

STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK

Mr. REID. Mr. Chairman, I am pleased to have the opportunity to indicate my strong support for legislation to prohibit arbitrary discrimination in employment on account of age.

Americans over 45 comprise some 27 percent of the unemployed. Their talents and experience can be put to productive use in our communities. Many of our ablest citizens are in their senior years, and they have yet to make some of their most valuable contributions in meaningful jobs and in service to their country. In my judgment, we must—and we are not now fully—do everything possible as a nation to forget the word “aged,” to recognize that chronological age has very little to do with the capacity to make a useful, indeed frequently a more important, contribution in many areas. Legislation such as this is an important corollary to the Older Americans Act amendments, passed earlier this year; it has the potential to make real the job opportunities that that act is designed to encourage.

In February of this year, I introduced legislation, H.R. 6389, co-sponsored by Senator Javits in the other body, which amends the Fair Labor Standards Act to prohibit employers with more than 50 employees, employment agencies, placement services, and labor organizations from discriminating against persons age 45 or older “when such an age distinction is not a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”

This bill is much the same as H.R. 3651, the principal measure on which these hearings are based. Both bills bar age discrimination against those over 45; they both allow an exemption for cases involving a “bona fide occupational qualification”; they both provide for conciliation, and, if necessary, enforcement by court order.

However, there are three significant differences between the administration bill and my bill and I would hope that the committee, in its wisdom, would consider these points carefully.

First, H.R. 6389 places responsibility for enforcement with the Wage and Hour Division of the Department of Labor. The administration bill specifies only the Department of Labor and fails to recognize that the Wage and Hour Division already has the staff and expertise necessary to carry out the duties mandated by this legislation. In fact, this Division presently supervises the age provisions concerning child labor.

Second, while the administration bill provides for an administrative hearing followed by enforcement in the courts, if necessary, my bill permits the Secretary of Labor to move directly to the U.S. district courts, following such informal conciliation procedures as it may be appropriate to employ. This is the system presently in use under the Fair Labor Standards Act and it has worked well.

Third, the Javits-Reid bill provides only civil remedies, in contrast to the administration bill which also makes provision for criminal penalties. Criminal sanctions would require a higher burden of proof and give rise to the possibility of witnesses in age discrimination cases refusing to testify under fifth amendment privileges. It would seem