

## Union Calendar No. 256

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3213

[Report No. 105-448]

To amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by United States companies, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1998

Mr. QUINN (for himself, Mr. FILNER, Mr. STUMP, Mr. EVANS, Mr. BUYER, Mr. KENNEDY of Massachusetts, Mr. BACHUS, Mr. MASCARA, Mr. COOKSEY, Mr. RODRIGUEZ, Mr. OLVER, Mr. PASCRELL, Ms. WATERS, and Mr. MANTON) introduced the following bill; which was referred to the Committee on Veterans' Affairs

MARCH 17, 1998

Additional sponsors: Mr. CLYBURN, Mr. REYES, and Mr. LAHOOD

MARCH 17, 1998

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

[Omit the part struck through and insert the part printed in *italic*]

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## A BILL

To amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private

employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by United States companies, 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 "USEERRA Amendments*  
 5 *Act of 1998".*

6 **SECTION 1. SEC. 2. ENFORCEMENT OF RIGHTS WITH RE-**  
 7 **SPECT TO A STATE AS AN EMPLOYER.**

8       (a) IN GENERAL.—Section 4323 of title 38, United  
 9 States Code, is amended to read as follows:

10 **"§ 4323. Enforcement of rights with respect to a State**  
 11 **or private employer**

12       “(a) ACTION FOR RELIEF.—(1) A person who re-  
 13 ceives from the Secretary a notification pursuant to sec-  
 14 tion 4322(e) of this title of an unsuccessful effort to re-  
 15 solve a complaint relating to a State (as an employer) or  
 16 a private employer may request that the Secretary refer  
 17 the complaint to the Attorney General. If the Attorney  
 18 General is reasonably satisfied that the person on whose  
 19 behalf the complaint is referred is entitled to the rights  
 20 or benefits sought, the Attorney General may appear on  
 21 behalf of, and act as attorney for, the person on whose  
 22 behalf the complaint is submitted and commence an action

1 for relief under this chapter for such person. In the case  
2 of such an action against a State (as an employer), the  
3 action shall be brought in the name of the United States  
4 as the plaintiff in the action.

5 “(2) A person may commence an action for relief with  
6 respect to a complaint against a State (as an employer)  
7 or a private employer if the person—

8 “(A) has chosen not to apply to the Secretary  
9 for assistance under section 4322(a) of this title;

10 “(B) has chosen not to request that the Sec-  
11 retary refer the complaint to the Attorney General  
12 under paragraph (1); or

13 “(C) has been refused representation by the At-  
14 torney General with respect to the complaint under  
15 such paragraph.

16 “(b) JURISDICTION.—(1) In the case of an action  
17 against a State (as an employer) or a private employer  
18 commenced by the United States, the district courts of  
19 the United States shall have jurisdiction over the action.

20 “(2) In the case of an action against a State (as an  
21 employer) by a person, the action may be brought in a  
22 State court of competent jurisdiction in accordance with  
23 the laws of the State.

1       “(3) In the case of an action against a private em-  
2 ployer by a person, the district courts of the United States  
3 shall have jurisdiction of the action.

4       “(c) VENUE.—(1) In the case of an action by the ~~At-~~  
5 ~~torney General~~ *United States* against a State (as an em-  
6 ployer), the action may proceed in the United States dis-  
7 trict court for any district in which the State exercises  
8 any authority or carries out any function.

9       “(2) In the case of an action against a private em-  
10 ployer, the action may proceed in the United States dis-  
11 trict court for any district in which the private employer  
12 of the person maintains a place of business.

13       “(d) REMEDIES.—(1) In any action under this sec-  
14 tion, the court may award relief as follows:

15               “(A) The court may require the employer to  
16 comply with the provisions of this chapter.

17               “(B) The court may require the employer to  
18 compensate the person for any loss of wages or ben-  
19 efits suffered by reason of such employer’s failure to  
20 comply with the provisions of this chapter.

21               “(C) The court may require the employer to  
22 pay the person an amount equal to the amount re-  
23 ferred to in subparagraph (B) as liquidated dam-  
24 ages, if the court determines that the employer’s

1 failure to comply with the provisions of this chapter  
2 was willful.

3 “(2)(A) Any compensation awarded under subpara-  
4 graph (B) or (C) of paragraph (1) shall be in addition  
5 to, and shall not diminish, any of the other rights and  
6 benefits provided for under this chapter.

7 “(B) In the case of an action commenced in the name  
8 of the United States for which the relief includes com-  
9 pensation awarded under subparagraph (B) or (C) of  
10 paragraph (1), such compensation shall be held in a spe-  
11 cial deposit account and shall be paid, on order of the At-  
12 torney General, directly to the person. If the compensation  
13 is not paid to the person because of inability to do so with-  
14 in a period of three years, the compensation shall be cov-  
15 ered into the Treasury of the United States as miscellane-  
16 ous receipts.

17 “(3) A State shall be subject to the same remedies,  
18 including prejudgment interest, as may be imposed upon  
19 any private employer under this section.

20 “(e) EQUITY POWERS.—The court may use its full  
21 equity powers, including temporary or permanent injunc-  
22 tions, temporary restraining orders, and contempt orders,  
23 to vindicate fully the rights or benefits of persons under  
24 this chapter.

1       “(f) STANDING.—An action under this chapter may  
2 be initiated only by a person claiming rights or benefits  
3 under this chapter under subsection (a)~~(2)~~ or by the  
4 United States under subsection (a)(1).

5       “(g) RESPONDENT.—In any action under this chap-  
6 ter, only an employer or a potential employer, as the case  
7 may be, shall be a necessary party respondent.

8       “(h) FEES, COURT COSTS.—(1) No fees or court  
9 costs may be charged or taxed against any person claiming  
10 rights under this chapter.

11       “(2) In any action or proceeding to enforce a provi-  
12 sion of this chapter by a person under subsection (a)(2)  
13 who obtained private counsel for such action or proceed-  
14 ing, the court may award any such person who prevails  
15 in such action or proceeding reasonable attorney fees, ex-  
16 pert witness fees, and other litigation expenses.

17       “(i) INAPPLICABILITY OF STATE STATUTE OF LIM-  
18 TATIONS.—No State statute of limitations shall apply to  
19 any proceeding under this chapter.

20       “(j) DEFINITION.—In this section, the term ‘private  
21 employer’ includes a political subdivision of a State.”.

22       (b) EFFECTIVE DATE.—(1) Section 4323 of title 38,  
23 United States Code, as amended by subsection (a), shall  
24 apply to actions commenced under chapter 43 of such title  
25 on or after the date of the enactment of this Act, and

1 shall apply to actions commenced under such chapter be-  
2 fore the date of the enactment of this Act that are not  
3 final on the date of the enactment of this Act, without  
4 regard to when the cause of action accrued.

5 (2) In the case of any such action against a State  
6 (as an employer) in which a person, on the day before the  
7 date of the enactment of this Act, is represented by the  
8 Attorney General under section 4323(a)(1) of such title  
9 as in effect on such day, the court shall upon motion of  
10 the Attorney General, substitute the United States as the  
11 plaintiff in the action pursuant to such section as amended  
12 by subsection (a).

13 **SEC. 2. 3. PROTECTION OF EXTRATERRITORIAL EMPLOY-**  
14 **MENT AND REEMPLOYMENT RIGHTS OF MEM-**  
15 **BERS OF THE UNIFORMED SERVICES.**

16 (a) DEFINITION OF EMPLOYEE.—Section 4303(3) of  
17 title 38, United States Code, is amended by adding at the  
18 end the following: “Such term includes any person who  
19 is a citizen, national, or permanent resident alien of the  
20 United States employed in a workplace in a foreign coun-  
21 try by an employer that is an entity incorporated or other-  
22 wise organized in the United States or that is controlled  
23 by an entity organized in the United States, within the  
24 meaning of section 4319(c) of this title.”.

1 (b) FOREIGN COUNTRIES.—Subchapter II of chapter  
2 43 of such title is amended by inserting after section 4318  
3 the following new section:

4 **“§ 4319. Employment and reemployment rights in for-**  
5 **eign countries**

6 “(a) LIABILITY OF CONTROLLING U.S. EMPLOYER  
7 OF FOREIGN ENTITY.—If an employer controls an entity  
8 that is incorporated or otherwise organized in a foreign  
9 country, any denial of employment, reemployment, or ben-  
10 efit by such entity shall be presumed to be by such em-  
11 ployer.

12 “(b) INAPPLICABILITY TO FOREIGN EMPLOYER.—  
13 This subchapter does not apply to foreign operations of  
14 an employer that is a foreign person not controlled by an  
15 United States employer.

16 “(c) DETERMINATION OF CONTROLLING EM-  
17 PLOYER.—For the purpose of this section, the determina-  
18 tion of whether an employer controls an entity shall be  
19 based upon the interrelations of operations, common man-  
20 agement, centralized control of labor relations, and com-  
21 mon ownership or financial control of the employer and  
22 the entity.

23 “(d) EXEMPTION.—Notwithstanding any other provi-  
24 sion of this subchapter, an employer, or an entity con-  
25 trolled by an employer, may—



1 lowing: “, without regard as to whether the complaint ac-  
2 crued before, on, or after October 13, 1994”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall apply to all complaints filed with the  
5 Merit Systems Protection Board on or after October 13,  
6 1994.



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