

114TH CONGRESS
1ST SESSION

H. R. 2999

To amend title 38, United States Code, to improve the authority of the Secretary of Veterans Affairs to suspend and remove employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2015

Mr. TAKANO introduced the following bill; which was referred to the
Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the authority of the Secretary of Veterans Affairs to suspend and remove employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety.

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 “Fair VA Accountability
5 Act”.

1 **SEC. 2. SUSPENSION AND REMOVAL OF DEPARTMENT OF**
2 **VETERANS AFFAIRS EMPLOYEES FOR PER-**
3 **FORMANCE OR MISCONDUCT THAT IS A**
4 **THREAT TO PUBLIC HEALTH OR SAFETY.**

5 (a) IN GENERAL.—Chapter 7 of title 38, United
6 States Code, is amended by adding after section 713 the
7 following new section:

8 **“§ 715. Employees: suspension and removal for per-**
9 **formance or misconduct that is a threat**
10 **to public health or safety**

11 “(a) SUSPENSION AND REMOVAL.—Subject to sub-
12 sections (b) and (c), the Secretary may—

13 “(1) suspend without pay an employee of the
14 Department of Veterans Affairs if the Secretary de-
15 termines the performance or misconduct of the em-
16 ployee is a clear and direct threat to public health
17 or safety; and

18 “(2) remove an employee suspended under
19 paragraph (1) when, after such investigation and re-
20 view as the Secretary considers necessary, the Sec-
21 retary determines that removal is necessary in the
22 interests of public health or safety.

23 “(b) PROCEDURE.—An employee suspended under
24 subsection (a)(1) is entitled, after suspension and before
25 removal, to—

1 “(1) within 30 days after suspension, a written
2 statement of the specific charges against the em-
3 ployee, which may be amended within 30 days there-
4 after;

5 “(2) an opportunity within 30 days thereafter,
6 plus an additional 30 days if the charges are amend-
7 ed, to answer the charges and submit affidavits;

8 “(3) a hearing, at the request of the employee,
9 by a Department authority duly constituted for this
10 purpose;

11 “(4) a review of the case by the Secretary, be-
12 fore a decision adverse to the employee is made
13 final; and

14 “(5) written statement of the decision of the
15 Secretary.

16 “(c) RELATION TO OTHER DISCIPLINARY RULES.—
17 The authority provided under this section shall be in addi-
18 tion to the authority provided under section 713 and title
19 5 with respect to disciplinary actions for performance or
20 misconduct.

21 “(d) BACK PAY FOR WHISTLEBLOWERS.—If any em-
22 ployee of the Department of Veterans Affairs is subject
23 to a suspension or removal under this section and such
24 suspension or removal is determined by an appropriate au-
25 thority under applicable law, rule, regulation, or collective

1 bargaining agreement to be a prohibited personnel prac-
 2 tice described under section 2302(b)(8) or (9) of title 5,
 3 such employee shall receive back pay equal to the total
 4 amount of basic pay that such employee would have re-
 5 ceived during the period that the suspension and removal
 6 (as the case may be) was in effect, less any amounts
 7 earned by the employee through other employment during
 8 that period.

9 “(e) DEFINITIONS.—In this section, the term ‘em-
 10 ployee’ means any individual occupying a position within
 11 the Department of Veterans Affairs under a permanent
 12 or indefinite appointment and who is not serving a proba-
 13 tionary or trial period.”.

14 (b) CLERICAL AND CONFORMING AMENDMENTS.—

15 (1) CLERICAL.—The table of sections at the be-
 16 ginning of such chapter is amended by adding after
 17 the item relating to section 713 the following new
 18 item:

“715. Employees: suspension and removal for performance or misconduct that
 is a threat to public health or safety.”.

19 (2) CONFORMING.—Section 4303(f) of title 5,
 20 United States Code, is amended—

21 (A) by striking “or” at the end of para-
 22 graph (2);

23 (B) by striking the period at the end of
 24 paragraph (3) and inserting “, or”; and

1 (C) by adding at the end the following:

2 “(4) any suspension or removal under section
3 715 of title 38.”.

4 (c) REPORT ON SUSPENSIONS AND REMOVALS.—Not
5 later than one year after the date of the enactment of this
6 Act, the Inspector General of the Department of Veterans
7 Affairs shall submit to the Committees on Veterans’ Af-
8 fairs of the House of Representatives and the Senate a
9 report on suspensions and removals of employees of the
10 Department made under section 715 of title 38, United
11 States Code, as added by subsection (a). Such report shall
12 include, with respect to the period covered by the report,
13 the following:

14 (1) The number of employees who were sus-
15 pended under such section.

16 (2) The number of employees who were re-
17 moved under such section.

18 (3) A description of the threats to public health
19 or safety that caused such suspensions and remov-
20 als.

21 (4) The number of such suspensions or remov-
22 als, or proposed suspensions or removals, that were
23 of employees who filed a complaint regarding—

24 (A) an alleged prohibited personnel prac-
25 tice committed by an officer or employee of the

1 Department and described in section
2 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or
3 (D) of title 5, United States Code; or

4 (B) the safety of a patient at a medical fa-
5 cility of the Department.

6 (5) Of the number of suspensions and removals
7 listed under paragraph (4), the number that the In-
8 spector General considers to be retaliation for whis-
9 tleblowing.

10 (6) The number of such suspensions or remov-
11 als that were of an employee who was the subject of
12 a complaint made to the Department regarding the
13 health or safety of a patient at a medical facility of
14 the Department.

15 (7) Any recommendations by the Inspector
16 General, based on the information described in para-
17 graphs (1) through (6), to improve the authority to
18 make such suspensions and removals.

19 **SEC. 3. PROHIBITION ON CERTAIN FORMER EMPLOYEE'S**
20 **ACCEPTANCE OF COMPENSATION FROM CON-**
21 **TRACTOR.**

22 (a) IN GENERAL.—Chapter 7 of title 38, United
23 States Code, is further amended by adding after section
24 715, as added by section 2, the following new section:

1 **“§ 717. Prohibition on certain former employee’s ac-**
2 **ceptance of compensation from contrac-**
3 **tors of the Department**

4 “(a) IN GENERAL.—An individual who was formerly
5 employed in a senior executive position at the Department
6 may not accept compensation from a covered contractor
7 as an employee, officer, director, or consultant of the cov-
8 ered contractor during the one-year period beginning on
9 the date on which the individual was last employed in a
10 senior executive position at the Department.

11 “(b) DEFINITIONS.—In this section:

12 “(1) The term ‘covered contractor’ means a
13 contractor carrying out a contract entered into with
14 the Department, including pursuant to a sub-
15 contract.

16 “(2) The term ‘senior executive position’ has
17 the meaning given such term in section 713(g) of
18 this title.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of such chapter is further amended by
21 adding at the end the following new item:

“717. Prohibition on certain former employee’s acceptance of compensation from
contractors of the Department.”.

1 **SEC. 4. LIMITATION ON CONTRACTING WITH ENTITIES EM-**
2 **PLOYING CERTAIN RECENTLY SEPARATED**
3 **DEPARTMENT EMPLOYEES.**

4 (a) IN GENERAL.—Subchapter II of chapter 81 of
5 title 38, United States Code, is amended by adding at the
6 end the following new section:

7 **“§ 8129. Limitation on contracting with entities em-**
8 **ploying certain recently separated De-**
9 **partment employees**

10 “(a) IN GENERAL.—The Secretary may not enter
11 into a contract with any entity if the entity employs an
12 individual who is prohibited from accepting compensation
13 from a contractor under section 717 of this title.

14 “(b) CERTIFICATION.—Before entering into a con-
15 tract with any entity, the Secretary shall require the entity
16 to submit to the Secretary certification that the entity
17 does not employ, and will not employ during the period
18 covered by the contract, any individual who is prohibited
19 from accepting compensation from a contractor under sec-
20 tion 717 of this title.

21 “(c) DEFINITIONS.—In this section, the term ‘senior
22 executive position’ has the meaning given such term in
23 section 713(g)(3) of this title.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of such chapter is amended by adding

1 after the item relating to section 8128 the following new
 2 item:

“8129. Limitation of contracting with entities employing certain recently separated Department employees.”.

3 **SEC. 5. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**
 4 **PLOYEES WITHIN THE DEPARTMENT OF VET-**
 5 **ERANS AFFAIRS.**

6 (a) IN GENERAL.—Chapter 7 of title 38, United
 7 States Code, is further amended by adding after section
 8 717, as added by section 3, the following new section:

9 **“§ 719. Administrative leave limitation and report**

10 “(a) LIMITATION APPLICABLE TO EMPLOYEES
 11 WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.—(1)
 12 The Secretary may not place any covered individual on
 13 administrative leave, or any other type of paid non-duty
 14 status without charge to leave, for more than a total of
 15 14 days during any 365-day period.

16 “(2) The Secretary may waive the limitation under
 17 paragraph (1) and extend the administrative leave or other
 18 paid non-duty status without charge to leave of a covered
 19 individual placed on such leave or status under paragraph
 20 (1) if the Secretary submits to the Committees on Vet-
 21 erans’ Affairs of the Senate and House of Representatives
 22 a detailed explanation of the reasons the individual was
 23 placed on administrative leave or other paid non-duty sta-
 24 tus without charge to leave and the reasons for the exten-

1 sion of such leave or status. Such explanation shall include
2 the name of the covered individual, the location where the
3 individual is employed, and the individual's job title.

4 “(3) In this subsection, the term ‘covered individual’
5 means an employee of the Department—

6 “(A) who is subject to an investigation for pur-
7 poses of determining whether such individual should
8 be subject to any disciplinary action under this title
9 or title 5; or

10 “(B) against whom any disciplinary action is
11 proposed or initiated under this title or title 5.

12 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
13 later than 30 days after the end of each quarter of any
14 calendar year, the Secretary shall submit to the Commit-
15 tees on Veterans' Affairs of the House of Representatives
16 and the Senate a report listing the name of any employee
17 of the Department (if any) who has been placed on admin-
18 istrative leave, or any other type of paid non-duty status,
19 for a period longer than 7 days during such quarter.

20 “(2) Any report submitted under subsection (a) shall
21 include, with respect to any employee listed in such report,
22 the position occupied by the employee, the number of days
23 of such leave, and the reason that such employee was
24 placed on such leave.”.

25 (b) APPLICATION.—

1 (1) ADMINISTRATIVE LEAVE LIMITATION.—Sec-
2 tion 719(a) of title 38, United States Code (as
3 added by subsection (a)), shall apply to any action
4 of removal or transfer under section 713 of such
5 title or title 5, United States Code, commencing on
6 or after the date of enactment of this section.

7 (2) REPORT.—The report under section 719(b)
8 of such title (as added by subsection (a)) shall begin
9 to apply in the quarter that ends after the date that
10 is 6 months after the date of enactment of this sec-
11 tion.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of such chapter 7 is amended by adding
14 at the end the following new item:

“719. Administrative leave limitation and report.”.

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