be persuasive to state agencies and adjudicators that parents who do not conform are unfit and not acting in the best interests of a child, risking limitation or termination of their rights.
Pro-Life States	States that choose to not fund elective abortions would likely be forced to do so.	Because §6 adds "sex," with its new definition from §9, to federal funding nondiscrimination requirements [*see above on Health Care Providers for more on abortion mandate*], states that receive federal funds could be forced to fund elective abortion in their health programs, contrary to law in 33 of them.
Religious Exercise	Religious freedom challenges in court arising from any of the above harms would be uniquely subjected to an analysis under which they are less likely to succeed. In addition, tax-exempt status of religious organizations with authentic views on marriage or sexuality might be indirectly at risk.	The Religious Freedom Restoration Act alters the judicial analysis of religious freedom claims against application of federal laws. Instead of the constitutional baseline under *Smith*, that religious freedom yields to non-targeted laws of general applicability, RFRA requires that, whenever religious freedom is substantially burdened, the fed. government must show that there is a compelling government interest and that it is using the least restrictive mean to achieve that end. This thus makes it easier for a religious objector to be exempt from a federal law. §9(3) of EA, however, would exempt the whole bill from RFRA, an unprecedented step that would make religious freedom much more difficult to protect. EA might also indirectly influence IRS to, as "public policy," end tax-exempt status based on beliefs *re* SOGI.