

114TH CONGRESS
2D SESSION

S. 3445

To amend title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services with respect to States and private employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mr. BLUMENTHAL (for himself, Mrs. MURRAY, Mr. DURBIN, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services with respect to States and private employers, 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 “Uniformed Services
5 Employment and Reemployment Rights Improvement Act
6 of 2016”.

1 **SEC. 2. ACTION FOR RELIEF IN ENFORCEMENT OF EM-**
2 **PLOYMENT AND REEMPLOYMENT RIGHTS OF**
3 **MEMBERS OF UNIFORMED SERVICES WITH**
4 **RESPECT TO A STATE OR PRIVATE EM-**
5 **PLOYER.**

6 (a) INITIATION OF ACTIONS.—Paragraph (1) of sub-
7 section (a) of section 4323 of title 38, United States Code,
8 is amended by striking the third sentence and inserting
9 the following new sentences: “If the Attorney General is
10 reasonably satisfied that the person on whose behalf the
11 complaint is referred is entitled to the rights or benefits
12 sought, the Attorney General may commence an action for
13 relief under this chapter, including on behalf of the person.
14 The person on whose behalf the complaint is referred may,
15 upon timely application, intervene in such action and may
16 obtain such appropriate relief as provided in subsections
17 (d) and (e).”.

18 (b) ATTORNEY GENERAL NOTICE TO SERVICEMEM-
19 BER OF DECISION.—Paragraph (2) of such subsection is
20 amended to read as follows:

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

25 “(i) if the Attorney General has made a deci-
26 sion about whether the United States will commence

1 an action for relief under paragraph (1) relating to
2 the complaint of the person, notice of the decision;
3 and

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

7 “(B) If the Attorney General notifies a person of
8 when the Attorney General expects to make a decision
9 under subparagraph (A)(ii), the Attorney General shall,
10 not later than 30 days after the date on which the Attor-
11 ney General makes such decision, notify, in writing, the
12 person of such decision.”.

13 (c) PATTERN OR PRACTICE CASES.—Such subsection
14 is further amended—

15 (1) by redesignating paragraph (3) as para-
16 graph (4); and

17 (2) by inserting after paragraph (2) (as amend-
18 ed by paragraph (2) of this subsection) the following
19 new paragraph (3):

20 “(3) Whenever the Attorney General has reasonable
21 cause to believe that a State (as an employer) or a private
22 employer is engaged in a pattern or practice of resistance
23 to the full enjoyment of any of the rights or benefits se-
24 cured by this chapter, the Attorney General may com-
25 mence an action under this chapter.”.

1 (d) ACTIONS BY PRIVATE PERSONS.—Subparagraph
 2 (C) of paragraph (4) of such subsection, as redesignated
 3 by paragraph (3)(A), is amended by striking “refused”
 4 and all that follows and inserting “notified by the Attorney
 5 General that the Attorney General does not intend to
 6 bring a civil action.”.

7 (e) CONFORMING AMENDMENT.—Subsection (h)(2)
 8 of such section is amended by striking “subsection (a)(2)”
 9 and inserting “subsection (a)(1) or subsection (a)(4)”.

10 **SEC. 3. WAIVER OF SOVEREIGN IMMUNITY FOR ENFORCE-**
 11 **MENT OF EMPLOYMENT AND REEMPLOY-**
 12 **MENT RIGHTS OF MEMBERS OF UNIFORMED**
 13 **SERVICES.**

14 Paragraph (2) of section 4323(b) of title 38, United
 15 States Code, is amended to read as follows:

16 “(2)(A) In the case of an action against a State (as
 17 an employer), any instrumentality of a State, or any offi-
 18 cer or employee of a State or instrumentality of a State
 19 acting in that officer or employee’s official capacity, by
 20 any person, the action may be brought in the appropriate
 21 district court of the United States or in a State court of
 22 competent jurisdiction, and the State, instrumentality of
 23 the State, or officer or employee of the State or instrumen-
 24 tality acting in that officer or employee’s official capacity
 25 shall not be immune under the Eleventh Amendment of

1 the Constitution, or under any other doctrine of sovereign
2 immunity, from such action.

3 “(B)(i) No State, instrumentality of such State, or
4 officer or employee of such State or instrumentality of
5 such State, acting in that officer or employee’s official ca-
6 pacity, that receives or uses Federal financial assistance
7 for a program or activity shall be immune, under the Elev-
8 enth Amendment of the Constitution or under any other
9 doctrine of sovereign immunity, from suit in Federal or
10 State court by any person for any violation under this
11 chapter related to such program or activity.

12 “(ii) In an action against a State brought pursuant
13 to subsection (a), a court may award the remedies (includ-
14 ing remedies both at law and in equity) that are available
15 under subsections (d) and (e).”.

16 **SEC. 4. VENUE FOR CASES AGAINST PRIVATE EMPLOYERS**
17 **FOR VIOLATIONS OF EMPLOYMENT AND RE-**
18 **EMPLOYMENT RIGHTS OF MEMBERS OF UNI-**
19 **FORMED SERVICES.**

20 Section 4323(c)(2) of title 38, United States Code,
21 is amended by striking “United States district court for
22 any district in which the private employer of the person
23 maintains a place of business.” and inserting “United
24 States district court for—

1 “(A) any district in which the employer main-
2 tains a place of business;

3 “(B) any district in which a substantial part of
4 the events or omissions giving rise to the claim oc-
5 curred; or

6 “(C) if there is no district in which an action
7 may otherwise be brought as provided in subpara-
8 graph (A) or (B), any district in which the employer
9 is subject to the court’s personal jurisdiction with re-
10 spect to such action.”.

11 **SEC. 5. STANDING IN CASES INVOLVING VIOLATIONS OF**
12 **EMPLOYMENT AND REEMPLOYMENT RIGHTS**
13 **OF MEMBERS OF UNIFORMED SERVICES BY**
14 **STATES AND PRIVATE EMPLOYERS.**

15 Section 4323(f) of title 38, United States Code, is
16 amended—

17 (1) by inserting “by the United States or” after
18 “may be initiated only”; and

19 (2) by striking “or by the United States under
20 subsection (a)(1)”.

1 **SEC. 6. CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY**
2 **GENERAL IN ENFORCEMENT OF EMPLOY-**
3 **MENT AND REEMPLOYMENT RIGHTS OF MEM-**
4 **BERS OF UNIFORMED SERVICES WITH RE-**
5 **SPECT TO STATES AND PRIVATE EMPLOYERS.**

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

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

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

12 “(i) **ISSUANCE AND SERVICE OF CIVIL INVESTIGA-**
13 **TIVE DEMANDS BY ATTORNEY GENERAL.**—(1) Whenever
14 the Attorney General has reason to believe that any person
15 may be in possession, custody, or control of any documen-
16 tary material relevant to an investigation under this chap-
17 ter, the Attorney General may, before commencing a civil
18 action under subsection (a), issue in writing and cause to
19 be served upon such person, a civil investigative demand
20 requiring—

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

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

1 “(C) the production of any combination of such
2 documentary material or answers.

3 “(2) The provisions governing the authority to issue,
4 use, and enforce civil investigative demands under section
5 3733 of title 31 (known as the ‘False Claims Act’) shall
6 govern the authority to issue, use, and enforce civil inves-
7 tigative demands under paragraph (1), except that for
8 purposes of that paragraph—

9 “(A) a reference in that section to false claims
10 law investigators or investigations shall be applied as
11 referring to investigators or investigations under this
12 chapter;

13 “(B) a reference to interrogatories shall be ap-
14 plied as referring to written questions, and answers
15 to such need not be under oath;

16 “(C) the statutory definitions for purposes of
17 that section relating to ‘false claims law’ shall not
18 apply; and

19 “(D) provisions of that section relating to qui
20 tam relators shall not apply.”.

1 **SEC. 7. TREATMENT OF DISABILITY DISCOVERED AFTER**
2 **EMPLOYEE ENTITLED TO REEMPLOYMENT**
3 **BY REASON OF UNIFORMED SERVICE STATUS**
4 **RESUMES EMPLOYMENT.**

5 Section 4313(a)(3) of title 38, United States Code,
6 is amended, in the matter before subparagraph (A), by
7 inserting “including a disability that is brought to the em-
8 ployer’s attention within 5 years after the person resumes
9 employment,” after “during, such service,”.

10 **SEC. 8. BURDEN OF IDENTIFYING PROPER REEMPLOY-**
11 **MENT POSITIONS FOR EMPLOYEES ENTITLED**
12 **TO REEMPLOYMENT BY REASON OF UNI-**
13 **FORMED SERVICE STATUS.**

14 Section 4313 of title 38, United States Code, is
15 amended by adding at the end the following new sub-
16 section:

17 “(c) For purposes of this section, the employer shall
18 have the burden of identifying the appropriate reemploy-
19 ment positions.”.

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