

Union Calendar No. 166

105TH CONGRESS
1ST Session

H. R. 1703

[Report No. 105-292]

A BILL

To amend title 38, United States Code, to provide for improved and expedited procedures for resolving complaints of unlawful employment discrimination arising within the Department of Veterans Affairs.

OCTOBER 2, 1997

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1997

Mr. EVERETT (for himself, Mr. EVANS, Mr. STUMP, Mr. CLYBURN, Mr. BILL-
RAKIS, and Mr. BUYER) introduced the following bill; which was referred
to the Committee on Veterans' Affairs

OCTOBER 2, 1997

Additional sponsors: Mr. MASCARA, Mr. GUTIERREZ, Mr. DOYLE, Mr.
FILNER, Mr. SPENCE, Mr. OLVER, Mr. REYES, Mr. SNYDER, Mr. SMITH
of New Jersey, and Mr. PASCRELL

OCTOBER 2, 1997

Reported with amendments, committed to the Committee of the Whole House
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[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 22, 1997]

A BILL

To amend title 38, United States Code, to provide for im-
proved and expedited procedures for resolving complaints
of unlawful employment discrimination arising within the
Department of Veterans Affairs.

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 “Department of Veterans*
5 *Affairs Employment Discrimination Resolution and Adju-*
6 *dication Act”.*

7 **SEC. 2. EQUAL EMPLOYMENT RESPONSIBILITIES IN THE**
8 **DEPARTMENT OF VETERANS AFFAIRS.**

9 *(a) IN GENERAL.—(1) Chapter 5 of title 38, United*
10 *States Code, is amended by inserting at the end of sub-*
11 *chapter I the following new section:*

12 **“§ 516. Equal employment responsibilities**

13 *“(a) The Secretary shall provide that the employment*
14 *discrimination complaint resolution system within the De-*
15 *partment be established and administered so as to encour-*
16 *age timely and fair resolution of concerns and complaints.*
17 *The Secretary shall take steps to ensure that the system is*
18 *administered in an objective, fair, and effective manner and*
19 *in a manner that is perceived by employees and other inter-*
20 *ested parties as being objective, fair, and effective.*

21 *“(b) The Secretary shall provide—*

22 *“(1) that employees responsible for counseling*
23 *functions associated with employment discrimination*
24 *and for receiving, investigating, and processing com-*
25 *plaints of employment discrimination shall be super-*

1 *vised in those functions by, and report to, an Assist-*
2 *ant Secretary or a Deputy Assistant Secretary for*
3 *complaint resolution management; and*

4 *“(2) that employees performing employment dis-*
5 *crimination complaint resolution functions at a facil-*
6 *ity of the Department shall not be subject to the au-*
7 *thority, direction, and control of the Director of the*
8 *facility with respect to those functions.*

9 *“(c) The Secretary shall ensure that all employees of*
10 *the Department receive adequate education and training for*
11 *the purposes of this section and section 319 of this title.*

12 *“(d) The Secretary shall impose appropriate discipli-*
13 *nary measures, as authorized by law, in the case of employ-*
14 *ees of the Department who engage in unlawful employment*
15 *discrimination, including retaliation against an employee*
16 *asserting rights under an equal employment opportunity*
17 *law.*

18 *“(e) The number of employees of the Department whose*
19 *duties include equal employment opportunity counseling*
20 *functions as well as other, unrelated functions may not ex-*
21 *ceed 40 full-time equivalent employees. Any such employee*
22 *may be assigned equal employment opportunity counseling*
23 *functions only at Department facilities in remote geo-*
24 *graphic locations (as determined by the Secretary). The*

1 *Secretary may waive the limitation in the preceding sen-*
2 *tence in specific cases.*

3 “(f) *The provisions of this section shall be implemented*
4 *in a manner consistent with procedures applicable under*
5 *regulations prescribed by the Equal Employment Oppor-*
6 *tunity Commission.*”.

7 (2) *The table of sections at the beginning of such chap-*
8 *ter is amended by inserting after the item relating to section*
9 *515 the following new item:*

“516. Equal employment responsibilities.”.

10 (b) *REPORTS ON IMPLEMENTATION.—The Secretary of*
11 *Veterans Affairs shall submit to Congress reports on the im-*
12 *plementation and operation of the equal employment oppor-*
13 *tunity system within the Department of Veterans Affairs.*
14 *The first such report shall be submitted not later than April*
15 *1, 1998, and subsequent reports shall be submitted not later*
16 *than January 1, 1999, and January 1, 2000. Each such*
17 *report shall set forth the actions taken by the Secretary to*
18 *implement section 516 of title 38, United States Code, as*
19 *added by subsection (a), and other actions taken by the Sec-*
20 *retary in relation to the equal employment opportunity sys-*
21 *tem within the Department of Veterans Affairs.*

1 **SEC. 3. DISCRIMINATION COMPLAINT ADJUDICATION AU-**
2 **THORITY IN THE DEPARTMENT OF VETERANS**
3 **AFFAIRS.**

4 (a) *IN GENERAL.*—(1) Chapter 3 of title 38, United
5 States Code, is amended by adding at the end the following
6 new section:

7 **“§ 319. Office of Employment Discrimination Com-**
8 **plaint Adjudication**

9 “(a)(1) *There is in the Department an Office of Em-*
10 *ployment Discrimination Complaint Adjudication. There is*
11 *at the head of the Office a Director.*

12 “(2) *The Director shall be a career appointee in the*
13 *Senior Executive Service.*

14 “(3) *The Director reports directly to the Secretary or*
15 *the Deputy Secretary concerning matters within the respon-*
16 *sibility of the Office.*

17 “(b)(1) *The Director is responsible for making the final*
18 *agency decision within the Department on the merits of any*
19 *employment discrimination complaint filed by an em-*
20 *ployee, or an applicant for employment, with the Depart-*
21 *ment. The Director shall make such decisions in an impar-*
22 *tial and objective manner.*

23 “(2) *No person may make any ex parte communica-*
24 *tion to the Director or to any employee of the Office with*
25 *respect to a matter on which the Director has responsibility*
26 *for making a final agency decision.*

1 “(c) Whenever the Director has reason to believe that
2 there has been retaliation against an employee by reason
3 of the employee asserting rights under an equal employment
4 opportunity law, the Director shall report the suspected re-
5 taliatory action directly to the Secretary or Deputy Sec-
6 retary, who shall take appropriate action thereon.

7 “(d)(1) The Office shall employ a sufficient number of
8 attorneys and other personnel as are necessary to carry out
9 the functions of the Office. Attorneys shall be compensated
10 at a level commensurate with attorneys employed by the
11 Office of General Counsel.

12 “(2) The Secretary shall ensure that the Director is
13 furnished sufficient resources in addition to personnel
14 under paragraph (1) to enable the Director to carry out
15 the functions of the Office in a timely manner.

16 “(3) The Secretary shall ensure that any performance
17 appraisal of the Director of the Office of Employment Dis-
18 crimination Complaint Adjudication or of any employee of
19 the Office does not take into consideration the record of the
20 Director or employee in deciding cases for or against the
21 Department.”.

22 (2) The table of sections at the beginning of such chap-
23 ter is amended by adding at the end the following new item:

“319. Office of Employment Discrimination Complaint Adjudication.”.

24 (b) *REPORTS ON IMPLEMENTATION.*—The Director of
25 the Office of Employment Discrimination Complaint Adju-

1 dication of the Department of Veterans Affairs (established
2 by section 319 of title 38, United States Code, as added
3 by subsection (a)) shall submit to the Secretary and to Con-
4 gress reports on the implementation and the operation of
5 that office. The first such report shall be submitted not later
6 than April 1, 1998, and subsequent reports shall be submit-
7 ted not later than January 1, 1999, and January 1, 2000.

8 **SEC. 4. EFFECTIVE DATE.**

9 Sections 516 and 319 of title 38, United States Code,
10 as added by sections 2 and 3 of this Act, shall take effect
11 90 days after the date of the enactment of this Act.

12 **SEC. 5. INDEPENDENT PANEL TO REVIEW EQUAL EMPLOY-**
13 **MENT OPPORTUNITY AND SEXUAL HARASS-**
14 **MENT PROCEDURES WITHIN THE DEPART-**
15 **MENT OF VETERANS AFFAIRS.**

16 (a) *ESTABLISHMENT.*—There is hereby established a
17 panel to review the equal employment opportunity and sex-
18 ual harassment practices and procedures within the De-
19 partment of Veterans Affairs and to make recommendations
20 on improvements to those practices and procedures.

21 (b) *PANEL FUNCTIONS RELATING TO EQUAL EMPLOY-*
22 *MENT OPPORTUNITY AND SEXUAL HARASSMENT.*—The
23 panel shall assess the culture of the Department of Veterans
24 Affairs in relationship to the issues of equal employment
25 opportunity and sexual harassment, determine the effect of

1 *that culture on the operation of the Department overall, and*
2 *provide recommendations as necessary to change that cul-*
3 *ture. As part of the review, the panel shall do the following:*

4 (1) *Determine whether laws relating to equal em-*
5 *ployment opportunity and sexual harassment, as*
6 *those laws apply to the Department of Veterans Af-*
7 *airs, and regulations and policy directives of the De-*
8 *partment relating to equal employment opportunity*
9 *and sexual harassment have been consistently and*
10 *fairly applied throughout the Department and make*
11 *recommendations to correct any disparities.*

12 (2) *Review practices of the Department of Veter-*
13 *ans Affairs, relevant studies, and private sector train-*
14 *ing and reporting concepts as those practices, studies,*
15 *and concepts pertain to equal employment oppor-*
16 *tunity, sexual misconduct, and sexual harassment*
17 *policies and enforcement.*

18 (3) *Provide an independent assessment of the Re-*
19 *port on the Equal Employment Opportunity Com-*
20 *plaint Process Review Task Force of the Department.*

21 (c) *COMPOSITION.*—(1) *The panel shall be composed*
22 *of six members, appointed as follows:*

23 (A) *Three members shall be appointed jointly by*
24 *the chairman and ranking minority party member of*

1 *the Committee on Veterans' Affairs of the House of*
2 *Representatives.*

3 *(B) Three members shall be appointed jointly by*
4 *the chairman and ranking minority party member of*
5 *the Committee on Veterans' Affairs of the Senate.*

6 *(2) The members of the panel shall choose one of the*
7 *members to chair the panel.*

8 *(d) QUALIFICATIONS.—Members of the panel shall be*
9 *appointed from among private United States citizens with*
10 *knowledge and expertise in one or more of the following:*

11 *(1) Extensive prior military experience, particu-*
12 *larly in the area of personnel policy management.*

13 *(2) Extensive experience with equal employment*
14 *opportunity complaint procedures, either within Fed-*
15 *eral or State government or in the private sector.*

16 *(3) Extensive knowledge of the Department of*
17 *Veterans Affairs, and particularly knowledge of per-*
18 *sonnel practices within the Department.*

19 *(e) REPORTS.—(1) Not later than six months after the*
20 *members of the panel are appointed, the panel shall submit*
21 *an interim report on its findings and conclusions to the*
22 *Committees on Veterans' Affairs of the Senate and House*
23 *of Representatives.*

24 *(2) Not later than one year after establishment of the*
25 *panel, the panel shall submit a final report to the Commit-*

1 *tees on Veterans' Affairs of the Senate and House of Rep-*
2 *resentatives. The final report shall include an assessment*
3 *of the equal employment opportunity system and the culture*
4 *within the Department of Veterans Affairs, with particular*
5 *emphasis on sexual harassment. The panel shall include in*
6 *the report recommendations to improve the culture within*
7 *the Department.*

8 (f) *PAY AND EXPENSES OF MEMBERS.—(1) Each*
9 *member of the panel shall be paid at a rate equal to the*
10 *daily equivalent of the annual rate of basic pay payable*
11 *for level IV of the Executive Schedule under section 5315*
12 *of title 5, United States Code, for each day (including travel*
13 *time) during which the member is engaged in the perform-*
14 *ance of the duties of the panel.*

15 (2) *The members of the panel shall be allowed travel*
16 *expenses, including per diem in lieu of subsistence, at rates*
17 *authorized for employees of agencies under subchapter I of*
18 *chapter 57 of title 5, United States Code, while away from*
19 *their homes or regular places of business in the performance*
20 *of services for the panel.*

21 (g) *ADMINISTRATIVE SUPPORT.—The Chairman may*
22 *hire such staff as necessary to accomplish the duties out-*
23 *lined under this title.*

24 (h) *FUNDING.—The Secretary of Veterans Affairs shall,*
25 *upon the request of the panel, make available to the panel*

1 *such amounts as the panel may require, not to exceed*
2 *\$400,000, to carry out its duties under this title.*

3 *(i) TERMINATION OF PANEL.—The panel shall termi-*
4 *nate 60 days after the date on which it submits its final*
5 *report under subsection (e)(2).*

Amend the title so as to read: “A bill to amend title 38, United States Code, to provide for improvements in the system of the Department of Veterans Affairs for resolution and adjudication of complaints of employment discrimination.”.