

115TH CONGRESS
2D SESSION

H. R. 7238

To prohibit discrimination on the basis of military service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 2018

Mr. KILMER (for himself, Mr. CARTWRIGHT, Ms. NORTON, Ms. CLARK of Massachusetts, Mr. BERA, and Mr. LAMALFA) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit discrimination on the basis of military service,
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 “Veterans and
5 Servicemembers Employment Rights and Housing Act of
6 2018”.

1 **SEC. 2. DISCRIMINATION ON THE BASIS OF MILITARY**
2 **SERVICE.**

3 (a) DEFINITIONS.—In this section:

4 (1) CIVIL RIGHTS DEFINITIONS.—The terms
5 “complaining party”, “demonstrates”, “employee”,
6 “employer”, “employment agency”, “labor organiza-
7 tion”, “person”, “respondent”, and “State” have the
8 meanings given the terms in section 701 of the Civil
9 Rights Act of 1964 (42 U.S.C. 2000e).

10 (2) MEMBER OF THE UNIFORMED SERVICES.—
11 The term “member of the uniformed services”
12 means an individual who—

13 (A) is a member of—

14 (i) the uniformed services (as defined
15 in section 101 of title 10, United States
16 Code); or

17 (ii) the National Guard in State sta-
18 tus under title 32, United States Code; or

19 (B) was discharged or released from serv-
20 ice in the uniformed services (as so defined) or
21 the National Guard in such status under condi-
22 tions other than dishonorable.

23 (3) MILITARY SERVICE.—The term “military
24 service” means status as a member of the uniformed
25 services.

1 (b) EMPLOYER PRACTICES.—It shall be an unlawful
2 employment practice for an employer—

3 (1) to fail or refuse to hire or to discharge any
4 individual, or otherwise to discriminate against any
5 individual with respect to the individual's compensa-
6 tion, terms, conditions, or privileges of employment,
7 because of such individual's military service; or

8 (2) to limit, segregate, or classify the employ-
9 er's employees or applicants for employment in any
10 way which would deprive or tend to deprive any indi-
11 vidual of employment opportunities or otherwise ad-
12 versely affect the individual's status as an employee,
13 because of such individual's military service.

14 (c) EMPLOYMENT AGENCY PRACTICES.—It shall be
15 an unlawful employment practice for an employment agen-
16 cy to fail or refuse to refer for employment, or otherwise
17 discriminate against, any individual because of the individ-
18 ual's military service, or to classify or refer for employ-
19 ment any individual on the basis of the individual's mili-
20 tary service.

21 (d) LABOR ORGANIZATION PRACTICES.—It shall be
22 an unlawful employment practice for a labor organiza-
23 tion—

1 (1) to exclude or to expel from its membership,
2 or otherwise to discriminate against, any individual
3 because of the individual's military service;

4 (2) to limit, segregate, or classify its member-
5 ship or applicants for membership, or to classify or
6 fail or refuse to refer for employment any individual,
7 in any way which would deprive or tend to deprive
8 any individual of employment opportunities, or
9 would limit such employment opportunities or other-
10 wise adversely affect the individual's status as an
11 employee or as an applicant for employment, be-
12 cause of such individual's military service; or

13 (3) to cause or attempt to cause an employer to
14 discriminate against an individual in violation of this
15 section.

16 (e) TRAINING PROGRAMS.—It shall be an unlawful
17 employment practice for any employer, labor organization,
18 or joint labor-management committee controlling appren-
19 ticeship or other training or retraining, including on-the-
20 job training programs, to discriminate against any indi-
21 vidual because of the individual's military service in admis-
22 sion to, or employment in, any program established to pro-
23 vide apprenticeship or other training.

24 (f) BUSINESSES OR ENTERPRISES WITH PERSONNEL
25 QUALIFIED ON BASIS OF MILITARY SERVICE.—Notwith-

1 standing any other provision of this section, it shall not
2 be an unlawful employment practice for an employer to
3 hire and employ employees, for an employment agency to
4 classify, or refer for employment any individual, for a
5 labor organization to classify its membership or to classify
6 or refer for employment any individual, or for an em-
7 ployer, labor organization, or joint labor-management
8 committee controlling apprenticeship or other training or
9 retraining programs to admit or employ any individual in
10 any such program, on the basis of the individual's military
11 service in those certain instances where military service
12 is a bona fide occupational qualification reasonably nec-
13 essary to the normal operation of that particular business
14 or enterprise.

15 (g) NATIONAL SECURITY.—Notwithstanding any
16 other provision of this section, it shall not be an unlawful
17 employment practice for an employer to fail or refuse to
18 hire and employ any individual for any position, for an
19 employer to discharge any individual from any position,
20 or for an employment agency to fail or refuse to refer any
21 individual for employment in any position, or for a labor
22 organization to fail or refuse to refer any individual for
23 employment in any position, if—

24 (1) the occupancy of such position, or access to
25 the premises in or upon which any part of the duties

1 of such position is performed or is to be performed,
2 is subject to any requirement imposed in the interest
3 of the national security of the United States under
4 any security program in effect pursuant to or ad-
5 ministered under any statute of the United States or
6 any Executive order of the President; and

7 (2) such individual has not fulfilled or has
8 ceased to fulfill that requirement.

9 (h) SENIORITY OR MERIT SYSTEM; QUANTITY OR
10 QUALITY OF PRODUCTION; ABILITY TESTS.—Notwith-
11 standing any other provision of this section, it shall not
12 be an unlawful employment practice for an employer to
13 apply different standards of compensation, or different
14 terms, conditions, or privileges of employment pursuant
15 to a bona fide seniority or merit system, or a system which
16 measures earnings by quantity or quality of production or
17 to employees who work in different locations, provided
18 that such differences are not the result of an intention
19 to discriminate because of military service, nor shall it be
20 an unlawful employment practice for an employer to give
21 and to act upon the results of any professionally developed
22 ability test provided that such test, its administration, or
23 action upon the results is not designed, intended, or used
24 to discriminate because of military service.

1 (i) PREFERENTIAL TREATMENT NOT TO BE GRANT-
2 ED ON ACCOUNT OF EXISTING NUMBER OR PERCENTAGE
3 IMBALANCE.—Nothing contained in this section shall be
4 interpreted to require any employer, employment agency,
5 labor organization, or joint labor-management committee
6 subject to this section to grant preferential treatment to
7 any individual or to any group because of the military
8 service of such individual or group on account of an imbal-
9 ance which may exist with respect to the total number or
10 percentage of persons with military service employed by
11 any employer, referred or classified for employment by any
12 employment agency or labor organization, admitted to
13 membership or classified by any labor organization, or ad-
14 mitted to, or employed in, any apprenticeship or other
15 training program, in comparison with the total number or
16 percentage of persons with military service in any commu-
17 nity, State, section, or other area, or in the available work
18 force in any community, State, section, or other area.

19 (j) BURDEN OF PROOF IN DISPARATE IMPACT
20 CASES.—

21 (1) DISPARATE IMPACT.—

22 (A) ESTABLISHMENT.—An unlawful em-
23 ployment practice based on disparate impact is
24 established under this section only if—

1 (i) a complaining party demonstrates
2 that a respondent uses a particular em-
3 ployment practice that causes a disparate
4 impact on the basis of military service and
5 the respondent fails to demonstrate that
6 the challenged practice is job related for
7 the position in question and consistent
8 with business necessity; or

9 (ii) the complaining party makes the
10 demonstration described in subparagraph
11 (C) with respect to an alternative employ-
12 ment practice and the respondent refuses
13 to adopt such alternative employment prac-
14 tice.

15 (B) DEMONSTRATION OF CAUSATION.—

16 (i) PARTICULAR EMPLOYMENT PRAC-
17 TICES.—With respect to demonstrating
18 that a particular employment practice
19 causes a disparate impact as described in
20 subparagraph (A)(i), the complaining party
21 shall demonstrate that each particular
22 challenged employment practice causes a
23 disparate impact, except that if the com-
24 plaining party can demonstrate to the
25 court that the elements of a respondent's

1 decisionmaking process are not capable of
2 separation for analysis, the decisionmaking
3 process may be analyzed as one employ-
4 ment practice.

5 (ii) DEMONSTRATION OF NONCAUSA-
6 TION.—If the respondent demonstrates
7 that a specific employment practice does
8 not cause the disparate impact, the re-
9 spondent shall not be required to dem-
10 onstrate that such practice is required by
11 business necessity.

12 (C) ALTERNATIVE EMPLOYMENT PRAC-
13 TICE.—The demonstration referred to by sub-
14 paragraph (A)(ii) shall be in accordance with
15 the law as it existed on June 4, 1989, with re-
16 spect to the concept of “alternative employment
17 practice”.

18 (2) BUSINESS NECESSITY NO DEFENSE TO IN-
19 TENTIONAL DISCRIMINATION.—A demonstration
20 that an employment practice is required by business
21 necessity may not be used as a defense against a
22 claim of intentional discrimination under this sec-
23 tion.

24 (3) RULES CONCERNING CONTROLLED SUB-
25 STANCES.—Notwithstanding any other provision of

1 this section, a rule barring the employment of an in-
2 dividual who currently and knowingly uses or pos-
3 sesses a controlled substance, as defined in section
4 102(6) of the Controlled Substances Act (21 U.S.C.
5 802(6)) and included in schedule I or II of the
6 schedules specified in that section, other than the
7 use or possession of a drug taken under the super-
8 vision of a licensed health care professional, or any
9 other use or possession authorized by the Controlled
10 Substances Act (21 U.S.C. 801 et seq.) or any other
11 provision of Federal law, shall be considered an un-
12 lawful employment practice under this section only if
13 such rule is adopted or applied with an intent to dis-
14 criminate because of military service.

15 (k) PROHIBITION OF DISCRIMINATORY USE OF TEST
16 SCORES.—It shall be an unlawful employment practice for
17 a respondent, in connection with the selection or referral
18 of applicants or candidates for employment or promotion,
19 to adjust the scores of, use different cutoff scores for, or
20 otherwise alter the results of, employment related tests on
21 the basis of military service.

22 (l) IMPERMISSIBLE CONSIDERATION OF MILITARY
23 SERVICE IN EMPLOYMENT PRACTICES.—Except as other-
24 wise provided in this section, an unlawful employment
25 practice is established when the complaining party dem-

1 onstrates that military service was a motivating factor for
2 any employment practice, even though other factors also
3 motivated the practice.

4 (m) RESOLUTION OF CHALLENGES TO EMPLOYMENT
5 PRACTICES IMPLEMENTING LITIGATED OR CONSENT
6 JUDGMENTS OR ORDERS.—

7 (1) PRACTICES NOT CHALLENGEABLE.—

8 (A) PRACTICES TO IMPLEMENT A LITI-
9 GATED OR CONSENT JUDGMENT OR ORDER.—

10 Notwithstanding any other provision of law,
11 and except as provided in paragraph (2), an
12 employment practice that implements and is
13 within the scope of a litigated or consent judg-
14 ment or order that resolves a claim of employ-
15 ment discrimination under the Constitution or
16 Federal civil rights laws may not be challenged
17 under the circumstances described in subpara-
18 graph (B).

19 (B) CIRCUMSTANCES.—A practice de-
20 scribed in subparagraph (A) may not be chal-
21 lenged in a claim under the Constitution or
22 Federal civil rights laws—

23 (i) by a person who, prior to the entry
24 of the judgment or order described in sub-
25 paragraph (A), had—

1 (I) actual notice of the proposed
2 judgment or order sufficient to ap-
3 prise such person that such judgment
4 or order might adversely affect the in-
5 terests and legal rights of such person
6 and that an opportunity was available
7 to present objections to such judg-
8 ment or order by a future date cer-
9 tain; and

10 (II) a reasonable opportunity to
11 present objections to such judgment
12 or order; or

13 (ii) by a person whose interests were
14 adequately represented by another person
15 who had previously challenged the judg-
16 ment or order on the same legal grounds
17 and with a similar factual situation, unless
18 there has been an intervening change in
19 law or fact.

20 (2) RULE OF CONSTRUCTION.—Nothing in this
21 subsection shall be construed to—

22 (A) alter the standards for intervention
23 under rule 24 of the Federal Rules of Civil Pro-
24 cedure or apply to the rights of parties who
25 have successfully intervened pursuant to such

1 rule in the proceeding in which the parties in-
2 tervened;

3 (B) apply to the rights of parties to the ac-
4 tion in which a litigated or consent judgment or
5 order was entered, or of members of a class
6 represented or sought to be represented in such
7 action, or of members of a group on whose be-
8 half relief was sought in such action by the
9 Federal Government;

10 (C) prevent challenges to a litigated or
11 consent judgment or order on the ground that
12 such judgment or order was obtained through
13 collusion or fraud, or is transparently invalid or
14 was entered by a court lacking subject matter
15 jurisdiction; or

16 (D) authorize or permit the denial to any
17 person of the due process of law required by the
18 Constitution.

19 (3) COURT FOR ACTIONS THAT ARE
20 CHALLENGEABLE.—Any action not precluded under
21 this subsection that challenges an employment con-
22 sent judgment or order described in paragraph (1)
23 shall be brought in the court, and if possible before
24 the judge, that entered such judgment or order.
25 Nothing in this subsection shall preclude a transfer

1 of such action pursuant to section 1404 of title 28,
2 United States Code.

3 (n) DISCRIMINATION FOR MAKING CHARGES, TESTI-
4 FYING, ASSISTING, OR PARTICIPATING IN ENFORCEMENT
5 PROCEEDINGS.—It shall be an unlawful employment prac-
6 tice for an employer to discriminate against any of the
7 employer's employees or applicants for employment, for an
8 employment agency, or joint labor-management committee
9 controlling apprenticeship or other training or retraining,
10 including on-the-job training programs, to discriminate
11 against any individual, or for a labor organization to dis-
12 criminate against any member thereof or applicant for
13 membership, because the employee, applicant, individuals,
14 or member involved has opposed any practice made an un-
15 lawful employment practice by this section, or has made
16 a charge, testified, assisted, or participated in any manner
17 in an investigation, proceeding, or hearing under this sec-
18 tion.

19 (o) PRINTING OR PUBLICATION OF NOTICES OR AD-
20 VERTISEMENTS.—It shall be an unlawful employment
21 practice for an employer, labor organization, employment
22 agency, or joint labor-management committee controlling
23 apprenticeship or other training or retraining, including
24 on-the-job training programs, to print or publish or cause
25 to be printed or published any notice or advertisement re-

1 relating to employment by such an employer or membership
 2 in or any classification or referral for employment by such
 3 a labor organization, or relating to any classification or
 4 referral for employment by such an employment agency,
 5 or relating to admission to, or employment in, any pro-
 6 gram established to provide apprenticeship or other train-
 7 ing by such a joint labor-management committee, indi-
 8 cating any preference, limitation, specification, or dis-
 9 crimination, based on military service, except that such a
 10 notice or advertisement may indicate a preference, limita-
 11 tion, specification, or discrimination based on military
 12 service when military service is a bona fide occupational
 13 qualification for employment.

14 (p) EXEMPTIONS.—

15 (1) INAPPLICABILITY OF TITLE TO CERTAIN
 16 ALIENS.—This section shall not apply to an em-
 17 ployer with respect to the employment of aliens out-
 18 side any State.

19 (2) COMPLIANCE WITH STATUTE AS VIOLATION
 20 OF FOREIGN LAW.—It shall not be unlawful under
 21 this section for an employer (or a corporation con-
 22 trolled by an employer), labor organization, employ-
 23 ment agency, or joint labor-management committee
 24 controlling apprenticeship or other training or re-
 25 training (including on-the-job training programs) to

1 take any action otherwise prohibited by such section,
2 with respect to an employee in a workplace in a for-
3 eign country if compliance with such section would
4 cause such employer (or such corporation), such or-
5 ganization, such agency, or such committee to vio-
6 late the law of the foreign country in which such
7 workplace is located.

8 (3) CONTROL OF CORPORATION INCORPORATED
9 IN FOREIGN COUNTRY.—

10 (A) IN GENERAL.—If an employer controls
11 a corporation whose place of incorporation is a
12 foreign country, any practice prohibited by this
13 section engaged in by such corporation shall be
14 presumed to be engaged in by such employer.

15 (B) FOREIGN PERSON NOT CONTROLLED
16 BY EMPLOYER.—This section shall not apply
17 with respect to the foreign operations of an em-
18 ployer that is a foreign person not controlled by
19 an American employer.

20 (C) CONTROL.—For purposes of this sub-
21 section, the determination of whether an em-
22 ployer controls a corporation shall be based
23 on—

24 (i) the interrelation of operations;

25 (ii) the common management;

1 (iii) the centralized control of labor re-
2 lations; and
3 (iv) the common ownership or finan-
4 cial control,
5 of the employer and the corporation.

6 (4) CLAIMS OF NO MILITARY SERVICE.—Noth-
7 ing in this section shall provide the basis for a claim
8 by an individual without military service that the in-
9 dividual was subject to discrimination because of the
10 individual's lack of military service.

11 (q) POSTING NOTICES.—Every employer, employ-
12 ment agency, labor organization, or joint labor-manage-
13 ment committee covered under this section shall post no-
14 tices to applicants, employees, and members describing the
15 applicable provisions of this section, in the manner pre-
16 scribed by section 711 of the Civil Rights Act of 1964
17 (42 U.S.C. 2000e–10).

18 (r) REGULATIONS.—Not later than 90 days after the
19 date of enactment of this Act, the Commission shall issue
20 regulations to carry out this section in accordance with
21 subchapter II of chapter 5 of title 5, United States Code.

22 (s) ENFORCEMENT.—The powers, remedies, and pro-
23 cedures set forth in sections 705, 706, 707, 708, 709, 710,
24 and 712 of the Civil Rights Act of 1964 (42 U.S.C.
25 2000e–4, 2000e–5, 2000e–6, 2000e–7, 2000e–8, 2000e–

1 9, and 2000e–11) shall be the powers, remedies, and pro-
 2 cedures this section provides to the Equal Employment
 3 Opportunity Commission, to the Attorney General, or to
 4 any person alleging discrimination on the basis of military
 5 service in violation of any provision of this section, or reg-
 6 ulations promulgated under subsection (s), concerning em-
 7 ployment.

8 **SEC. 3. ENDING HOUSING DISCRIMINATION AGAINST MEM-**
 9 **BERS OF THE UNIFORMED SERVICES.**

10 (a) DEFINITIONS.—Section 802 of the Fair Housing
 11 Act (42 U.S.C. 3602) is amended by adding at the end
 12 the following:

13 “(p) ‘Member of the uniformed services’ means an
 14 individual who—

15 “(1) is a member of—

16 “(A) the uniformed services (as defined in
 17 section 101 of title 10, United States Code); or

18 “(B) the National Guard in State status
 19 under title 32, United States Code; or

20 “(2) was discharged or released from service in
 21 the uniformed services (as so defined) or the Na-
 22 tional Guard in such status under conditions other
 23 than dishonorable.”.

24 (b) DISCRIMINATION IN THE SALE OR RENTAL OF
 25 HOUSING AND OTHER PROHIBITED PRACTICES.—Section

1 804 of the Fair Housing Act (42 U.S.C. 3604) is amend-
2 ed—

3 (1) in subsection (a), by inserting “or because
4 the person is a member of the uniformed services”
5 after “national origin”;

6 (2) in subsection (b), by inserting “or because
7 the person is a member of the uniformed services”
8 after “national origin”;

9 (3) in subsection (c), by inserting “or because
10 a person is a member of the uniformed services,”
11 after “national origin,”; and

12 (4) in subsection (d), by inserting “, or because
13 the person is a member of the uniformed services,”
14 after “national origin”.

15 (c) DISCRIMINATION IN RESIDENTIAL REAL ESTATE-
16 RELATED TRANSACTIONS.—Section 805 of the Fair
17 Housing Act (42 U.S.C. 3605) is amended—

18 (1) in subsection (a), by inserting “or because
19 the person is a member of the uniformed services”
20 after “national origin”; and

21 (2) in subsection (c), by striking “, or familial
22 status” and inserting “familial status, or whether a
23 person is a member of the uniformed services”.

24 (d) DISCRIMINATION IN THE PROVISION OF BROKER-
25 AGE SERVICES.—Section 806 of the Fair Housing Act (42

1 U.S.C. 3606) is amended by inserting “or because a per-
2 son is a member of the uniformed services” after “national
3 origin”.

4 (e) RELIGIOUS ORGANIZATION OR PRIVATE CLUB
5 EXEMPTION.—Section 807(a) of the Fair Housing Act
6 (42 U.S.C. 3607(a)) is amended, in the first sentence by
7 inserting “or to persons who are not members of the uni-
8 formed services” after “national origin”.

9 (f) ADMINISTRATION.—Section 808(e)(6) of the Fair
10 Housing Act (42 U.S.C. 3608(e)(6)) is amended, in the
11 first sentence, by inserting “(including whether such per-
12 sons and households are or include a member of the uni-
13 formed services)” after “persons and households”.

14 (g) PREVENTION OF DISCRIMINATION.—Section 901
15 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is
16 amended—

17 (1) in subsection (a), by inserting “, or because
18 the person is a member of the uniformed services (as
19 such term is defined in section 802 of this Act),”
20 after “national origin”;

21 (2) in subsection (b)(1), by inserting “or be-
22 cause a person is a member of the uniformed serv-
23 ices (as such term is defined in section 802 of this
24 Act),” after “national origin,”; and

1 (3) in subsection (c), by inserting “or because
2 a person is a member of the uniformed services (as
3 such term is defined in section 802 of this Act),”
4 after “national origin,”.

5 (h) RULE OF CONSTRUCTION.—The Fair Housing
6 Act (42 U.S.C. 3601 et seq.) is amended by adding at
7 the end the following:

8 **“SEC. 821. RULE OF CONSTRUCTION RELATING TO THE**
9 **TREATMENT OF MEMBERS OF THE UNI-**
10 **FORMED SERVICES.**

11 “(a) RULE OF CONSTRUCTION.—Nothing in this Act
12 may be construed to prohibit any person from—

13 “(1) making available to an individual a benefit
14 with respect to a dwelling, a residential real estate-
15 related transaction (as defined in section 805 of this
16 Act), or a service described in section 806 of this
17 Act because the individual is a member of the uni-
18 formed services; or

19 “(2) selling or renting a dwelling only to mem-
20 bers of the uniformed services.

21 “(b) DEFINITION.—For purposes of this section, the
22 term ‘benefit’ includes a term, condition, privilege, pro-
23 motion, discount, or other favorable treatment (including
24 an advertisement for such treatment) having the purpose

1 or effect of providing an advantage to a member of the
2 uniformed services.”.

3 **SEC. 4. EFFECTIVE DATE.**

4 This Act shall become effective 120 days after the
5 date of enactment of this Act.

○