

112TH CONGRESS
2D SESSION

S. 3322

To strengthen enforcement and clarify certain provisions of the Servicemembers Civil Relief Act, the Uniformed and Overseas Citizens Absentee Voting Act, and chapter 43 of title 38, United States Code, and to reconcile, restore, clarify, and conform similar provisions in other related civil rights statutes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 20, 2012

Mr. BROWN of Ohio (for himself, Mr. KERRY, Mr. LEAHY, Mr. COONS, Mr. HARKIN, Mr. BLUMENTHAL, Ms. MIKULSKI, Mrs. SHAHEEN, Mr. WHITEHOUSE, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To strengthen enforcement and clarify certain provisions of the Servicemembers Civil Relief Act, the Uniformed and Overseas Citizens Absentee Voting Act, and chapter 43 of title 38, United States Code, and to reconcile, restore, clarify, and conform similar provisions in other related civil rights statutes, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Servicemembers’ Protection Act of 2012”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE SERVICEMEMBERS CIVIL
RELIEF ACT

Sec. 101. Clarification of plaintiff affidavit filing requirement for default judgments against servicemembers.

Sec. 102. Residency of military family members.

Sec. 103. Increase in civil penalties.

Sec. 104. Authority for issuance and service of civil investigative demands by Attorney General and retroactive application of Attorney General enforcement authority.

Sec. 105. Retroactive application of private right of action under Servicemembers Civil Relief Act.

Sec. 106. Related changes to Fair Housing Act—increase in civil penalties.

Sec. 107. Related changes to Fair Housing Act—civil investigative demands.

Sec. 108. Related changes to Equal Credit Opportunity Act—civil investigative demands.

TITLE II—AMENDMENTS TO THE UNIFORMED AND OVERSEAS
CITIZENS ABSENTEE VOTING ACT

Sec. 201. Pre-election reporting requirements on availability and transmission of absentee ballots.

Sec. 202. Transmission requirements; repeal of waiver provision.

Sec. 203. Clarification of State responsibility, civil penalties, and private right of action.

Sec. 204. Treatment of early ballot requests.

Sec. 205. Applicability to Commonwealth of the Northern Mariana Islands.

Sec. 206. Related changes to title VI of the Civil Rights Act of 1964—clarification of prohibited discrimination, private right of action, and available relief.

Sec. 207. Related changes to title IX of the Education Amendments of 1972—clarification of prohibited discrimination, private right of action, and available relief.

TITLE III—AMENDMENTS TO CHAPTER 43 OF TITLE 38, UNITED
STATES CODE

Sec. 301. Enforcement of rights of members of uniformed services with respect to States and private employers.

Sec. 302. Issuance and service of civil investigative demands by Attorney General.

Sec. 303. Related changes to title VII of Civil Rights Act of 1964—civil investigative demands.

1 **TITLE I—AMENDMENTS TO THE**
 2 **SERVICEMEMBERS CIVIL RE-**
 3 **LIEF ACT**

4 **SEC. 101. CLARIFICATION OF PLAINTIFF AFFIDAVIT FILING**
 5 **REQUIREMENT FOR DEFAULT JUDGMENTS**
 6 **AGAINST SERVICEMEMBERS.**

7 Paragraph (1) of section 201(b) of the
 8 Servicemembers Civil Relief Act (50 U.S.C. App. 521(b))
 9 is amended to read as follows:

10 “(1) PLAINTIFF TO FILE AFFIDAVIT.—

11 “(A) IN GENERAL.—In any action or pro-
 12 ceeding covered by this section, the plaintiff, be-
 13 fore seeking a default judgment, shall file with
 14 the court an affidavit—

15 “(i) stating whether or not the de-
 16 fendant is in military service and showing
 17 necessary facts to support the affidavit; or

18 “(ii) if the plaintiff is unable to deter-
 19 mine whether or not the defendant is in
 20 military service, stating that the plaintiff is
 21 unable to determine whether or not the de-
 22 fendant is in military service.

23 “(B) DUE DILIGENCE.—Before filing the
 24 affidavit, the plaintiff shall conduct a diligent
 25 and reasonable investigation to determine

1 whether or not the defendant is in military
 2 service, including a search of available records
 3 of the Department of Defense and any other in-
 4 formation available to the plaintiff. The affi-
 5 davit shall set forth in the affidavit all steps
 6 taken to determine the defendant’s military sta-
 7 tus.”.

8 **SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS.**

9 (a) IN GENERAL.—Section 705(b) of the
 10 Servicemembers Civil Relief Act (50 U.S.C. App. 595(b))
 11 is amended—

12 (1) in the matter before paragraph (1), by
 13 striking “a person” and all that follows through
 14 “that absence” and inserting “a family member of
 15 a servicemember who is absent from a State because
 16 the servicemember is absent from that same State in
 17 compliance with military or naval orders shall not,
 18 solely by reason of absence, whether or not accom-
 19 panying the servicemember”; and

20 (2) in paragraph (1), by striking “the person”
 21 and inserting “the family member”.

22 (b) CLERICAL AMENDMENTS.—Such Act (50 U.S.C.
 23 App. 501 et seq.) is amended—

24 (1) in section 705 (50 U.S.C. App. 595)—

1 (A) in the section heading by striking
 2 “**SPOUSES**” and inserting “**FAMILY MEM-**
 3 **BERS**”; and

4 (B) in the heading for subsection (b), by
 5 striking “**SPOUSES**” and inserting “**FAMILY**
 6 **MEMBERS**”; and

7 (2) in the table of sections in section 1 (505
 8 U.S.C. App. 501), by striking the item relating to
 9 section 705 and inserting the following new item:

“Sec. 705. Guarantee of residency for military personnel and family members
 of military personnel.”.

10 **SEC. 103. INCREASE IN CIVIL PENALTIES.**

11 Section 801(b)(3) of the Servicemembers Civil Relief
 12 Act (50 U.S.C. App. 597(b)(3)) is amended—

13 (1) in subparagraph (A), by striking “\$55,000”
 14 and inserting “\$110,000”; and

15 (2) in subparagraph (B), by striking
 16 “\$110,000” and inserting “\$220,000”.

17 **SEC. 104. AUTHORITY FOR ISSUANCE AND SERVICE OF**
 18 **CIVIL INVESTIGATIVE DEMANDS BY ATTOR-**
 19 **NEY GENERAL AND RETROACTIVE APPLICA-**
 20 **TION OF ATTORNEY GENERAL ENFORCE-**
 21 **MENT AUTHORITY.**

22 (a) IN GENERAL.—Section 801 of the
 23 Servicemembers Civil Relief Act (50 U.S.C. App. 597) is
 24 amended by adding at the end the following:

1 “(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
2 TIVE DEMANDS.—

3 “(1) IN GENERAL.—Whenever the Attorney
4 General has reason to believe that any person may
5 be in possession, custody, or control of any docu-
6 mentary material relevant to an investigation under
7 this Act, the Attorney General may, before com-
8 mencing a civil action under subsection (a), issue in
9 writing and serve upon such person, a civil investiga-
10 tive demand requiring—

11 “(A) the production of such documentary
12 material for inspection and copying;

13 “(B) that the custodian of such documen-
14 tary material answer in writing written ques-
15 tions with respect to such documentary mate-
16 rial; or

17 “(C) the production of any combination of
18 such documentary material or answers.

19 “(2) PROCEDURES.—The provisions of section
20 3733 of title 31, United States Code, governing the
21 authority to issue, use, and enforce civil investigative
22 demands shall apply with respect to the authority to
23 issue, use, and enforce civil investigative demands
24 under this section, except that, for purposes of ap-
25 plying such section 3733—

5 “(B) references to interrogatories shall be
6 considered references to written questions, and
7 answers to such need not be under oath;

8 “(C) the definitions relating to ‘false
9 claims law’ shall not apply; and

10 “(D) provisions relating to qui tam rela-
11 tors shall not apply.”.

(b) RETROACTIVE APPLICABILITY.—Section 801 of such Act (50 U.S.C. App. 597), as amended by subsection (a), shall apply as if such section were included in the enactment of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, chapter 888) and included in the restatement of such Act in Public Law 108–189.

18 **SEC. 105. RETROACTIVE APPLICATION OF PRIVATE RIGHT**
19 **OF ACTION UNDER SERVICEMEMBERS CIVIL**
20 **RELIEF ACT.**

Section 802 of the Servicemembers Civil Relief Act (50 U.S.C. App. 597a) shall apply as if such section were included in the enactment of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, chapter 888) and

1 included in the restatement of such Act in Public Law
2 108–189.

3 **SEC. 106. RELATED CHANGES TO FAIR HOUSING ACT—IN-**
4 **CREASE IN CIVIL PENALTIES.**

5 Section 814(d)(1)(C) of the Fair Housing Act (42
6 U.S.C. 3614(d)(1)(C)) is amended—

7 (1) in clause (i), by striking “\$50,000” and in-
8 serting “\$110,000”; and

9 (2) in clause (ii), by striking “\$100,000” and
10 inserting “\$220,000”.

11 **SEC. 107. RELATED CHANGES TO FAIR HOUSING ACT—**
12 **CIVIL INVESTIGATIVE DEMANDS.**

13 Section 814(c) of the Fair Housing Act (42 U.S.C.
14 3614(c)) is amended—

15 (1) in the subsection heading, by inserting
16 “AND SERVICE OF CIVIL INVESTIGATIVE DE-
17 MANDS”;

18 (2) by inserting “(1)” before “The Attorney
19 General”; and

20 (3) by adding at the end the following:

21 “(2)(A) Whenever the Attorney General has
22 reason to believe that any person may be in posses-
23 sion, custody, or control of any documentary mate-
24 rial relevant to an investigation under this title, the
25 Attorney General may, before commencing a civil ac-

1 tion under subsection (a) or (b), issue in writing and
2 serve upon such person, a civil investigative demand
3 requiring—

4 “(i) the production of such documentary
5 material for inspection and copying;

6 “(ii) that the custodian of such documen-
7 tary material answer, in writing, written ques-
8 tions with respect to such documentary mate-
9 rial; or

10 “(iii) the production of any combination of
11 such documentary material or answers.

12 “(B) Section 3733 of title 31, United States
13 Code, shall apply to a civil investigative demand
14 under this paragraph, except that—

15 “(i) such section shall be applied by sub-
16 stituting—

17 “(I) the term ‘fair housing investi-
18 gator’ for the term ‘false claims law inves-
19 tigator’;

20 “(II) the term ‘fair housing investiga-
21 tion’ for the term ‘false claims law inves-
22 tigation’; and

23 “(III) the term ‘written questions’ for
24 the term ‘interrogatories’;

1 “(ii) an answer to written questions shall
2 not be required to be made under oath;

3 “(iii) the definition of the term ‘false
4 claims law’ under section 3722(l)(1) shall not
5 apply; and

6 “(iv) the provisions relating to qui tam re-
7 altors shall not apply.”.

8 **SEC. 108. RELATED CHANGES TO EQUAL CREDIT OPPOR-**
9 **TUNITY ACT—CIVIL INVESTIGATIVE DE-**
10 **MANDS.**

11 Section 706(h) of the Equal Credit Opportunity Act
12 (15 U.S.C. 1691e(h)) is amended to read as follows:

13 “(h) **AUTHORITY FOR ATTORNEY GENERAL TO**
14 **BRING CIVIL ACTION; JURISDICTION.—**

15 “(1) **IN GENERAL.—**When a matter is referred
16 to the Attorney General pursuant to subsection (g),
17 or whenever the Attorney General has reason to be-
18 lieve that one or more creditors are engaged in a
19 pattern or practice in violation of this title, the At-
20 torney General may bring a civil action in any ap-
21 propriate United States district court for such relief
22 as may be appropriate, including actual and punitive
23 damages and injunctive relief.

24 “(2) **ISSUANCE AND SERVICE OF CIVIL INVES-**
25 **TIGATIVE DEMANDS.—**Whenever the Attorney Gen-

1 eral has reason to believe that any person may be
2 in possession, custody, or control of any documen-
3 tary material relevant to an investigation under this
4 title, the Attorney General may, before commencing
5 a civil action under paragraph (1), issue in writing
6 and serve upon such person, a civil investigative de-
7 mand requiring—

8 “(A) the production of such documentary
9 material for inspection and copying;

10 “(B) that the custodian of such documen-
11 tary material answer in writing written ques-
12 tions with respect to such documentary mate-
13 rial; or

14 “(C) the production of any combination of
15 such documentary material or answers.

16 “(3) PROCEDURES.—The provisions of law gov-
17 erning the authority to issue, use, and enforce civil
18 investigative demands under section 3733 of title 31,
19 United States Code, governing the authority to
20 issue, use, and enforce civil investigative demands
21 shall apply with respect to the authority to issue,
22 use, and enforce civil investigative demands under
23 this section, except that, for purposes of applying
24 such section 3733—

1 “(A) references to false claims law inves-
 2 tigators or investigations shall be read as ref-
 3 erences to fair lending investigators or inves-
 4 tigators;

5 “(B) references to interrogatories shall be
 6 read as references to written questions, and an-
 7 swers to such need not be under oath;

8 “(C) the statutory definitions relating to
 9 ‘false claims law’ shall not apply; and

10 “(D) provisions thereof relating to qui tam
 11 relators shall not apply.”.

12 **TITLE II—AMENDMENTS TO THE**
 13 **UNIFORMED AND OVERSEAS**
 14 **CITIZENS ABSENTEE VOTING**
 15 **ACT**

16 **SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS ON**
 17 **AVAILABILITY AND TRANSMISSION OF AB-**
 18 **SENTEE BALLOTS.**

19 (a) IN GENERAL.—Subsection (c) of section 102 of
 20 the Uniformed and Overseas Citizens Absentee Voting Act
 21 (42 U.S.C. 1973ff–1(c)) is amended by striking “Not later
 22 than 90 days” and inserting the following:

23 “(1) PRE-ELECTION REPORT ON ABSENTEE
 24 BALLOT AVAILABILITY.—Not later than 55 days be-
 25 fore any election for Federal office held in a State,

1 such State shall submit a report to the Attorney
2 General and the Presidential Designee, and make
3 that report publicly available that same day, certi-
4 fying that absentee ballots are or will be available
5 for transmission by 46 days before the election. The
6 report shall be in a form prescribed by the Attorney
7 General and shall require the State to certify specific
8 information about ballot availability from each unit
9 of local government which will administer the elec-
10 tion.

11 “(2) PRE-ELECTION REPORT ON ABSENTEE
12 BALLOTS TRANSMITTED.—Not later than 43 days
13 before any election for Federal office held in a State,
14 such State shall submit a report to the Attorney
15 General and the Presidential Designee, and make
16 that report publicly available that same day, certi-
17 fying whether all absentee ballots validly requested
18 by absent uniformed services voters and overseas
19 voters whose requests were received by the 46th day
20 before the election have been transmitted to such
21 voters by such date. The report shall be in a form
22 prescribed by the Attorney General and shall require
23 the State to certify specific information about ballot
24 transmission, including the total numbers of ballot
25 requests received and ballots transmitted, from each

1 unit of local government which will administer the
2 election.

3 “(3) POST ELECTION REPORT ON NUMBER OF
4 ABSENTEE BALLOTS TRANSMITTED AND RE-
5 CEIVED.—Not later than 90 days”.

6 (b) CONFORMING AMENDMENT.—The heading for
7 subsection (c) of section 102 of such Act (42 U.S.C.
8 1973ff–1(c)) is amended by striking “REPORT ON NUM-
9 BER OF ABSENTEE BALLOTS TRANSMITTED AND RE-
10 CEIVED” and inserting “REPORTS ON ABSENTEE BAL-
11 LOTS”.

12 **SEC. 202. TRANSMISSION REQUIREMENTS; REPEAL OF**
13 **WAIVER PROVISION.**

14 (a) IN GENERAL.—Paragraph (8) of section 102(a)
15 of the Uniformed and Overseas Citizens Absentee Voting
16 Act (42 U.S.C. 1973ff–1(a)) is amended to read as fol-
17 lows:

18 “(8) transmit a validly requested absentee bal-
19 lot to an absent uniformed services voter or overseas
20 voter by the date and in the manner determined
21 under subsection (g);”.

22 (b) BALLOT TRANSMISSION REQUIREMENTS AND
23 REPEAL OF WAIVER PROVISION.—Subsection (g) of sec-
24 tion 102 of such Act (42 U.S.C. 1973ff–1(g)) is amended
25 to read as follows:

1 “(g) BALLOT TRANSMISSION REQUIREMENTS.—

2 “(1) IN GENERAL.—For purposes of subsection
3 (a)(8), in the case in which a valid request for an
4 absentee ballot is received at least 46 days before an
5 election for Federal office, the following rules shall
6 apply:

7 “(A) IN GENERAL.—The State shall trans-
8 mit the absentee ballot not later than 46 days
9 before the election.

10 “(B) SPECIAL RULES IN CASE OF FAILURE
11 TO TRANSMIT ON TIME.—

12 “(i) IN GENERAL.—If the State fails
13 to transmit any absentee ballot by the 46th
14 day before the election as required by sub-
15 paragraph (A) and the absent uniformed
16 services voter or overseas voter did not re-
17 quest electronic ballot submission pursuant
18 to subsection (f), the State shall transmit
19 such ballot by express delivery.

20 “(ii) EXTENDED FAILURE.—If the
21 State fails to transmit any absentee ballot
22 by the 41st day before the election, in ad-
23 dition to transmitting the ballot as pro-
24 vided in clause (i), the State shall—

1 “(I) in the case of absentee bal-
2 lots requested by absent uniformed
3 services voters with respect to regu-
4 larly scheduled general elections, no-
5 tify such voters of the procedures es-
6 tablished under section 103A for the
7 collection and delivery of marked ab-
8 sentee ballots; and

9 “(II) in any other case, provide,
10 at the State’s expense, for the return
11 of such ballot by express delivery.

12 “(iii) ENFORCEMENT.—A State’s
13 compliance with this subparagraph does
14 not bar the Attorney General from seeking
15 additional remedies necessary to effectuate
16 the purposes of this Act.

17 “(2) REQUESTS RECEIVED AFTER 46TH DAY
18 BEFORE ELECTION.—For purposes of subsection
19 (a)(8), in the case in which a valid request for an
20 absentee ballot is received less than 46 days before
21 an election for Federal office, the State shall trans-
22 mit the absentee ballot—

23 “(A) in accordance with State law; and

1 “(B) if practicable and as determined ap-
 2 propriate by the State, in a manner that expe-
 3 dites the transmission of such absentee ballot.”.

4 **SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY,**
 5 **CIVIL PENALTIES, AND PRIVATE RIGHT OF**
 6 **ACTION.**

7 (a) **ENFORCEMENT.**—Section 105 (42 U.S.C.
 8 1973ff–4) of the Uniformed and Overseas Citizens Absen-
 9 tee Voting Act is amended to read as follows:

10 **“SEC. 105. ENFORCEMENT.**

11 “(a) **IN GENERAL.**—The Attorney General may bring
 12 a civil action in an appropriate district court for such de-
 13 claratory or injunctive relief as may be necessary to carry
 14 out this title. In any such action, the only necessary party
 15 defendant is the State and it shall not be a defense to
 16 such action that local election officials are not also named
 17 as defendants.

18 “(b) **CIVIL PENALTY.**—In a civil action brought
 19 under subsection (a), if the court finds that a State vio-
 20 lated any provision of this Act, it may, to vindicate the
 21 public interest, assess a civil penalty against the State—

22 “(1) in an amount not exceeding \$110,000, for
 23 a first violation; and

24 “(2) in an amount not exceeding \$220,000, for
 25 any subsequent violation.

1 “(c) REPORT TO CONGRESS.—Not later than Decem-
 2 ber 31 of each year, the Attorney General shall submit
 3 to Congress an annual report on any civil action brought
 4 under subsection (a) during the preceding year.

5 “(d) PRIVATE RIGHT OF ACTION.—A person who is
 6 aggrieved by a State’s violation of this Act, may bring a
 7 civil action in an appropriate district court for such declar-
 8 atory or injunctive relief as may be necessary to carry out
 9 this Act. In any such action, the only necessary party de-
 10 fendant is the State, and it shall not be a defense to such
 11 action that local election officials are not also named as
 12 defendants.

13 “(e) ATTORNEY’S FEES.—In a civil action under this
 14 section, the court may allow the prevailing party (other
 15 than the United States) reasonable attorney’s fees, includ-
 16 ing litigation expenses, and costs.”.

17 (b) REPEAL OF CLARIFICATION REGARDING DELE-
 18 GATION OF STATE RESPONSIBILITY.—Section 576 of the
 19 Military and Overseas Voter Empowerment Act (42
 20 U.S.C. 1973ff–1 note) is repealed.

21 **SEC. 204. TREATMENT OF EARLY BALLOT REQUESTS.**

22 (a) APPLICATION OF PROHIBITION OF REFUSAL OF
 23 APPLICATIONS ON GROUNDS OF EARLY SUBMISSION TO
 24 OVERSEAS VOTERS.—Section 104 of the Uniformed and

1 Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–
2 3) is amended—

3 (1) by inserting “or overseas voter” after “sub-
4 mitted by an absent uniformed services voter”; and

5 (2) by inserting “or who do not reside outside
6 the United States” after “who are not members of
7 the uniformed services”.

8 (b) USE OF SINGLE APPLICATION FOR SUBSEQUENT
9 ELECTIONS.—

10 (1) IN GENERAL.—Section 104 of the Uni-
11 formed and Overseas Citizens Absentee Voting Act
12 (42 U.S.C. 1973ff–3) is amended—

13 (A) by striking “A State” and inserting
14 the following:

15 “(a) PROHIBITION OF REFUSAL OF APPLICATIONS
16 ON GROUNDS OF EARLY SUBMISSION.—A State”, and

17 (B) by adding at the end the following new
18 subsections:

19 “(b) APPLICATION TREATED AS VALID FOR SUBSE-
20 QUENT ELECTIONS.—

21 “(1) IN GENERAL.—If a State accepts and
22 processes a request for an absentee ballot by an ab-
23 sent uniformed services voter or overseas voter and
24 the voter requests that the application be considered
25 an application for an absentee ballot for each subse-

1 quent election for Federal office held in the State
 2 through the next regularly scheduled general election
 3 for Federal office (including any runoff elections
 4 which may occur as a result of the outcome of such
 5 general election), the State shall provide an absentee
 6 ballot to the voter for each such subsequent election.

7 “(2) EXCEPTION FOR VOTERS CHANGING REG-
 8 ISTRATION.—Paragraph (1) shall not apply with re-
 9 spect to a voter registered to vote in a State for any
 10 election held after the voter notifies the State that
 11 the voter no longer wishes to be registered to vote
 12 in the State or after the State determines that the
 13 voter has registered to vote in another State.”.

14 (2) CONFORMING AMENDMENT.—The heading
 15 of section 104 of such Act is amended by striking
 16 “**PROHIBITION OF REFUSAL OF APPLICATIONS**
 17 **ON GROUNDS OF EARLY SUBMISSION**” and in-
 18 serting “**TREATMENT OF EARLY BALLOT RE-**
 19 **QUESTS**”.

20 **SEC. 205. APPLICABILITY TO COMMONWEALTH OF THE**
 21 **NORTHERN MARIANA ISLANDS.**

22 Paragraph (6) and (8) of section 107 of the Uni-
 23 formed and Overseas Citizens Absentee Voting Act (42
 24 U.S.C. 1973ff-6(6)) are each amended by striking “and

1 American Samoa” and inserting “American Samoa, and
 2 the Commonwealth of the Northern Mariana Islands”.

3 **SEC. 206. RELATED CHANGES TO TITLE VI OF THE CIVIL**
 4 **RIGHTS ACT OF 1964—CLARIFICATION OF**
 5 **PROHIBITED DISCRIMINATION, PRIVATE**
 6 **RIGHT OF ACTION, AND AVAILABLE RELIEF.**

7 (a) CLARIFICATION OF PROHIBITED DISCRIMINA-
 8 TION.—Section 601 of the Civil Rights Act of 1964 (42
 9 U.S.C. 2000d) is amended—

10 (1) by striking “No” and inserting “(a) No”;

11 and

12 (2) by adding at the end the following new sub-
 13 section:

14 “(b)(1) Discrimination based on disparate impact
 15 with respect to a program or activity is established under
 16 this section only if—

17 “(A) a Federal department or agency, or any
 18 person aggrieved, demonstrates that an entity sub-
 19 ject to this title has a policy or practice with respect
 20 to the program or activity that causes a disparate
 21 impact on the basis of race, color, or national origin;
 22 and

23 “(B)(i) the entity fails to demonstrate that the
 24 challenged policy or practice is related to, and nec-
 25 essary to achieve, the substantial and legitimate

1 nondiscriminatory goals of the program or activity;
2 or

3 “(ii) the Federal department or agency, or the
4 person aggrieved, demonstrates that a less discrimi-
5 natory alternative policy or practice exists, and the
6 entity refuses to adopt such alternative policy or
7 practice.

8 “(2) In this subsection, the term ‘demonstrates’
9 means meets the burdens of production and persuasion.”.

10 (b) PRIVATE RIGHT OF ACTION AND AVAILABLE RE-
11 LIEF.—Section 602 of the Civil Rights Act of 1964 (42
12 U.S.C. 2000d–1) is amended—

13 (1) by striking “Each” and inserting “(a)
14 Each”; and

15 (2) by adding at the end the following new sub-
16 section:

17 “(b) Any person aggrieved by the failure of an entity
18 to comply with section 601 may bring a civil action in any
19 Federal or State court of competent jurisdiction to enforce
20 such person’s rights and may recover equitable relief, rea-
21 sonable attorney’s fees, and costs. The aggrieved person
22 may also recover legal relief (including compensatory and,
23 from nongovernmental entities, punitive damages) in the
24 case of noncompliance that is intentional discrimination.

1 “(c) Nothing in subsection (b) limits the authority
 2 of a Federal department or agency to enforce section
 3 601.”.

4 **SEC. 207. RELATED CHANGES TO TITLE IX OF THE EDU-**
 5 **CATION AMENDMENTS OF 1972—CLARIFICA-**
 6 **TION OF PROHIBITED DISCRIMINATION, PRI-**
 7 **VATE RIGHT OF ACTION, AND AVAILABLE RE-**
 8 **LIEF.**

9 (a) CLARIFICATION OF PROHIBITED DISCRIMINA-
 10 TION.—Section 901 of the Education Amendments of
 11 1972 (20 U.S.C. 1681) is amended—

12 (1) by redesignating subsection (c) as sub-
 13 section (d); and

14 (2) by inserting after subsection (b) the fol-
 15 lowing new subsection:

16 “(c)(1) Subject to the conditions described in para-
 17 graphs (1) through (9) of subsection (a), discrimination
 18 based on disparate impact with respect to a program or
 19 activity is established under this section only if—

20 “(A) a Federal department or agency, or any
 21 person aggrieved, demonstrates that an entity sub-
 22 ject to this title has a policy or practice with respect
 23 to the program or activity that causes a disparate
 24 impact on the basis of sex; and

1 “(B)(i) the entity fails to demonstrate that the
 2 challenged policy or practice is related to, and nec-
 3 essary to achieve, the substantial and legitimate
 4 nondiscriminatory goals of the program or activity;
 5 or

6 “(ii) the Federal department or agency, or the
 7 person aggrieved, demonstrates that a less discrimi-
 8 natory alternative policy or practice exists, and the
 9 entity refuses to adopt such alternative policy or
 10 practice.

11 “(2) In this subsection, the term ‘demonstrates’
 12 means meets the burdens of production and persuasion.”.

13 (b) PRIVATE RIGHT OF ACTION AND AVAILABLE RE-
 14 LIEF.—Section 902 of the Education Amendments of
 15 1972 (20 U.S.C. 1682) is amended—

16 (1) in the section heading, by adding at the end
 17 the following: “; PRIVATE RIGHT OF ACTION AND
 18 AVAILABLE RELIEF”;

19 (2) by striking “Each” and inserting “(a)
 20 Each”; and

21 (3) by adding at the end the following new sub-
 22 section:

23 “(b) Any person aggrieved by the failure of an entity
 24 to comply with section 901 may bring a civil action in any
 25 Federal or State court of competent jurisdiction to enforce

1 such person’s rights and may recover equitable relief, rea-
 2 sonable attorney’s fees, and costs. The aggrieved person
 3 may also recover legal relief (including compensatory and,
 4 from nongovernmental entities, punitive damages) in the
 5 case of noncompliance that is intentional discrimination.

6 “(c) Nothing in subsection (b) limits the authority
 7 of a Federal department or agency to enforce section
 8 901.”.

9 **TITLE III—AMENDMENTS TO**
 10 **CHAPTER 43 OF TITLE 38,**
 11 **UNITED STATES CODE**

12 **SEC. 301. ENFORCEMENT OF RIGHTS OF MEMBERS OF UNI-**
 13 **FORMED SERVICES WITH RESPECT TO**
 14 **STATES AND PRIVATE EMPLOYERS.**

15 (a) ACTION FOR RELIEF.—Subsection (a) of section
 16 4323 of title 38, United States Code, is amended—

17 (1) in paragraph (1)—

18 (A) by striking “appear on behalf of, and
 19 act as attorney for, the person on whose behalf
 20 the complaint is submitted and”;

21 (B) by striking “for such person”;

22 (C) by striking the fourth sentence; and

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

24 “The person on whose behalf the complaint is
 25 referred may, upon timely application, intervene

1 in such action, and may obtain such appro-
2 priate relief as is provided in subsections (d)
3 and (e).”;

4 (2) by striking paragraph (2) and inserting the
5 following new paragraph (2):

6 “(2)(A) Not later than 60 days after the date the
7 Attorney General receives a referral under paragraph (1),
8 the Attorney General shall transmit, in writing, to the per-
9 son on whose behalf the complaint is submitted—

10 “(i) if the Attorney General has made a deci-
11 sion to commence an action for relief under para-
12 graph (1) relating to the complaint of the person,
13 notice of the decision; and

14 “(ii) if the Attorney General has not made such
15 a decision, notice of when the Attorney General ex-
16 pects to make such a decision.

17 “(B) If the Attorney General notifies a person that
18 the Attorney General expects to make a decision under
19 subparagraph (A)(ii), the Attorney General shall, not later
20 than 30 days after the date on which the Attorney General
21 makes such decision, notify, in writing, the person of such
22 decision.”;

23 (3) by redesignating paragraph (3) as para-
24 graph (4);

1 (4) by inserting after paragraph (2) the fol-
 2 lowing new paragraph (3):

3 “(3) Whenever the Attorney General has reasonable
 4 cause to believe that a State (as an employer) or a private
 5 employer is engaged in a pattern or practice of resistance
 6 to the full enjoyment of any of the rights and benefits pro-
 7 vided for under this chapter, and that the pattern or prac-
 8 tice is of such a nature and denies the full exercise of such
 9 rights and benefits, the Attorney General may commence
 10 an action for relief under this chapter.”; and

11 (5) in paragraph (4), as redesignated by para-
 12 graph (3), by striking subparagraph (C) and insert-
 13 ing the following new subparagraph (C):

14 “(C) has been notified by the Attorney General
 15 that the Attorney General does not intend to com-
 16 mence an action for relief under paragraph (1) with
 17 respect to the complaint under such paragraph.”.

18 (b) STANDING.—Subsection (f) of such section is
 19 amended to read as follows:

20 “(f) STANDING.—An action under this chapter may
 21 be initiated only by the Attorney General or by a person
 22 claiming rights or benefits under this chapter under sub-
 23 section (a).”.

24 (c) CONFORMING AMENDMENT.—Subsection (h)(2)
 25 of such section is amended by striking “under subsection

1 (a)(2)” and inserting “under paragraph (1) or (4) of sub-
 2 section (a)”.

3 **SEC. 302. ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE**
 4 **DEMANDS BY ATTORNEY GENERAL.**

5 Section 4323 of title 38, United States Code, is
 6 amended—

7 (1) by redesignating subsection (i) as subsection
 8 (j); and

9 (2) by inserting after subsection (h) the fol-
 10 lowing new subsection (i):

11 “(i) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
 12 TIVE DEMANDS.—(1) Whenever the Attorney General has
 13 reason to believe that any person may be in possession,
 14 custody, or control of any documentary material relevant
 15 to an investigation under this subchapter, the Attorney
 16 General may, before commencing a civil action under sub-
 17 section (a), issue in writing and serve upon such person,
 18 a civil investigative demand requiring—

19 “(A) the production of such documentary mate-
 20 rial for inspection and copying;

21 “(B) that the custodian of such documentary
 22 material answer in writing written questions with re-
 23 spect to such documentary material; or

24 “(C) the production of any combination of such
 25 documentary material or answers.

1 “(2) The provisions of section 3733 of title 31 gov-
 2 erning the authority to issue, use, and enforce civil inves-
 3 tigative demands shall apply with respect to the authority
 4 to issue, use, and enforce civil investigative demands under
 5 this section, except that, for purposes of applying such sec-
 6 tion 3733—

7 “(A) references to false claims law investigators
 8 or investigations shall be considered references to in-
 9 vestigators or investigations under this subchapter;

10 “(B) references to interrogatories shall be con-
 11 sidered references to written questions, and answers
 12 to such need not be under oath;

13 “(C) the definitions relating to ‘false claims
 14 law’ shall not apply; and

15 “(D) provisions relating to qui tam relators
 16 shall not apply.”.

17 **SEC. 303. RELATED CHANGES TO TITLE VII OF CIVIL**
 18 **RIGHTS ACT OF 1964—CIVIL INVESTIGATIVE**
 19 **DEMANDS.**

20 (a) Section 707 of the Civil Rights Act of 1964 (42
 21 U.S.C. 2000e–6) is amended—

22 (1) by redesignating subsections (b) through (e)
 23 as subsections (c) through (f), respectively; and

24 (2) by inserting after subsection (a) the fol-
 25 lowing:

1 “(b)(1) Whenever the Attorney General has reason
2 to believe that any person may be in possession, custody,
3 or control of any documentary material relevant to an in-
4 vestigation under this title, the Attorney General may, be-
5 fore commencing a civil action under subsection (a), issue
6 in writing and cause to be served upon such person, a civil
7 investigative demand requiring—

8 “(A) the production of such documentary mate-
9 rial for inspection and copying;

10 “(B) that the custodian of such documentary
11 material answer in writing written questions with re-
12 spect to such documentary material; or

13 “(C) the production of any combination of such
14 documentary material or answers.

15 “(2) The statutory provisions of section 3733 of title
16 31, United States Code, governing the authority to issue,
17 use, and enforce civil investigative demands shall apply
18 with respect to the authority to issue, use, and enforce
19 civil investigative demands under this section, except that,
20 for purposes of applying that section 3733—

21 “(A) references to false claims law investigators
22 or investigations shall be considered to be references
23 to employment discrimination investigators or inves-
24 tigations under this title;

1 “(B) references to interrogatories shall be con-
2 sidered to be references to written questions, and
3 answers to such need not be under oath;

4 “(C) the statutory definition relating to ‘false
5 claims law’ shall not apply; and

6 “(D) provisions relating to qui tam relators
7 shall not apply.”;

8 (3) in subsection (d), as redesignated by para-
9 graph (1), by striking “subsections (d) and (e)” and
10 inserting “subsections (e) and (f)”; and

11 (4) in subsection (e), as redesignated by para-
12 graph (1), by striking “subsection (c)” and inserting
13 “subsection (d)”.

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