

114TH CONGRESS
2D SESSION

S. 2554

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2016

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for the removal or demotion of employees of the Department of Veterans Affairs based on performance or misconduct, and for other purposes.

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 Vet-
5 erans Affairs Accountability Act of 2016”.

1 **SEC. 2. REMOVAL OR DEMOTION OF EMPLOYEES BASED ON**
2 **PERFORMANCE OR MISCONDUCT.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

6 **“§ 714. Employees: removal or demotion based on**
7 **performance or misconduct**

8 “(a) IN GENERAL.—(1) The Secretary may remove
9 or demote an individual who is an employee of the Depart-
10 ment if the Secretary determines the performance or mis-
11 conduct of the individual warrants such removal or demo-
12 tion.

13 “(2) A determination under paragraph (1) that the
14 performance or misconduct of an individual warrants re-
15 moval or demotion may consist of a determination of any
16 of the following:

17 “(A) The individual neglected a duty of the po-
18 sition in which the individual was employed.

19 “(B) The individual engaged in malfeasance.

20 “(C) The individual failed to accept a directed
21 reassignment or to accompany a position in a trans-
22 fer of function.

23 “(D) The individual violated a policy of the De-
24 partment.

25 “(E) The individual violated a provision of law.

26 “(F) The individual engaged in insubordination.

1 “(G) The individual over prescribed medication.

2 “(H) The individual contributed to the purpose-
3 ful omission of the name of one or more veterans
4 waiting for health care from an electronic wait list
5 for a medical facility of the Department.

6 “(I) The individual was the supervisor of an
7 employee of the Department, or was a supervisor of
8 the supervisor, at any level, who contributed to a
9 purposeful omission as described in subparagraph
10 (H) and knew, or reasonably should have known,
11 that the employee contributed to such purposeful
12 omission.

13 “(J) Such other performance or misconduct as
14 the Secretary determines warrants the removal or
15 demotion of the individual under paragraph (1).

16 “(3) If the Secretary removes or demotes an indi-
17 vidual as described in paragraph (1), the Secretary may—

18 “(A) remove the individual from the civil service
19 (as defined in section 2101 of title 5); or

20 “(B) demote the individual by means of—

21 “(i) a reduction in grade for which the in-
22 dividual is qualified and that the Secretary de-
23 termines is appropriate; or

24 “(ii) a reduction in annual rate of pay that
25 the Secretary determines is appropriate.

1 “(4)(A) The Secretary shall delegate authority under
2 paragraph (1) to each director of a Veterans Integrated
3 Service Network for the removal and demotion of employ-
4 ees of the department in such network.

5 “(B) The Secretary shall ensure that authority dele-
6 gated under subparagraph (A) can be exercised without
7 intervening action by the Secretary.

8 “(b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
9 Notwithstanding any other provision of law, any individual
10 subject to a demotion under subsection (a)(3)(B)(i) shall,
11 beginning on the date of such demotion, receive the annual
12 rate of pay applicable to such grade.

13 “(2) An individual so demoted may not be placed on
14 administrative leave or any other category of paid leave
15 during the period during which an appeal (if any) under
16 this section is ongoing, and may only receive pay if the
17 individual reports for duty. If an individual so demoted
18 does not report for duty, such individual shall not receive
19 pay or other benefits pursuant to subsection (e)(5).

20 “(c) NOTICE TO CONGRESS.—Not later than 30 days
21 after removing or demoting an individual under subsection
22 (a), the Secretary shall submit to the Committees on Vet-
23 erans’ Affairs of the Senate and the House of Representa-
24 tives notice in writing of such removal or demotion and
25 the reason for such removal or demotion.

1 “(d) PROCEDURE.—(1) The procedures under section
2 7513(b) of title 5 and chapter 43 of such title shall not
3 apply to a removal or demotion under this section.

4 “(2)(A) Subject to subparagraph (B) and subsection
5 (e), any removal or demotion under subsection (a) may
6 be appealed to the Merit Systems Protection Board under
7 section 7701 of title 5.

8 “(B) An appeal under subparagraph (A) of a removal
9 or demotion may only be made if such appeal is made not
10 later than seven days after the date of such removal or
11 demotion.

12 “(e) EXPEDITED REVIEW BY ADMINISTRATIVE LAW
13 JUDGE.—(1) Upon receipt of an appeal under subsection
14 (d)(2)(A), the Merit Systems Protection Board shall refer
15 such appeal to an administrative law judge pursuant to
16 section 7701(b)(1) of title 5. The administrative law judge
17 shall expedite any such appeal under such section and, in
18 any such case, shall issue a decision not later than 45 days
19 after the date of the appeal.

20 “(2) Notwithstanding any other provision of law, in-
21 cluding section 7703 of title 5, the decision of an adminis-
22 trative judge under paragraph (1) shall be final and shall
23 not be subject to any further appeal.

24 “(3) In any case in which the administrative judge
25 cannot issue a decision in accordance with the 45-day re-

1 quirement under paragraph (1), the removal or demotion
2 is final. In such a case, the Merit Systems Protection
3 Board shall, within 14 days after the date that such re-
4 moval or demotion is final, submit to Congress and the
5 Committees on Veterans' Affairs of the Senate and the
6 House of Representatives a report that explains the rea-
7 sons why a decision was not issued in accordance with
8 such requirement.

9 “(4) The Merit Systems Protection Board or admin-
10 istrative judge may not stay any removal or demotion
11 under this section.

12 “(5) During the period beginning on the date on
13 which an individual appeals a removal from the civil serv-
14 ice under subsection (d) and ending on the date that the
15 administrative judge issues a final decision on such appeal,
16 such individual may not receive any pay, awards, bonuses,
17 incentives, allowances, differentials, student loan repay-
18 ments, special payments, or benefits.

19 “(6) To the maximum extent practicable, the Sec-
20 retary shall provide to the Merit Systems Protection
21 Board, and to any administrative law judge to whom an
22 appeal under this section is referred, such information and
23 assistance as may be necessary to ensure an appeal under
24 this subsection is expedited.

1 “(f) WHISTLEBLOWER PROTECTION.—(1) In the
2 case of an individual seeking corrective action (or on be-
3 half of whom corrective action is sought) from the Office
4 of Special Counsel based on an alleged prohibited per-
5 sonnel practice described in section 2302(b) of title 5, the
6 Secretary may not remove or demote such individual
7 under subsection (a) without the approval of the Special
8 Counsel under section 1214(f) of title 5.

9 “(2) The Office of Special Counsel shall establish—

10 “(A) a mechanism to expedite cases for correc-
11 tive action under paragraph (1); and

12 “(B) a standard for the approval under para-
13 graph (1) of removal or demotion under subsection
14 (a), which may include a determination as to wheth-
15 er the removal or demotion is a prohibited personnel
16 action.

17 “(3)(A) Notwithstanding any other provision of law,
18 the Special Counsel may terminate an investigation of a
19 prohibited personnel practice alleged by an individual in
20 connection with a removal or demotion of the individual
21 under subsection (a) only after the Special Counsel pro-
22 vides to the individual a written statement of the reasons
23 for the termination of the investigation.

24 “(B) The written statement provided to the indi-
25 vidual under subparagraph (A) may not be admissible as

1 evidence in any judicial or administrative proceeding with-
 2 out the consent of such individual.

3 “(g) RELATION TO OTHER PROVISIONS OF LAW.—

4 (1) The authority provided by this section is in addition
 5 to the authority provided by subchapter V of chapter 75
 6 of title 5 and chapter 43 of such title.

7 “(2) Subchapter V of chapter 74 of this title shall
 8 not apply to any action under this section.

9 “(h) DEFINITIONS.—In this section:

10 “(1) The term ‘individual’ means an individual
 11 occupying a position at the Department of Veterans
 12 Affairs but does not include—

13 “(A) an individual, as that term is defined
 14 in section 713(g)(1); or

15 “(B) a political appointee.

16 “(2) The term ‘grade’ has the meaning given
 17 such term in section 7511(a) of title 5.

18 “(3) The term ‘misconduct’ includes neglect of
 19 duty, malfeasance, or failure to accept a directed re-
 20 assignment or to accompany a position in a transfer
 21 of function.

22 “(4) The term ‘political appointee’ means an in-
 23 dividual who is—

1 “(A) employed in a position described
2 under sections 5312 through 5316 of title 5,
3 (relating to the Executive Schedule);

4 “(B) a limited term appointee, limited
5 emergency appointee, or noncareer appointee in
6 the Senior Executive Service, as defined under
7 paragraphs (5), (6), and (7), respectively, of
8 section 3132(a) of title 5; or

9 “(C) employed in a position of a confiden-
10 tial or policy-determining character under
11 schedule C of subpart C of part 213 of title 5
12 of the Code of Federal Regulations.”.

13 (b) CLERICAL AND CONFORMING AMENDMENTS.—

14 (1) CLERICAL.—The table of sections at the be-
15 ginning of such chapter is amended by adding at the
16 end the following new item:

“714. Employees: removal or demotion based on performance or misconduct”.

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

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

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

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

24 “(4) any removal or demotion under section
25 714 of title 38.”.

1 **SEC. 3. AUTHORITY TO INVESTIGATE MEDICAL CENTERS.**

2 (a) The Director of a Veterans Integrated Service
3 Network of the Department may contract with an appro-
4 priate entity specializing in civilian accreditation or health
5 care evaluation to investigate any medical center within
6 such Network to assess and report deficiencies of the fa-
7 cilities at such medical center.

8 **SEC. 4. COMPTROLLER GENERAL REPORT ON THE IMPLE-**
9 **MENTATION AND EXECUTION OF THE VET-**
10 **ERANS CHOICE PROGRAM.**

11 (a) REPORT.—Not later than March 1, 2017, the
12 Comptroller General of the United States shall submit to
13 the appropriate committees of Congress a report on the
14 implementation and execution by the Department of Vet-
15 erans Affairs of the Veterans Choice Program.

16 (b) ELEMENTS.—The report required by subsection
17 (a) shall include an assessment of the following:

18 (1) The number of veterans enrolled in and re-
19 ceiving care through the Veterans Choice Program
20 as of the date of submittal of the report,
21 disaggregated by—

22 (A) State;

23 (B) Veterans Integrated Service Network
24 of the Department;

25 (C) medical center of the Department; and

26 (D) clinic of the Department.

1 (2) The ability of veterans to fully access the
2 Veterans Choice Program so that they do not have
3 to travel more than 40 miles to receive care at a
4 medical facility of the Department.

5 (3) The instances in which veterans have to
6 travel more than 40 miles to receive care.

7 (4) The instances in which veterans have been
8 denied care through the Veterans Choice Program
9 and an analysis of any systematic policies, including
10 at the national, regional, or local level, that have led
11 to such denials of care.

12 (5) The impact of the Veterans Choice Program
13 on reducing wait times for the receipt of care from
14 the Department.

15 (6) The effectiveness of the rules, regulations,
16 and procedures used by the Department to carry out
17 the Veterans Choice Program.

18 (7) The difference in implementation of the
19 Veterans Choice Program—

20 (A) in each State;

21 (B) at each Veterans Integrated Service
22 Network of the Department;

23 (C) at each medical center of the Depart-
24 ment; and

25 (D) at each clinic of the Department.

1 (8) The processing of claims for reimbursement
 2 for services provided under the Veterans Choice Pro-
 3 gram, disaggregated by—

4 (A) State;

5 (B) Veterans Integrated Service Network
 6 of the Department;

7 (C) medical center of the Department; and

8 (D) clinic of the Department.

9 (9) The satisfaction of veterans with the Vet-
 10 erans Choice Program, disaggregated by—

11 (A) State;

12 (B) Veterans Integrated Service Network
 13 of the Department;

14 (C) medical center of the Department; and

15 (D) clinic of the Department.

16 (c) DEFINITIONS.—In this section:

17 (1) APPROPRIATE COMMITTEES OF CON-
 18 GRESS.—The term “appropriate committees of Con-
 19 gress” means—

20 (A) the Committee on Veterans’ Affairs,
 21 the Committee on Armed Services, and the
 22 Committee on Appropriations of the Senate;
 23 and

24 (B) the Committee on Veterans’ Affairs,
 25 the Committee on Armed Services, and the

1 Committee on Appropriations of the House of
2 Representatives.

3 (2) VETERANS CHOICE PROGRAM.—The term
4 “Veterans Choice Program” means hospital care and
5 medical services furnished under section 101 of the
6 Veterans Access, Choice, and Accountability Act of
7 2014 (Public Law 113–146; 38 U.S.C. 1701 note).

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