

105TH CONGRESS  
1ST SESSION

# H. R. 963

To prohibit employment discrimination on any basis other than factors  
pertaining to job performance.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1997

Mr. BILBRAY (for himself, Mr. HORN, Mrs. KELLY, Mr. KOLBE, Mr. BOEHLERT, Mr. WYNN, and Mr. TRAFICANT) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on the Judiciary, Government Reform and Oversight, and House Oversight, 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

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## A BILL

To prohibit employment discrimination on any basis other  
than factors pertaining to job performance.

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 “Workplace Fairness  
5 Act of 1997”.

1 **SEC. 2. DISCRIMINATION PROHIBITED.**

2 A covered entity shall not subject an individual to dif-  
3 ferent standards or treatment on any basis other than fac-  
4 tors pertaining to job performance in connection with em-  
5 ployment or employment opportunities, or beginning on  
6 the 91st day of employment following hire or rehire, the  
7 compensation, terms conditions, or privileges of employ-  
8 ment.

9 **SEC. 3. QUOTAS PROHIBITED.**

10 A covered entity shall not adopt or implement a quota  
11 pursuant to this Act on any basis other than factors per-  
12 taining to job performance.

13 **SEC. 4. RELIGIOUS EXEMPTION.**

14 (a) IN GENERAL.—Except as provided in subsection  
15 (b), this Act shall not apply to religious organizations.

16 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply  
17 with respect to employment and employment opportunities  
18 that relate to any employment position that pertains solely  
19 to a religious organization’s for-profit activities subject to  
20 taxation under section 511(a) of the Internal Revenue  
21 Code of 1986.

22 **SEC. 5. ENFORCEMENT.**

23 (a) ENFORCEMENT POWERS.—With respect to the  
24 administration and enforcement of this Act in the case of  
25 a claim alleged by an individual for a violation of this  
26 Act—

1           (1) the Commission shall have the same powers  
2 as the Commission has to administer and enforce—

3           (A) title VII of the Civil Rights Act of  
4 1964 (42 U.S.C. 2000e et seq.), or

5           (B) sections 302, 303, and 304 of the Gov-  
6 ernment Employee Rights Act of 1991 (2  
7 U.S.C. 1202, 1203, and 1204),

8 in the case of a claim alleged by such individual for  
9 a violation of such title or of section 302(a)(1) of  
10 such Act, respectively,

11          (2) the Librarian of Congress shall have the  
12 same powers as the Librarian of Congress has to ad-  
13 minister and enforce title VII of the Civil Rights Act  
14 of 1964 (42 U.S.C. 2000e et seq.) in the case of a  
15 claim alleged by such individual for a violation of  
16 such title,

17          (3) the Board (as defined in section 101 of the  
18 Congressional Accountability Act of 1995 (Public  
19 Law 104–1; 109 Stat. 3) shall have the same powers  
20 as the Board has to administer and enforce the Con-  
21 gressional Accountability Act of 1995 in the case of  
22 a claim alleged by such individual for a violation of  
23 section 201(a)(1) of such Act.

1           (4) the Attorney General of the United States  
2 shall have the same powers as the Attorney General  
3 has to administer and enforce—

4           (A) title VII of the Civil Rights Act of  
5 1964 (42 U.S.C. 2000e et seq.), or

6           (B) sections 302, 303, and 304 of the Gov-  
7 ernment Employee Rights Act of 1991 (2  
8 U.S.C. 1202, 1203, 1204),

9 in the case of a claim alleged by such individual for  
10 a violation of such title or of section 302(a)(1) of  
11 such Act, respectively, and

12           (5) the courts of the United States shall have  
13 the same jurisdiction and powers as such courts  
14 have to enforce—

15           (A) title VII of the Civil Rights Act of  
16 1964 (42 U.S.C. 2000e et seq.) in the case of  
17 a claim alleged by such individual for a viola-  
18 tion of such title,

19           (B) sections 302, 303, and 304 of the Gov-  
20 ernment Employee Rights Act of 1991 (2  
21 U.S.C. 1202, 1203, 1204) in the case of a  
22 claim alleged by such individual for a violation  
23 of section 302(a)(1) of such Act, and

24           (C) the Congressional Accountability Act  
25 of 1995 (Public Law 104–1; 109 Stat. 3) in the

1 case of a claim alleged by such individual for a  
2 violation of section 201(a)(1) of such Act.

3 (b) PROCEDURES AND REMEDIES.—The procedures  
4 and remedies applicable to a claim alleged by an individual  
5 for a violation of this Act are—

6 (1) the procedures and remedies applicable for  
7 a violation of title VII of the Civil Rights Act of  
8 1964 (42 U.S.C. 2000e et seq.) in the case of a  
9 claim alleged by such individual for a violation of  
10 such title,

11 (2) the procedures and remedies applicable for  
12 a violation of section 302(a)(1) of the Government  
13 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))  
14 in the case of a claim alleged by such individual for  
15 a violation of such section, and

16 (3) the procedures and remedies applicable for  
17 a violation of section 201(a)(1) of Congressional Ac-  
18 countability Act of 1995 (Public Law 104–1; 109  
19 Stat. 3) in the case of a claim alleged by such indi-  
20 vidual for a violation of such section.

21 (c) OTHER APPLICABLE PROVISIONS.—With respect  
22 to claims alleged by covered employees (as defined in sec-  
23 tion 101 of the Congressional Accountability Act of 1995  
24 (Public Law 104–1; 109 Stat. 3)) for violations of this  
25 Act, title III of the Congressional Accountability Act of

1 1995 shall apply in the same manner as such title applies  
2 with respect to a claims alleged by such covered employees  
3 for violations of section 201(a)(1) of such Act.

4 **SEC. 7. STATE AND FEDERAL IMMUNITY.**

5 (a) STATE IMMUNITY.—A State shall not be immune  
6 under the eleventh article of amendment to the Constitu-  
7 tion of the United States from an action in a Federal court  
8 of competent jurisdiction for a violation of this Act. In  
9 an action against a State for a violation of this Act, rem-  
10 edies (including remedies at law and in equity) are avail-  
11 able for the violation to the same extent as such remedies  
12 are available in an action against any public or private  
13 entity other than a State.

14 (b) LIABILITY OF THE UNITED STATES.—The  
15 United States shall be liable for all remedies (excluding  
16 punitive damages) under this Act to the same extent as  
17 a private person and shall be liable to the same extent  
18 as a nonpublic party for interest to compensate for delay  
19 in payment.

20 **SEC. 8. ATTORNEYS' FEES.**

21 In any action or administrative proceeding com-  
22 menced pursuant to this Act, the court or the Commission,  
23 in its discretion, may allow the prevailing party, other  
24 than the United States, a reasonable attorney's fee, in-  
25 cluding expert fees and other litigation expenses, and

1 costs. The United States shall be liable for the foregoing  
2 the same as a private person.

3 **SEC. 9. POSTING NOTICES.**

4 A covered entity shall post notices for employees, and  
5 for applicants for employment, describing the applicable  
6 provisions of this Act in the manner prescribed by, and  
7 subject to the penalty provided under, section 711 of the  
8 Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

9 **SEC. 10. REGULATIONS.**

10 The Commission shall have authority to issue regula-  
11 tions to carry out this Act.

12 **SEC. 11. RELATIONSHIP TO OTHER LAWS.**

13 This Act shall not invalidate or limit the rights, rem-  
14 edies, or procedures available to an individual under title  
15 VII of the Civil Rights Act of 1964, or any other Federal  
16 law or any law of a State or political subdivision of a  
17 State.

18 **SEC. 12. SEVERABILITY.**

19 If any provision of this Act, or the application of such  
20 provision to any person or circumstance, is held to be in-  
21 valid, the remainder of this Act and the application of such  
22 provision to other persons or circumstances shall not be  
23 affected thereby.

1 **SEC. 13. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of  
3 the enactment of this Act and shall not apply to conduct  
4 occurring before such effective date.

5 **SEC. 14. DEFINITIONS.**

6 As used in this Act:

7 (1) The term “Commission” means the Equal  
8 Employment Opportunity Commission.

9 (2) The term “covered entity” means an em-  
10 ployer, employment agency, labor organization, joint  
11 labor management committee, an entity to which  
12 section 717(a) of the Civil Rights Act of 1964 (42  
13 U.S.C. 2000e(a)) applies, an employing authority to  
14 which section 302(a)(1) of the Government Em-  
15 ployee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-  
16 plies, or an employing authority to which section  
17 201(a) of the Congressional Accountability Act of  
18 1995 (Public Law 104–1; 109 Stat. 3) applies.

19 (3) The term “employer” has the meaning  
20 given such term in section 701(b) of the Civil Rights  
21 Act of 1964 (42 U.S.C. 2000e(b)), except that a ref-  
22 erence in such section to employees shall be deemed  
23 for purposes of this Act to be a reference to full-time  
24 employees.

1           (4) The term “employment agency” has the  
2 meaning given such term in section 701(c) of the  
3 Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

4           (5) The term “employment or employment op-  
5 portunities” includes job application procedures, hir-  
6 ing, advancement, discharge, compensation, job  
7 training, or any other term, condition, or privilege of  
8 employment.

9           (6) The term “labor organization” has the  
10 meaning given such term in section 701(d) of the  
11 Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

12           (7) The term “person” has the meaning given  
13 such term in section 701(a) of the Civil Rights Act  
14 of 1964 (42 U.S.C. 2000e(a)).

15           (8) The term “factors pertaining to job per-  
16 formance” means—

17                   (A) employment history, including referrals  
18 from previous employers,

19                   (B) ability and willingness to comply with  
20 the performance requirements (including at-  
21 tendance and procedures) of the particular em-  
22 ployment involved,

23                   (C) educational background,

24                   (D) any use of a drug or of alcohol, that  
25 may adversely affect job performance,

1 (E) any conviction of an offense for which  
2 a term of imprisonment exceeding 1 year could  
3 have been imposed,

4 (F) any conflict of interest relating to the  
5 particular employment involved,

6 (G) seniority recognized under an applica-  
7 ble bona fide seniority system,

8 (H) ability to work well with others (co-  
9 operation and teamwork), and

10 (I) insubordination.

11 (9) The term “religious organization” means—

12 (A) a religious corporation, association, or  
13 society, or

14 (B) a college, school, university, or other  
15 educational institution, not otherwise a religious  
16 organization, if—

17 (i) it is in whole or substantial part  
18 controlled, managed, owned, or supported  
19 by a religious corporation, association, or  
20 society, or

21 (ii) its curriculum is directed toward  
22 the propagation of a particular religion.

1           (10) The term “State” has the meaning given  
2           such term in section 701(i) of the Civil Rights Act  
3           of 1964 (42 U.S.C. 2000e(i)).

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