

103^D CONGRESS
1ST SESSION

H. R. 2729

To provide for the application of certain employment protection laws to the Congress, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Mr. SHAYS (for himself, Mr. SWETT, Mr. DICKEY, Mr. MANN, Mr. BARTLETT of Maryland, and Mr. MCHALE) introduced the following bill; which was referred jointly to the Committees on House Administration and Rules

A BILL

To provide for the application of certain employment protection laws to the Congress, 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 “Congressional Ac-
5 countability Act”.

6 **SEC. 2. APPLICATION OF FEDERAL LAWS.**

7 Any provision of Federal law shall, to the extent that
8 it relates to—

9 (1) the terms and conditions of employment (in-
10 cluding hiring, promotion or demotion, salary and

1 wages, overtime compensation, benefits, work assign-
2 ments or reassignments, termination, and family and
3 medical leave) of employees,

4 (2) protection from discrimination in personnel
5 actions, including discrimination based on—

6 (A) race, color, religion, sex (including
7 marital and parental status), or national origin
8 within the meaning of section 717 of the Civil
9 Rights Act of 1964 (42 U.S.C. 20003–16),

10 (B) age within the meaning of section 13
11 of the Age Discrimination in Employment Act
12 of 1967 (29 U.S.C. 633a), or

13 (C) handicap or disability within the mean-
14 ing of section 501 of the Rehabilitation Act of
15 1973 (29 U.S.C. 791) and sections 102 through
16 104 of the Americans with Disabilities Act of
17 1990 (42 U.S.C. 12112–14),

18 (3) the health and safety of employees, or

19 (4) the availability of information to the public,
20 apply to the House of Representatives and the Sen-
21 ate (hereinafter in this Act referred to jointly as the
22 “Congress”) in accordance with section 4.

1 **SEC. 3. OFFICE OF COMPLIANCE.**

2 (a) ESTABLISHMENT.—There is established in the
3 legislative branch for the Congress an Office of Compli-
4 ance (hereinafter in this Act referred to as the “Office”).

5 (b) COMPOSITION.—

6 (1) IN GENERAL.—The Office shall be com-
7 posed of a Board of Directors and staff. The Board
8 of Directors shall consist of 13 individuals appointed
9 jointly by the Speaker of the House of Representa-
10 tives, the majority leader of the Senate, and the mi-
11 nority leaders of the House of Representatives and
12 the Senate. Appointments to the Board of Directors
13 shall be completed not later than 120 days after the
14 date of the enactment of this Act.

15 (2) QUALIFICATIONS.—

16 (A) IN GENERAL.—The members of the
17 Board of Directors who shall have the general
18 authority described in subsection (c)(1) shall
19 be—

20 (i) 7 individuals with training or ex-
21 pertise in—

22 (I) the application of the laws re-
23 ferred to in section 2 to employment,
24 and

25 (II) employment in the Congress,
26 and

1 (ii) 2 Members of the House of Rep-
2 resentatives, 2 Senators, one employee of
3 the House of Representatives, and one em-
4 ployee of the Senate.

5 (B) SPECIFIC QUALIFICATIONS.—

6 (i) LOBBYING.—No individual who en-
7 gages in, or is otherwise employed in, lob-
8 bying of the Congress shall be considered
9 eligible for appointment to, or service on,
10 the Board of Directors.

11 (ii) OFFICE.—No member appointed
12 under subparagraph (A)(i) may hold the
13 position of Member of the House of Rep-
14 resentatives, Senator, or employee of the
15 House of Representatives or the Senate

16 (3) POLITICAL AFFILIATION.—Not more than
17 one Member of the House of Representatives who is
18 a member of the Board of Directors and not more
19 than one Senator who is a member of the Board of
20 Directors may be of the same political party.

21 (4) HOLDING OFFICE.—If during a term of of-
22 fice a member of the Board of Directors no longer
23 holds the position qualifying such member or en-
24 gages in an activity described in paragraph
25 (2)(B)(i), such position shall be declared vacant and

1 a successor shall be selected in accordance with
2 paragraph (2).

3 (5) VACANCIES.—A vacancy in the Board of
4 Directors shall be filled in the manner in which the
5 original appointment was made.

6 (c) AUTHORITY.—

7 (1) IN GENERAL.—The 13 members of the
8 Board of Directors appointed under subsection
9 (b)(1) shall have the authority to carry out the func-
10 tions described in subsections (a), (b), (d), and (e)
11 of section 4.

12 (2) LIMITED AUTHORITY.—The 7 members of
13 the Board of Directors appointed under subsection
14 (b)(2)(A)(i) shall have the additional authority to
15 carry out the functions of the Office under sections
16 5 through 12.

17 (d) TERM OF OFFICE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), membership on the Board of Directors
20 shall be for 5 years.

21 (2) FIRST APPOINTMENTS.—Of the members
22 first appointed to the Board of Directors—

23 (A) 3 shall have a term of office of one
24 year,

1 (B) 3 shall have a term of office of 2
2 years,

3 (C) 3 shall have a term of office of 3
4 years,

5 (D) 3 shall have a term of office of 4
6 years, and

7 (E) 3 shall have a term of office of 5
8 years,

9 as designated at the time of appointment by the per-
10 sons specified in subsection (b)(1).

11 (e) CHAIRMAN.—The Chairman of the Board of Di-
12 rectors shall be appointed from the members of the Board
13 of Directors by the members of the Board.

14 (f) BASIC PAY.—Members of the Board of Directors
15 shall serve without pay.

16 (g) STAFF.—The Board of Directors may appoint
17 and fix the compensation of such staff, including hearing
18 officers, as are necessary to carry out the Board of Direc-
19 tor's functions.

20 (h) DETAILEES.—The Board of Directors may, with
21 the prior consent of the Government department or agency
22 concerned, use on a reimbursable or nonreimbursable
23 basis the services of any such department or agency, in-
24 cluding the services of members or personnel of the Gen-
25 eral Accounting Office Personnel Appeals Board.

1 (i) CONSULTANTS.—In carrying out the functions of
2 the Office, the Board of Directors may procure the tem-
3 porary (not to exceed 1 year) or intermittent services of
4 individual consultants, or organizations thereof.

5 **SEC. 4. BOARD FUNCTIONS.**

6 (a) INITIAL ACTION.—

7 (1) STUDY.—The Board of Directors shall con-
8 duct a study of the application to Congress of the
9 laws referred to in section 2. The Board of Directors
10 shall complete such study and report the results to
11 Congress not later than 180 days after the date of
12 the enactment of this Act.

13 (2) REGULATIONS.—Not later than 180 days
14 after the date of the completion of the study under
15 subsection (a), the Board of Directors shall, in ac-
16 cordance with section 553 of title 5, United States
17 Code, issue regulations which specify which of such
18 laws shall apply to Congress. Such regulations—

19 (A) shall take into account the costs asso-
20 ciated with the application of such laws to the
21 Congress,

22 (B) shall be consistent with the provision
23 of law made applicable to Congress, including
24 remedies, except as otherwise specifically pro-
25 vided, and

1 (C) may specify specific dates for the ap-
2 plication of specific laws and may specify spe-
3 cific means for the application of such laws.

4 (b) CONTINUING ACTION.—On an ongoing basis the
5 Board of Directors shall study the application to the Con-
6 gress of laws referred to in section 2 which are enacted
7 after the date of the enactment of this Act and may issue
8 regulations with respect to such laws in accordance with
9 subsection (a)(2).

10 (c) CONGRESSIONAL APPROVAL.—

11 (1) IN GENERAL.—Regulations of the Office
12 shall not go in effect unless approved by the Con-
13 gress under this subsection.

14 (2) RULEMAKING.—The provisions of this sub-
15 section are enacted by the Congress—

16 (A) as an exercise of the rulemaking power
17 of the House of Representatives, and as such
18 they are deemed a part of the rules of the
19 House, but applicable only with respect to the
20 procedure to be followed in the House in the
21 case of concurrent resolutions of regulation ap-
22 proval, and such provisions supersede other
23 rules of the House only to the extent that they
24 are inconsistent with such other rules; and

1 (B) with full recognition of the constitu-
2 tional right of the House to change the rules
3 (so far as relating to the procedure of the
4 House) at any time, in the same manner and
5 to the same extent as in the case of any other
6 rule of the House.

7 (3) REFERRAL.—Concurrent resolutions of reg-
8 ulation approval shall, upon introduction, be imme-
9 diately referred by the Speaker of the House to the
10 appropriate committee or committees of the House.
11 Any such concurrent resolution received from the
12 Senate shall be held at the Speaker's table.

13 (4) COMMITTEE CONSIDERATION.—Upon the
14 expiration of 6 days of continuous session after the
15 introduction of the first concurrent resolution of reg-
16 ulation approval with respect to any regulation, each
17 committee to which such concurrent resolution was
18 referred shall be discharged from further consider-
19 ation of such concurrent resolution, and such con-
20 current resolution shall be referred to the appro-
21 priate calendar, unless such concurrent resolution or
22 an identical resolution was previously reported by
23 each committee to which it was referred.

24 (5) HOUSE CONSIDERATION.—It shall be in
25 order for the Speaker to recognize a Member favor-

1 ing a concurrent resolution to call up a concurrent
2 resolution of regulation approval after it has been on
3 the appropriate calendar for 5 legislative days. When
4 any such concurrent resolution is called up, the
5 House shall proceed to its immediate consideration
6 and the Speaker shall recognize the Member calling
7 up such concurrent resolution and a Member op-
8 posed to such concurrent resolution for 1 hour of de-
9 bate in the House, to be equally divided and con-
10 trolled by such Members. When such time has ex-
11 pired, the previous question shall be considered as
12 ordered on the concurrent resolution to adoption
13 without intervening motion. No amendment to any
14 such concurrent resolution shall be in order, nor
15 shall it be in order to move to reconsider the vote
16 by which such resolution is agreed to or disagreed
17 to.

18 (6) SENATE CONCURRENT RESOLUTION.—If the
19 House receives from the Senate a concurrent resolu-
20 tion of regulation approval with respect to any regu-
21 lation approval, then the following procedures shall
22 apply:

23 (A) The concurrent resolution of the Sen-
24 ate with respect to such regulation approval
25 shall not be referred to a committee.

1 (B) With respect to the concurrent resolu-
2 tion of the House with respect to such regula-
3 tion the procedure with respect to that or other
4 concurrent resolutions of the House with re-
5 spect to such regulation approval shall be the
6 same as if no resolution from the Senate with
7 respect to such regulation had been received.
8 On any vote on final passage a concurrent reso-
9 lution of the House with respect to such regula-
10 tion, a resolution from the Senate with respect
11 to such regulation where the text is identical
12 shall be automatically substituted for the reso-
13 lution of the House.

14 (7) COMPUTATION OF DAYS.—For purposes of
15 this section—

16 (A) continuity of session of Congress is
17 broken only by an adjournment sine die; and

18 (B) the days on which either House is not
19 in session because of an adjournment of more
20 than 3 days to a day certain are excluded in the
21 computation of the 60-day period referred to in
22 paragraph (4).

23 (d) RULES OF THE OFFICE.—The Board of Directors
24 shall adopt rules governing the procedures of the Office,
25 including the procedures of hearing boards, which shall be

1 submitted for publication in the Congressional Record.
2 The rules may be amended in the same manner. The
3 Board of Directors may consult with the Chairman of the
4 Administrative Conference of the United States on the
5 adoption of rules.

6 (e) INFORMATION PROGRAM.—The Board of Direc-
7 tors shall carry out such information program as may be
8 appropriate to acquaint Members of the House of Rep-
9 resentatives, Senators, and congressional employees as to
10 the provisions, including remedies, of the laws made appli-
11 cable to the Congress under subsection (a) or (b).

12 **SEC. 5. PROCEDURE FOR CONSIDERATION OF ALLEGED**
13 **VIOLATIONS.**

14 The procedure for consideration of alleged violations
15 of laws made applicable to Congress under the regulation
16 promulgated under section 4(a) consists of 4 steps as
17 follows:

18 (1) Step I, counseling, as set forth in section 6.

19 (2) Step II, mediation, as set forth in section
20 7.

21 (3) Step III, formal complaint and hearing by
22 a hearing board, as set forth in section 8.

23 (4) Step IV, judicial review of a hearing board
24 decision, as set forth in section 9.

1 **SEC. 6. STEP I: COUNSELING.**

2 (a) IN GENERAL.—A congressional employee alleging
3 a violation of a law made applicable to Congress under
4 section 4 may request counseling by the Office. The Office
5 shall provide the employee with all relevant information
6 with respect to the rights of the employee. A request for
7 counseling shall be made not later than 180 days after
8 the alleged violation forming the basis of the request for
9 counseling occurred.

10 (b) PERIOD OF COUNSELING.—The period for coun-
11 seling shall be 30 days unless the employee and the Office
12 agree to reduce the period. The period shall begin on the
13 date the request for counseling is received.

14 (c) EMPLOYEES OF THE ARCHITECT OF THE CAP-
15 ITOL AND CAPITOL POLICE.—In the case of an employee
16 of the Architect of the Capitol or an employee who is a
17 member of the Capitol Police, the Director may refer the
18 employee to the Architect of the Capitol or the Capitol
19 Police Board for resolution of the employee's complaint
20 through the internal grievance procedures of the Architect
21 of the Capitol or the Capitol Police Board for a specific
22 period of time, which shall not count against the time
23 available for counseling or mediation under this Act.

24 **SEC. 7. STEP II: MEDIATION.**

25 (a) IN GENERAL.—Not later than 15 days after the
26 end of the counseling period under section 6, the employee

1 who alleged a violation of a law made applicable to Con-
2 gress under section 4 may file a request for mediation with
3 the Office. Mediation—

4 (1) may include the Office, the employee, the
5 employing office, and individuals who are rec-
6 ommended to the Director by the Federal Mediation
7 and Conciliation Service, and

8 (2) shall be a process involving meetings with
9 the parties separately or jointly for the purpose of
10 resolving the dispute between the employee and the
11 employing office.

12 (b) **MEDIATION PERIOD.**—The mediation period shall
13 be 30 days beginning on the date the request for mediation
14 is received and may be extended for an additional 30 days
15 at the discretion of the Office. The Office shall notify the
16 employee and the head of the employing office when the
17 mediation period has ended. For purposes of this section,
18 the term “head of employing office” means the individual
19 who has final authority to appoint, hire, discharge, and
20 set the terms, conditions or privileges of the congressional
21 employment of an employee.

22 **SEC. 8. STEP III: FORMAL COMPLAINT AND HEARING.**

23 (a) **FORMAL COMPLAINT AND REQUEST FOR HEAR-**
24 **ING.**—Not later than 30 days after receipt by the congres-
25 sional employee of notice from the Office of the end of

1 the mediation period under section 7, the congressional
2 employee may file a formal complaint with the Office. No
3 complaint may be filed unless the employee has made a
4 timely request for counseling and has completed the proce-
5 dures set forth in sections 6 and 7.

6 (b) HEARING BOARD.—A board of 3 independent
7 hearing officers (hereinafter in this Act referred to as a
8 “hearing board”), who are not Members of the House of
9 Representatives, Senators, or officers or employees of the
10 House of Representatives or Senate, chosen by the Board
11 of Directors (one of whom shall be designated by the
12 Board of Directors as the presiding hearing officer) shall
13 be assigned to consider each complaint filed under sub-
14 section (a). The Board of Directors shall appoint hearing
15 officers after considering any candidates who are rec-
16 ommended to the Director by the Federal Mediation and
17 Conciliation Service, the Administrative Conference of the
18 United States, or organizations composed primarily of in-
19 dividuals experienced in adjudicating or arbitrating per-
20 sonnel matters. A hearing board shall act by majority vote.

21 (c) DISMISSAL OF FRIVOLOUS CLAIMS.—Prior to a
22 hearing under subsection (d), a hearing board may dismiss
23 any claim that it finds to be frivolous.

24 (d) HEARING.—A hearing shall be conducted—

1 (1) in closed session on the record by a hearing
2 board,

3 (2) no later than 30 days after filing of the
4 complaint under subsection (a), except that the Of-
5 fice may, for good cause, extend up to an additional
6 60 days the time for conducting a hearing, and

7 (3) except as specifically provided in this Act
8 and to the greatest extent practicable, in accordance
9 with the principles and procedures set forth in sec-
10 tions 554 through 557 of title 5, United States
11 Code.

12 (e) DISCOVERY.—Reasonable prehearing discovery
13 may be permitted at the discretion of the hearing board.

14 (f) SUBPOENA POWER.—

15 (1) IN GENERAL.—A hearing board may au-
16 thorize subpoenas, which shall be issued by the pre-
17 siding hearing officer on behalf of the hearing board,
18 for the attendance of witnesses at proceedings of the
19 hearing board and for the production of correspond-
20 ence, books, papers, documents, and other records.
21 The attendance of witnesses and the production of
22 evidence may be required from any place within the
23 United States.

24 (2) FAILURE TO OBEY A SUBPOENA.—If a per-
25 son refuses to obey a subpoena issued under para-

1 graph (1), the hearing board may apply to a United
2 States district court for an order requiring that per-
3 son to appear before the hearing board to give testi-
4 mony, produce evidence, or both, relating to the
5 matter under investigation. The application may be
6 made within the judicial district where the hearing
7 is conducted or where that person is found, resides,
8 or transacts business. Any failure to obey the order
9 of the court may be punished by the court as civil
10 contempt.

11 (3) SERVICE OF SUBPOENAS.—The subpoenas
12 of the hearing board shall be served in the manner
13 provided for subpoenas issued by a United States
14 district court under the Federal Rules of Civil Pro-
15 cedure for the United States district courts.

16 (4) SERVICE OF PROCESS.—All process of any
17 court to which application is made under paragraph
18 (2) may be served in the judicial district in which
19 the person required to be served resides or may be
20 found.

21 (5) IMMUNITY.—The hearing board is an agen-
22 cy of the United States for the purpose of part V
23 of title 18, United States Code (relating to immunity
24 of witnesses).

1 (g) DECISION.—As expeditiously as possible, but in
2 no case more than 45 days after the conclusion of the
3 hearing, the hearing board shall make a recommendation
4 to the Board of Directors for a decision in the matter for
5 which the hearing was held. The decision of the Board
6 of Directors shall be transmitted by the Office to the em-
7 ployee and the employing office. The decision shall state
8 the issues raised by the complaint, describe the evidence
9 in the record, and contain a determination as to whether
10 a violation of a law made applicable to Congress under
11 section 4 has occurred. Any decision of the Board of Di-
12 rectors shall contain a written statement of the reasons
13 for the Board’s decision.

14 (h) REMEDY ORDER.—If the Board of Directors de-
15 termines that a violation of a law made applicable to Con-
16 gress under section 4 has occurred, it shall order such
17 remedies as are authorized under the regulations promul-
18 gated under section 4. The Board of Directors shall have
19 no authority to award punitive damages. The entry of an
20 order under this subsection shall constitute a final decision
21 for purposes of judicial review under section 9.

22 **SEC. 9. JUDICIAL REVIEW.**

23 (a) IN GENERAL.—Any congressional employee ag-
24 grieved by a dismissal under section 8(c), a final decision
25 under section 8(g), or an order under section 8(h), or any

1 Member of the House of Representatives or Senate ag-
2 grieved by a final decision under section 8(g) or who would
3 be subject to an order issued under section 8(h), may peti-
4 tion for review by the United States Court of Appeals for
5 the Federal Circuit.

6 (b) LAW APPLICABLE.—Chapter 158 of title 28,
7 United States Code, shall apply to a review under sub-
8 section (a) except that—

9 (1) with respect to section 2344 of title 28,
10 United States Code, service of the petition shall be
11 on the House or Senate Legal Counsel, as the case
12 may be, rather than on the Attorney General,

13 (2) the provisions of section 2348 of title 28,
14 United States Code, on the authority of the Attorney
15 General, shall not apply,

16 (3) the petition for review shall be filed not
17 later than 90 days after the entry in the Office of
18 a final decision under section 8(g) or order under
19 section 8(h),

20 (4) the Office shall be an “agency” as that
21 term is used in chapter 158 of title 28, United
22 States Code, and

23 (5) the Office shall be the respondent in any
24 proceeding under subsection (a).

1 (c) STANDARD OF REVIEW.—To the extent necessary
2 to decision and when presented, the court shall decide all
3 relevant questions of law and interpret constitutional and
4 statutory provisions. The court shall set aside a final deci-
5 sion under section 8(h) or order under section 8(g) if it
6 is determined that the decision or order was—

7 (1) arbitrary, capricious, an abuse of discretion,
8 or otherwise not consistent with law;

9 (2) not made consistent with required proce-
10 dures; or

11 (3) unsupported by substantial evidence.

12 In making the foregoing determinations, the court shall
13 review the whole record, or those parts of it cited by a
14 party, and due account shall be taken of the rule of preju-
15 dicial error. The record on review shall include the record
16 before the hearing board, the decision of the hearing
17 board, and the order of the hearing board.

18 (d) ATTORNEY'S FEES.—If an employee is the pre-
19 vailing party in a proceeding under this section, attorney's
20 fees may be allowed by the court in accordance with the
21 standards prescribed under section 706(k) of the Civil
22 Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

23 **SEC. 10. RESOLUTION OF COMPLAINT.**

24 If, after a formal complaint is filed under section 8,
25 the employee and the head of the employing office resolve

1 the issues involved, the employee may withdraw the com-
2 plaint or the parties may enter into a written agreement,
3 subject to the approval of the Director.

4 **SEC. 11. PROHIBITION OF INTIMIDATION.**

5 Any intimidation of, or reprisal against, any employee
6 by any Member, officer, or employee of the Senate, or by
7 the Architect of the Capitol, or anyone employed by the
8 Architect of the Capitol, as the case may be, because of
9 the exercise of a right under this Act constitutes an unlaw-
10 ful employment practice, which may be remedied in the
11 same manner under this Act as is a violation of a law
12 made applicable to Congress under section 4.

13 **SEC. 12. CONFIDENTIALITY.**

14 (a) COUNSELING.—All counseling shall be strictly
15 confidential except that the Office and the employee may
16 agree to notify the head of the employing office of the alle-
17 gations.

18 (b) MEDIATION.—All mediation shall be strictly con-
19 fidential.

20 (c) HEARINGS.—Except as provided in subsection
21 (d), the hearings, deliberations, and decisions of the hear-
22 ing board shall be confidential.

23 (d) RELEASE OF RECORDS FOR JUDICIAL REVIEW.—
24 The records and decisions of hearing boards, and the deci-
25 sions of the Select Committee on Ethics, may be made

1 public if required for the purpose of judicial review under
2 section 9.

3 **SEC. 13. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) CIVIL RIGHTS ACT OF 1991.—Section 117 and
5 title III of the Civil Rights Act of 1991 (2 U.S.C. 601,
6 1201 et seq.) are repealed.

7 (b) RULE OF THE HOUSE OF REPRESENTATIVES.—
8 Rule LI of the House of Representatives is repealed.

9 (c) FAIR LABOR STANDARDS AMENDMENTS OF
10 1989.—Section 8 of the Fair Labor Standards Amend-
11 ments of 1989 is repealed.

12 **SEC. 14. POLITICAL AFFILIATION AND PLACE OF RESI-
13 DENCE.**

14 (a) IN GENERAL.—It shall not be a violation of a law
15 made applicable to Congress under section 4 to consider
16 the—

17 (1) party affiliation;

18 (2) domicile, or

19 (3) political compatibility with the employing
20 office,

21 of an employee with respect to employment decisions.

22 (b) DEFINITION.—For purposes of subsection (a),
23 the term “employee” means—

24 (1) an employee on the staff of the House of
25 Representatives or Senate leadership;

1 (2) an employee on the staff of a committee or
2 subcommittee;

3 (3) an employee on the staff of a Member of
4 the House of Representatives or Senate;

5 (4) an officer or employee of the House of Rep-
6 resentatives or Senate elected by the House of Rep-
7 resentatives or Senate or appointed by a Member
8 House of Representatives or Senate, other than
9 those described in paragraphs (1) through (3); or

10 (5) an applicant for a position that is to be oc-
11 cupied by an individual described in paragraphs (1)
12 through (4).

13 **SEC. 15. OTHER REVIEW.**

14 No congressional employee may commence a judicial
15 proceeding to redress practices prohibited under section
16 4, except as provided in this Act.

○

HR 2729 IH—2

HR 2729 IH—3