

Union Calendar No. 351

118TH CONGRESS
2^D SESSION

H. R. 4278

[Report No. 118-425]

To amend title 38, United States Code, to modify personnel action procedures with respect to employees of the Department of Veterans Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2023

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

MARCH 15, 2024

Additional sponsors: Mr. ISSA, Mrs. RADEWAGEN, Mr. BERGMAN, Mr. OBERNOLTE, Mr. LOUDERMILK, Mr. SELF, Mr. MURPHY, Mr. WENSTRUP, Mr. LAMBORN, Mr. ROSENDALE, Mrs. KIGGANS of Virginia, Mr. RUTHERFORD, Mrs. MILLER-MEEKS, Mr. WESTERMAN, Mr. JOHNSON of Ohio, Mr. CLINE, Mr. D'ESPOSITO, Mr. WILSON of South Carolina, Mr. CARTER of Georgia, Mr. CALVERT, Mr. ROUZER, Mr. WALBERG, Mr. VAN ORDEN, Mrs. CAMMACK, Mr. WEBSTER of Florida, Mr. NEWHOUSE, and Mr. OGLES

MARCH 15, 2024

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

[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 June 22, 2023]

A BILL

To amend title 38, United States Code, to modify personnel action procedures with respect to employees of the Department of Veterans Affairs, 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 “Restore Department of*
5 *Veterans Affairs Accountability Act of 2023” or the “Re-*
6 *store VA Accountability Act of 2023”.*

7 **SEC. 2. SUPERVISORS: REMOVAL, DEMOTION, OR SUSPEN-**
8 **SION BASED ON PERFORMANCE OR MIS-**
9 **CONDUCT.**

10 *(a) DISCIPLINE OF SUPERVISORS.—*

11 *(1) IN GENERAL.—Title 38, United States Code,*
12 *is amended by inserting after section 711 the fol-*
13 *lowing:*

14 **“§ 712. Supervisors: removal, demotion, or suspension**
15 **based on performance or misconduct**

16 *“(a) IN GENERAL.—The Secretary may remove from*
17 *civil service, demote, or suspend a covered individual who*
18 *is an employee of the Department if the Secretary deter-*
19 *mines by substantial evidence that the performance or mis-*
20 *conduct of the covered individual warrants such action.*

21 *“(b) RIGHTS AND PROCEDURES.—(1)(A) When mak-*
22 *ing an initial decision under subsection (a) with respect*
23 *to determining whether a covered individual should be re-*
24 *moved, demoted, or suspended, the deciding employee of the*
25 *Department shall exclusively apply the following factors:*

1 “(i) *The nature and seriousness of the offense,*
2 *and its relation to the covered individual’s duties, po-*
3 *sition, and responsibilities, including whether the of-*
4 *fense was intentional or technical or inadvertent, or*
5 *was committed maliciously or for gain, or was fre-*
6 *quently repeated.*

7 “(ii) *The covered individual’s job level and type*
8 *of employment, including supervisory or fiduciary*
9 *role, and prominence of the position.*

10 “(B) *The Secretary shall review the initial decision*
11 *and uphold such decision if it is supported by substantial*
12 *evidence.*

13 “(2) *A covered individual subject to an action under*
14 *subsection (a) is entitled to—*

15 “(A) *advance notice of the action and a file con-*
16 *taining all evidence in support of the proposed action;*

17 “(B) *be represented by an attorney or other rep-*
18 *resentative of the covered individual’s choice; and*

19 “(C) *grieve the action in accordance with an in-*
20 *ternal grievance process that the Secretary, in con-*
21 *sultation with the Assistant Secretary for Account-*
22 *ability and Whistleblower Protection, shall establish*
23 *for purposes of this subsection.*

1 “(3) *A final decision by the Secretary under para-*
2 *graph (1)(B) that is not grieved, and a grievance decision*
3 *under paragraph (2)(C), shall be final and conclusive.*

4 “(4) *The procedures under chapter 43 of title 5 shall*
5 *not apply to a removal, demotion, or suspension under this*
6 *section, and the Secretary may carry out such a removal,*
7 *demotion, or suspension without first placing a covered in-*
8 *dividual on a performance improvement plan.*

9 “(c) *TIMING.—(A) The aggregate period for notice, re-*
10 *sponse, and final decision by the Secretary of an action*
11 *under this section may not exceed 15 business days.*

12 “(B) *The period for the response of a covered indi-*
13 *vidual to a notice under subsection (b)(2)(A) shall be 7 busi-*
14 *ness days.*

15 “(C) *The final decision by the Secretary under sub-*
16 *section (b)(1)(B) shall—*

17 “(i) *be issued not later than 15 business days*
18 *after notice is provided under subsection (b)(2)(A);*
19 *and*

20 “(ii) *be in writing and shall include the specific*
21 *reasons for the decision.*

22 “(D) *The Secretary shall ensure that the grievance*
23 *process established under paragraph (2)(C) takes fewer than*
24 *21 days after the final decision.*

1 “(d) *JUDICIAL REVIEW.*—(1) *A covered individual ad-*
2 *versely affected by a final decision under this section that*
3 *is not grieved, or by a grievance decision under subsection*
4 *(b)(2)(C), may obtain judicial review of such decision.*

5 “(2) *Any removal, demotion, or suspension under this*
6 *section is not appealable to the Merit Systems Protection*
7 *Board, or to any administrative judge or other person ap-*
8 *pointed by the Merit Systems Protection Board.*

9 “(3) *In any case in which judicial review is sought*
10 *under paragraph (1), the court shall review the record and*
11 *may set aside any Department action found to be—*

12 “(A) *arbitrary, capricious, an abuse of discre-*
13 *tion, or otherwise not in accordance with a provision*
14 *of law;*

15 “(B) *obtained without procedures required by a*
16 *provision of law having been followed; or*

17 “(C) *unsupported by substantial evidence.*

18 “(4) *Except to the extent that an appeal under this*
19 *subsection presents a constitutional issue, such court may*
20 *not review a challenge to the penalty imposed against the*
21 *covered individual or mitigate such penalty.*

22 “(e) *DEMOTED INDIVIDUALS.*—(1) *A demotion under*
23 *subsection (a) shall be carried out as a reduction in grade*
24 *for which the covered individual is qualified, that the Sec-*

1 *retary determines is appropriate, and that reduces the an-*
2 *nual rate of pay of the covered individual.*

3 “(2) *Notwithstanding any other provision of law, any*
4 *covered individual so demoted—*

5 “(A) *shall, beginning on the date of such demo-*
6 *tion, receive the annual rate of pay applicable to such*
7 *grade;*

8 “(B) *may not be placed on administrative leave*
9 *during the period during which an appeal (if any)*
10 *under this section is ongoing, and may only receive*
11 *pay if the covered individual reports for duty or is*
12 *approved to use accrued unused annual, sick, family*
13 *medical, military, or court leave; and*

14 “(C) *who does not report for duty or receive ap-*
15 *proval to use accrued unused leave shall not receive*
16 *pay or other benefits.*

17 “(f) *WHISTLEBLOWER PROTECTION.—(1) In the case*
18 *of a covered individual seeking corrective action (or on be-*
19 *half of whom corrective action is sought) from the Office*
20 *of Special Counsel based on an alleged prohibited personnel*
21 *practice described in section 2302(b) of title 5, the Secretary*
22 *may not remove, demote, or suspend such covered indi-*
23 *vidual under subsection (a) without the approval of the*
24 *Special Counsel under section 1214(f) of title 5.*

1 “(2) *In the case of a covered individual who has made*
2 *a whistleblower disclosure to the Assistant Secretary for Ac-*
3 *countability and Whistleblower Protection, the Secretary*
4 *may not remove, demote, or suspend such covered indi-*
5 *vidual under subsection (a) until—*

6 “(A) *in the case in which the Assistant Secretary*
7 *determines to refer the whistleblower disclosure under*
8 *section 323(c)(1)(D) of this title to an office or other*
9 *investigative entity, a final decision with respect to*
10 *the whistleblower disclosure has been made by such of-*
11 *fice or other investigative entity; or*

12 “(B) *in the case in which the Assistant Secretary*
13 *determines not to refer the whistleblower disclosure*
14 *under such section, the Assistant Secretary makes*
15 *such determination.*

16 “(g) *TERMINATION OF INVESTIGATIONS BY OFFICE OF*
17 *SPECIAL COUNSEL.—(1) Notwithstanding any other provi-*
18 *sion of law, the Special Counsel (established by section 1211*
19 *of title 5) may terminate an investigation of a prohibited*
20 *personnel practice alleged by an employee or former em-*
21 *ployee of the Department after the Special Counsel provides*
22 *to the employee or former employee a written statement of*
23 *the reasons for the termination of the investigation.*

1 “(2) *Such statement may not be admissible as evidence*
2 *in any judicial or administrative proceeding without the*
3 *consent of such employee or former employee.*

4 “(h) *APPLICATION.—This section shall apply to any*
5 *performance or misconduct of a covered individual begin-*
6 *ning on the date of enactment of the Department of Veterans*
7 *Affairs Accountability and Whistleblower Protection Act of*
8 *2017 (Public Law 115–41).*

9 “(i) *DEFINITIONS.—In this section:*

10 “(1) *The term ‘civil service’ has the meaning*
11 *given that term in section 2101 of title 5.*

12 “(2) *The term ‘covered individual’ means an em-*
13 *ployee of the Department who is a supervisor or man-*
14 *agement official as defined in section 7103(a) of title*
15 *5 occupying a position at the Department, including*
16 *individuals appointed pursuant to this title, title 5,*
17 *and hybrid employees appointed pursuant to section*
18 *7401 of this title, but does not include—*

19 “(A) *an individual occupying a senior exec-*
20 *utive position (as defined in section 713(d) of*
21 *this title);*

22 “(B) *an individual appointed pursuant to*
23 *section 7306, 7401(1), 7401(4), or 7405 of this*
24 *title;*

1 “(C) *an individual who has not completed*
2 *a probationary or trial period; or*

3 “(D) *a political appointee.*

4 “(3) *The term ‘grade’ has the meaning given*
5 *such term in section 7511(a) of title 5.*

6 “(4) *The term ‘misconduct’ includes neglect of*
7 *duty, malfeasance, or failure to accept a directed re-*
8 *assignment or to accompany a position in a transfer*
9 *of function.*

10 “(5) *The term ‘political appointee’ means an in-*
11 *dividual who is—*

12 “(A) *employed in a position described*
13 *under sections 5312 through 5316 of title 5 (re-*
14 *lating to the Executive Schedule);*

15 “(B) *a limited term appointee, limited*
16 *emergency appointee, or noncareer appointee in*
17 *the Senior Executive Service, as defined under*
18 *paragraphs (5), (6), and (7), respectively, of sec-*
19 *tion 3132(a) of title 5; or*

20 “(C) *employed in a position of a confiden-*
21 *tial or policy-determining character under sched-*
22 *ule C of subpart C of part 213 of title 5, Code*
23 *of Federal Regulations, or successor regulation.*

24 “(6) *The term ‘suspend’ means the placing of an*
25 *employee, for disciplinary reasons, in a temporary*

1 *status without duties and pay for a period in excess*
 2 *of 14 days.*

3 “(7) *The term ‘whistleblower disclosure’ has the*
 4 *meaning given such term in section 323(g) of this*
 5 *title.’”.*

6 (2) *CLERICAL AMENDMENT.—The table of con-*
 7 *tents for title 38, United States Code, is amended by*
 8 *inserting after the item relating to section 711 the fol-*
 9 *lowing:*

“712. Supervisors: removal, demotion, or suspension based on performance or mis-
 conduct.”.

10 **SEC. 3. SENIOR EXECUTIVES: MODIFICATION OF PROCE-**
 11 **DURES TO REMOVE, DEMOTE, OR SUSPEND**
 12 **BASED ON PERFORMANCE OR MISCONDUCT.**

13 *Section 713 of title 38, United States Code, is amend-*
 14 *ed—*

15 (1) *in subsection (a)—*

16 (A) *by inserting “by substantial evidence”,*
 17 *after “determines”; and*

18 (B) *by adding at the end the following:*

19 “(3) *When making an initial decision under this sub-*
 20 *section with respect to determining whether a covered indi-*
 21 *vidual should be reprimanded or suspended, involuntarily*
 22 *reassigned, demoted, or removed, the deciding employee of*
 23 *the Department shall exclusively apply the following fac-*
 24 *tors:*

1 “(A) *The nature and seriousness of the offense,*
2 *and its relation to the covered individual’s duties, po-*
3 *sition, and responsibilities, including whether the of-*
4 *fense was intentional or technical or inadvertent, or*
5 *was committed maliciously or for gain, or was fre-*
6 *quently repeated.*

7 “(B) *The covered individual’s job level and type*
8 *of employment, including supervisory or fiduciary*
9 *role, and prominence of the position.*

10 “(4) *The Secretary shall review the initial decision*
11 *and uphold such decision if it is supported by substantial*
12 *evidence.”;*

13 (2) *in subsection (b)—*

14 (A) *in paragraph (3), by inserting “after*
15 *the final decision” after “21 days”; and*

16 (B) *by adding at the end the following:*

17 “(7) *Except to the extent that an appeal under this*
18 *subsection presents a constitutional issue, such court may*
19 *not review a challenge to the penalty imposed against the*
20 *covered individual or mitigate such penalty.”; and*

21 (3) *by inserting after subsection (c) the following*
22 *(and redesignating subsection (d) as subsection (e)):*

23 “(d) *APPLICATION.—This section shall apply to any*
24 *misconduct or performance of a covered individual begin-*
25 *ning on the date of enactment of the Department of Veterans*

1 *Affairs Accountability and Whistleblower Protection Act of*
2 *2017 (Public Law 115–41).”*

3 **SEC. 4. MODIFICATION OF DISCIPLINARY PROCEDURES**
4 **FOR EMPLOYEES OF THE DEPARTMENT OF**
5 **VETERANS AFFAIRS.**

6 *(a) DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE*
7 *DISCIPLINE MODIFICATIONS.—Section 714 of title 38,*
8 *United States Code, is amended—*

9 *(1) in subsection (a),*

10 *(A) in paragraph (1), by inserting “by sub-*
11 *stantial evidence” after “the Secretary deter-*
12 *mines”; and*

13 *(B) by adding at the end the following:*

14 *“(3)(A) When making an initial decision under this*
15 *subsection with respect to determining whether a covered*
16 *individual should be removed, demoted, or suspended, the*
17 *deciding employee of the Department shall exclusively apply*
18 *the following factors:*

19 *“(i) The nature and seriousness of the offense,*
20 *and its relation to the covered individual’s duties, po-*
21 *sition, and responsibilities, including whether the of-*
22 *fense was intentional or technical or inadvertent, or*
23 *was committed maliciously or for gain, or was fre-*
24 *quently repeated.*

1 “(ii) *The covered individual’s job level and type*
2 *of employment, including supervisory or fiduciary*
3 *role, and prominence of the position.*

4 “(iii) *The covered individual’s past disciplinary*
5 *record.*

6 “(iv) *The covered individual’s past work record,*
7 *including length of service, performance on the job,*
8 *ability to get along with fellow workers, and depend-*
9 *ability.*

10 “(v) *Mitigating circumstances surrounding the*
11 *offense such as unusual job tensions, personality prob-*
12 *lems, mental impairment, harassment, or bad faith,*
13 *malice, or provocation on the part of others involved*
14 *in the matter.*

15 “(B) *The Secretary shall review the initial decision*
16 *and uphold such decision if it is supported by substantial*
17 *evidence.”.*

18 (2) *in subsection (c)—*

19 (A) *by striking paragraph (1)(D); and*

20 (B) *in paragraph (3), by inserting before*
21 *the period the following: “, and the Secretary*
22 *may carry out such a removal, demotion, or sus-*
23 *pension without first placing a covered indi-*
24 *vidual on a performance improvement plan”;*

25 (3) *in subsection (d)—*

1 (A) in paragraph (2), by adding at the end
2 the following:

3 “(C) Except to the extent that an appeal under this
4 subsection presents a constitutional issue, the administra-
5 tive judge may not review a challenge to the penalty im-
6 posed against the covered individual.”;

7 (B) in paragraph (3), by adding at the end
8 the following:

9 “(D) Except to the extent that an appeal under this
10 subsection presents a constitutional issue, the Merit Systems
11 Protection Board may not review a challenge to the penalty
12 imposed against the covered individual.”;

13 (C) in paragraph (5), by adding at the end
14 the following:

15 “(C) Except to the extent that an appeal under this
16 subsection presents a constitutional issue, such Court may
17 not review a challenge to the penalty imposed against the
18 covered individual or mitigate such penalty.”; and

19 (D) by striking paragraph (10);

20 (4) by redesignating subsection (h) as subsection
21 (j);

22 (5) by inserting after subsection (g) the fol-
23 lowing:

24 “(h) *COLLECTIVE BARGAINING AGREEMENTS.—The*
25 *procedures in this section shall supersede any collective bar-*

1 *gaining agreement to the extent that such agreement is in-*
2 *consistent with such procedures.*

3 “(i) *APPLICATION.—This section shall apply to any*
4 *performance or misconduct of a covered individual begin-*
5 *ning on the date of enactment of the Department of Veterans*
6 *Affairs Accountability and Whistleblower Protection Act of*
7 *2017 (Public Law 115–41).”;* and

8 (6) *in paragraph (1) of subsection (j), as redesign-*
9 *ated by paragraph (4)—*

10 (A) *by inserting “including individuals ap-*
11 *pointed pursuant to this title, title 5, and hybrid*
12 *employees appointed pursuant to section 7401 of*
13 *this title” after “Department”;*

14 (B) *in subparagraph (D), by striking the*
15 *period and inserting “; or”;* and

16 (C) *by adding after subparagraph (D) the*
17 *following:*

18 “(E) *a supervisor or management official as*
19 *defined in section 7103(a) of title 5.”.*

20 (b) *VHA EMPLOYEE DISCIPLINE MODIFICATIONS.—*
21 *Section 7403(f)(3) of such title is amended—*

22 (1) *by striking “Notwithstanding any other pro-*
23 *vision of this title or other law,” and inserting “(A)*
24 *Notwithstanding any other provision of this title or*

1 *other law, and consistent with subparagraph (B),”;*
2 *and*

3 *(2) by adding at the end the following:*

4 *“(B) With respect to any covered individual (as that*
5 *term is defined in section 712 or 714) appointed to such*
6 *positions, such matters shall be resolved, at Secretary’s sole*
7 *discretion, under—*

8 *“(i) section 712;*

9 *“(ii) section 714; or*

10 *“(iii) title 5 as though such individuals had been*
11 *appointed under that title.”.*

12 **SEC. 5. INDEPENDENT STUDY REGARDING MANAGEMENT**
13 **STRUCTURES OF DEPARTMENT OF VETERANS**
14 **AFFAIRS.**

15 *(a) IN GENERAL.—Not later than 90 days after the*
16 *date of the enactment of this Act, the Secretary of Veterans*
17 *Affairs shall seek to enter into an agreement with the Na-*
18 *tional Academy of Public Administration (referred to in*
19 *this section as the “Academy”) under which the Academy*
20 *shall conduct a study and review of the oversight, account-*
21 *ability, and performance management structures of the De-*
22 *partment of Veterans Affairs.*

23 *(b) CONSIDERATIONS.—In conducting a study and re-*
24 *view under this section, the Academy shall—*

1 (1) *consult with the Secretary and outside stake-*
2 *holders;*

3 (2) *take into account previous reports and rec-*
4 *ommendations pertaining to oversight, accountability,*
5 *and performance management of the Department;*

6 (3) *examine alternatives and develop rec-*
7 *ommendations for improving the oversight, account-*
8 *ability, and performance management of the Depart-*
9 *ment; and*

10 (4) *make recommendations to improve the over-*
11 *sight, accountability, and performance management*
12 *of the Department.*

13 (c) *SCOPE.—The scope of the study and review under*
14 *this section shall include—*

15 (1) *the organizational structure of the Depart-*
16 *ment;*

17 (2) *the employee performance management proc-*
18 *esses of the Department;*

19 (3) *training on performance management proc-*
20 *esses for employees, supervisors, senior executives, and*
21 *human resources professionals of the Department;*

22 (4) *employee professional development programs*
23 *of the Department; and*

24 (5) *leadership development programs of the De-*
25 *partment.*

1 (d) *BEST PRACTICES.*—*In conducting the study, the*
2 *Academy shall review best practices of other Federal agen-*
3 *cies to determine whether they are applicable to the Depart-*
4 *ment.*

5 (e) *REPORT OF THE ACADEMY.*—*Not later than 18*
6 *months after the date of the enactment of this Act, the Acad-*
7 *emy shall submit to the Committees on Veterans' Affairs*
8 *of the Senate and House of Representatives a report that*
9 *contains—*

10 (1) *the findings of the study and review con-*
11 *ducted under this section; and*

12 (2) *any other recommendations that the Acad-*
13 *emy determines necessary and relevant to the study*
14 *and review.*

15 (f) *REPORT OF THE SECRETARY.*—*Not later than 90*
16 *days after the Academy submits the report under subsection*
17 *(e), the Secretary shall submit to the Committees on Vet-*
18 *erans' Affairs of the Senate and House of Representatives*
19 *a report containing—*

20 (1) *the evaluation of the Secretary of the find-*
21 *ings and recommendations made by the Academy;*

22 (2) *the determination of the Secretary whether to*
23 *implement such recommendations and findings;*

24 (3) *a timeline for such implementation; and*

1 (4) *the determination of the Secretary whether*
2 *such implementation requires legislation.*

3 **SEC. 6. COMPTROLLER GENERAL STUDY ON VETERANS**

4 **HEALTH ADMINISTRATION OVERSIGHT FUNC-**
5 **TIONS.**

6 (a) *STUDY.*—*The Comptroller General of the United*
7 *States shall conduct a study of the oversight functions of*
8 *the Veterans Health Administration. Such study shall in-*
9 *clude an examination of each of the following:*

10 (1) *How the Veterans Health Administration*
11 *manages and coordinates its oversight functions.*

12 (2) *How the Veterans Health Administration de-*
13 *termines the appropriate number and types of em-*
14 *ployees necessary to carry out such oversight func-*
15 *tions.*

16 (3) *How the Veterans Health Administration*
17 *prioritizes the work conducted pursuant to such over-*
18 *sight functions and the extent to which the findings*
19 *generated through such functions are used to make*
20 *system-wide improvements.*

21 (b) *REPORT.*—*Not later than one year after the date*
22 *of the enactment of this Act, the Comptroller General shall*
23 *submit to the Committees on Veterans' Affairs of the Senate*
24 *and House of Representatives a report on the results of the*
25 *study required under subsection (a) and any recommenda-*

- 1 *tions of the Comptroller General with respect to such find-*
- 2 *ings.*

Union Calendar No. 351

118TH CONGRESS
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H. R. 4278

[Report No. 118-425]

A BILL

To amend title 38, United States Code, to modify personnel action procedures with respect to employees of the Department of Veterans Affairs, and for other purposes.

MARCH 15, 2024

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