

Union Calendar No. 193

118TH CONGRESS
1ST SESSION

H. R. 3943

[Report No. 118-241]

To amend title 38, United States Code, to improve the reemployment rights of members of the Armed Forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2023

Mr. C. SCOTT FRANKLIN of Florida (for himself and Mr. BOST) introduced the following bill; which was referred to the Committee on Veterans' Affairs

OCTOBER 2, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 9, 2023]

A BILL

To amend title 38, United States Code, to improve the reemployment rights of members of the Armed Forces, 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 “Servicemember Employ-*
5 *ment Protection Act of 2023”.*

6 **SEC. 2. IMPROVEMENTS TO REEMPLOYMENT RIGHTS OF**
7 **MEMBERS OF THE ARMED FORCES.**

8 (a) *USERRA PURPOSES.*—Section 4301(a)(1) of title
9 38, United States Code, is amended by striking “encourage
10 noncareer service in the uniformed services” and inserting
11 “encourage service in the uniformed services”.

12 (b) *PROHIBITION OF RETALIATION.*—Subsection (b) of
13 section 4311 of title 38, United States Code, is amended
14 by inserting “or other retaliatory action” after “employ-
15 ment action”.

16 (c) *EXPANSION OF INJUNCTIVE RELIEF.*—Subsection
17 (e) of section 4323 of such title is amended—

18 (1) by striking “The court shall use” and insert-
19 ing “(1) The court shall use”; and

20 (2) by adding at the end the following new para-
21 graphs:

22 “(2) A person bringing an action to enforce a provi-
23 sion of this chapter pursuant to subsection (a) shall be enti-
24 tled to an injunction under paragraph (1) if such person
25 demonstrates—

1 “(A) a violation—

2 “(i) of the provisions of this chapter; or

3 “(ii) of the provisions of this chapter is
4 threatened or is imminent;

5 “(B) the harm to the person outweighs the injury
6 to the employer;

7 “(C) a likelihood of success on the merits of such
8 action; and

9 “(D) awarding such relief is in the public inter-
10 est.

11 “(3) The court may not deny a motion for injunctive
12 relief on the basis that a party bringing an action to enforce
13 a provision of this chapter may be awarded wages unearned
14 due to an unlawful termination or denial of employment
15 at the conclusion of such action.”.

16 (d) *DAMAGES AGAINST A STATE OR PRIVATE EM-*
17 *PLOYER.*—Section 4323 of such title is further amended, in
18 paragraph (1) of subsection (d), by striking subparagraph
19 (C) and inserting the following new subparagraphs:

20 “(C) The court may require the employer to pay
21 the person the amount referred to in subparagraph
22 (B) and interest on such amount, calculated at a rate
23 of 3 percent per year.

24 “(D) The court may require the employer to pay
25 the person the greater of \$50,000 or the amount equal

1 to the amounts referred to in subparagraphs (B) and
2 (C) as liquidated damages, if the court determines
3 that the employer knowingly failed to comply with the
4 provisions of this chapter.”.

5 (e) *MANDATORY ATTORNEY FEES AWARD IN SUCCESS-*
6 *FUL ACTIONS FOR REEMPLOYMENT.*—

7 (1) *MSPB ACTIONS.*—Paragraph (4) of sub-
8 section (c) of section 4324 of such title is amended—

9 (A) by striking “may, in its discretion,”
10 and inserting “shall”; and

11 (B) by adding at the end the following new
12 sentence: “The Board may, in its discretion,
13 award reasonable attorney fees in a case settled
14 before the issuance of an order if the person can
15 demonstrate that significant attorney fees were
16 incurred and that justice requires such an
17 award.”.

18 (2) *FEDERAL CIRCUIT ACTIONS.*—Subsection (d)
19 of such section is amended by adding at the end the
20 following new paragraph:

21 “(3) In such Federal Circuit proceeding, the court shall
22 award such person reasonable attorney fees, expert witness
23 fees, and other litigation expenses if such person—

24 “(A) prevails in such Federal Circuit proceeding;
25 and

1 “(B) is not represented by the Special Counsel in
2 such Federal Circuit proceeding.”.

3 (3) *ACTIONS AGAINST A STATE OR PRIVATE EM-*
4 *PLOYER.—Paragraph (2) of section 4323(h) of such*
5 *title is amended—*

6 (A) by striking “subsection (a)(2)” and in-
7 serting “subsection (a)(3)”; and

8 (B) by striking “the court may award any
9 such person who prevails in such action or pro-
10 ceeding reasonable attorney fees” and inserting
11 “the court shall award any such person who pre-
12 vails in such action or proceeding reasonable at-
13 torney fees”.

14 (f) *GAO REVIEW AND REPORT ON USERRA.—*

15 (1) *REVIEW.—The Comptroller General of the*
16 *United States shall review the methods through which*
17 *the Secretary of Labor, acting through the Veterans’*
18 *Employment and Training Service, processes actions*
19 *for relief under chapter 43 of title 38, United States*
20 *Code.*

21 (2) *ELEMENTS.—Not later than two years after*
22 *the date of the enactment of this Act, the Comptroller*
23 *General shall submit to the Committees on Veterans’*
24 *Affairs of the House of Representatives and the Senate*
25 *a report that includes—*

1 (A) *the findings of the review required*
2 *under paragraph (1);*

3 (B) *an identification of the number of ac-*
4 *tions for relief under chapter 43 of title 38,*
5 *United States Code, initiated during the period*
6 *covered by the report, disaggregated by employer*
7 *characteristics, including size and geographic re-*
8 *gion;*

9 (C) *an identification of the number of such*
10 *actions for relief that were dismissed, including*
11 *the characteristics of such actions and reasons*
12 *for dismissal;*

13 (D) *an identification of the number of such*
14 *actions for relief that were referred to the De-*
15 *partment of Justice; and*

16 (E) *an assessment of trends, if any, in such*
17 *actions for relief initiated during such period.*

18 (g) *GAO REVIEW OF PROTECTIONS FOR MEMBERS OF*
19 *THE UNIFORMED SERVICES BY FEDERAL INTELLIGENCE*
20 *AGENCIES.—*

21 (1) *BRIEFING.—Not later than one year after the*
22 *date of the enactment of this Act, the Comptroller*
23 *General of the United States shall provide to the ap-*
24 *propriate congressional committees a briefing on the*
25 *processes and procedures adopted and used by the in-*

1 *telligence community to provide the protections for*
2 *members of the uniformed services otherwise estab-*
3 *lished under chapter 43 of title 38, United States*
4 *Code.*

5 (2) *REPORT.—Not later than 18 months after the*
6 *date of the enactment of this Act, the Comptroller*
7 *General shall provide to such committees a report on*
8 *such processes and procedures.*

9 (3) *DEFINITIONS.—In this subsection:*

10 (A) *The term “appropriate congressional*
11 *committees” means the Committees on Veterans’*
12 *Affairs of the House of Representatives and Sen-*
13 *ate, the Permanent Select Committee on Intel-*
14 *ligence of the House of Representatives, and the*
15 *Select Committee on Intelligence of the Senate.*

16 (B) *The term “intelligence community” has*
17 *the meaning given such term in section 3(4) of*
18 *the National Security Act of 1947 (50 U.S.C.*
19 *3003(4)).*

20 **SEC. 3. REVIEW OF INVESTIGATIONS MANUAL OF VET-**
21 **ERANS’ EMPLOYMENT AND TRAINING SERV-**
22 **ICE.**

23 (a) *IN GENERAL.—Not later than one year after the*
24 *date of the enactment of this Act, and once every two years*
25 *thereafter for the period of five years beginning on such*

1 *date, the Secretary of Labor, shall review the manual of*
2 *the Department of Labor titled “Veterans’ Employment and*
3 *Training Service Investigations Manual: USERRA, VEOA,*
4 *and VP” (or a successor manual) and make such revisions*
5 *to such manual as the Secretary determines appropriate.*

6 *(b) REPORT.—Not later than 90 days after any date*
7 *on which the Secretary completes a review required under*
8 *subsection (a), the Secretary shall submit to the Committees*
9 *on Veterans’ Affairs of the House of Representatives and*
10 *the Senate—*

11 *(1) a report that includes a description of any*
12 *revision to such manual made pursuant to such re-*
13 *view; and*

14 *(2) a copy of the entire such manual which—*

15 *(A) shall be provided to the Chairman and*
16 *Ranking Member of each such committee; and*

17 *(B) may contain a separate addendum for*
18 *portions of the manual that contain law enforce-*
19 *ment sensitive materials.*

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