

113TH CONGRESS  
1ST SESSION

# S. 1281

To prohibit discrimination on the basis of military service, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2013

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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## A BILL

To prohibit discrimination on the basis of military service, 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 “Veterans and  
5 Servicemembers Employment Rights and Housing Act of  
6 2013”.

7 **SEC. 2. DISCRIMINATION ON THE BASIS OF MILITARY**  
8 **SERVICE.**

9 (a) DEFINITIONS.—In this section:

1           (1) CIVIL RIGHTS DEFINITIONS.—The terms  
2           “complaining party”, “demonstrates”, “employee”,  
3           “employer”, “employment agency”, “labor organiza-  
4           tion”, “person”, “respondent”, and “State” have the  
5           meanings given the terms in section 701 of the Civil  
6           Rights Act of 1964 (42 U.S.C. 2000e).

7           (2) MEMBER OF THE UNIFORMED SERVICES.—  
8           The term “member of the uniformed services”  
9           means an individual who—

10                   (A) is a member of—

11                           (i) the uniformed services (as defined  
12                           in section 101 of title 10, United States  
13                           Code); or

14                           (ii) the National Guard in State sta-  
15                           tus under title 32, United States Code; or

16                   (B) was discharged or released from serv-  
17           ice in the uniformed services (as so defined) or  
18           the National Guard in such status under condi-  
19           tions other than dishonorable.

20           (3) MILITARY SERVICE.—The term “military  
21           service” means status as a member of the uniformed  
22           services.

23           (b) EMPLOYER PRACTICES.—It shall be an unlawful  
24           employment practice for an employer—

1           (1) to fail or refuse to hire or to discharge any  
2 individual, or otherwise to discriminate against any  
3 individual with respect to the individual's compensa-  
4 tion, terms, conditions, or privileges of employment,  
5 because of such individual's military service; or

6           (2) to limit, segregate, or classify the employ-  
7 er's employees or applicants for employment in any  
8 way which would deprive or tend to deprive any indi-  
9 vidual of employment opportunities or otherwise ad-  
10 versely affect the individual's status as an employee,  
11 because of such individual's military service.

12       (c) EMPLOYMENT AGENCY PRACTICES.—It shall be  
13 an unlawful employment practice for an employment agen-  
14 cy to fail or refuse to refer for employment, or otherwise  
15 discriminate against, any individual because of the individ-  
16 ual's military service, or to classify or refer for employ-  
17 ment any individual on the basis of the individual's mili-  
18 tary service.

19       (d) LABOR ORGANIZATION PRACTICES.—It shall be  
20 an unlawful employment practice for a labor organiza-  
21 tion—

22           (1) to exclude or to expel from its membership,  
23 or otherwise to discriminate against, any individual  
24 because of the individual's military service;

1           (2) to limit, segregate, or classify its member-  
2           ship or applicants for membership, or to classify or  
3           fail or refuse to refer for employment any individual,  
4           in any way which would deprive or tend to deprive  
5           any individual of employment opportunities, or  
6           would limit such employment opportunities or other-  
7           wise adversely affect the individual's status as an  
8           employee or as an applicant for employment, be-  
9           cause of such individual's military service; or

10           (3) to cause or attempt to cause an employer to  
11           discriminate against an individual in violation of this  
12           section.

13           (e) TRAINING PROGRAMS.—It shall be an unlawful  
14           employment practice for any employer, labor organization,  
15           or joint labor-management committee controlling appren-  
16           ticeship or other training or retraining, including on-the-  
17           job training programs, to discriminate against any indi-  
18           vidual because of the individual's military service in admis-  
19           sion to, or employment in, any program established to pro-  
20           vide apprenticeship or other training.

21           (f) BUSINESSES OR ENTERPRISES WITH PERSONNEL  
22           QUALIFIED ON BASIS OF MILITARY SERVICE.—Notwith-  
23           standing any other provision of this section, it shall not  
24           be an unlawful employment practice for an employer to  
25           hire and employ employees, for an employment agency to

1 classify, or refer for employment any individual, for a  
2 labor organization to classify its membership or to classify  
3 or refer for employment any individual, or for an em-  
4 ployer, labor organization, or joint labor-management  
5 committee controlling apprenticeship or other training or  
6 retraining programs to admit or employ any individual in  
7 any such program, on the basis of the individual's military  
8 service in those certain instances where military service  
9 is a bona fide occupational qualification reasonably nec-  
10 essary to the normal operation of that particular business  
11 or enterprise.

12 (g) NATIONAL SECURITY.—Notwithstanding any  
13 other provision of this section, it shall not be an unlawful  
14 employment practice for an employer to fail or refuse to  
15 hire and employ any individual for any position, for an  
16 employer to discharge any individual from any position,  
17 or for an employment agency to fail or refuse to refer any  
18 individual for employment in any position, or for a labor  
19 organization to fail or refuse to refer any individual for  
20 employment in any position, if—

21 (1) the occupancy of such position, or access to  
22 the premises in or upon which any part of the duties  
23 of such position is performed or is to be performed,  
24 is subject to any requirement imposed in the interest  
25 of the national security of the United States under

1 any security program in effect pursuant to or ad-  
2 ministered under any statute of the United States or  
3 any Executive order of the President; and

4 (2) such individual has not fulfilled or has  
5 ceased to fulfill that requirement.

6 (h) SENIORITY OR MERIT SYSTEM; QUANTITY OR  
7 QUALITY OF PRODUCTION; ABILITY TESTS.—Notwith-  
8 standing any other provision of this section, it shall not  
9 be an unlawful employment practice for an employer to  
10 apply different standards of compensation, or different  
11 terms, conditions, or privileges of employment pursuant  
12 to a bona fide seniority or merit system, or a system which  
13 measures earnings by quantity or quality of production or  
14 to employees who work in different locations, provided  
15 that such differences are not the result of an intention  
16 to discriminate because of military service, nor shall it be  
17 an unlawful employment practice for an employer to give  
18 and to act upon the results of any professionally developed  
19 ability test provided that such test, its administration, or  
20 action upon the results is not designed, intended, or used  
21 to discriminate because of military service.

22 (i) PREFERENTIAL TREATMENT NOT TO BE GRANT-  
23 ED ON ACCOUNT OF EXISTING NUMBER OR PERCENTAGE  
24 IMBALANCE.—Nothing contained in this section shall be  
25 interpreted to require any employer, employment agency,

1 labor organization, or joint labor-management committee  
 2 subject to this section to grant preferential treatment to  
 3 any individual or to any group because of the military  
 4 service of such individual or group on account of an imbal-  
 5 ance which may exist with respect to the total number or  
 6 percentage of persons with military service employed by  
 7 any employer, referred or classified for employment by any  
 8 employment agency or labor organization, admitted to  
 9 membership or classified by any labor organization, or ad-  
 10 mitted to, or employed in, any apprenticeship or other  
 11 training program, in comparison with the total number or  
 12 percentage of persons with military service in any commu-  
 13 nity, State, section, or other area, or in the available work  
 14 force in any community, State, section, or other area.

15 (j) BURDEN OF PROOF IN DISPARATE IMPACT  
 16 CASES.—

17 (1) DISPARATE IMPACT.—

18 (A) ESTABLISHMENT.—An unlawful em-  
 19 ployment practice based on disparate impact is  
 20 established under this section only if—

21 (i) a complaining party demonstrates  
 22 that a respondent uses a particular em-  
 23 ployment practice that causes a disparate  
 24 impact on the basis of military service and  
 25 the respondent fails to demonstrate that

1 the challenged practice is job related for  
2 the position in question and consistent  
3 with business necessity; or

4 (ii) the complaining party makes the  
5 demonstration described in subparagraph  
6 (C) with respect to an alternative employ-  
7 ment practice and the respondent refuses  
8 to adopt such alternative employment prac-  
9 tice.

10 (B) DEMONSTRATION OF CAUSATION.—

11 (i) PARTICULAR EMPLOYMENT PRAC-  
12 TICES.—With respect to demonstrating  
13 that a particular employment practice  
14 causes a disparate impact as described in  
15 subparagraph (A)(i), the complaining party  
16 shall demonstrate that each particular  
17 challenged employment practice causes a  
18 disparate impact, except that if the com-  
19 plaining party can demonstrate to the  
20 court that the elements of a respondent's  
21 decisionmaking process are not capable of  
22 separation for analysis, the decisionmaking  
23 process may be analyzed as one employ-  
24 ment practice.

1 (ii) DEMONSTRATION OF NONCAUSA-  
2 TION.—If the respondent demonstrates  
3 that a specific employment practice does  
4 not cause the disparate impact, the re-  
5 spondent shall not be required to dem-  
6 onstrate that such practice is required by  
7 business necessity.

8 (C) ALTERNATIVE EMPLOYMENT PRAC-  
9 TICE.—The demonstration referred to by sub-  
10 paragraph (A)(ii) shall be in accordance with  
11 the law as it existed on June 4, 1989, with re-  
12 spect to the concept of “alternative employment  
13 practice”.

14 (2) BUSINESS NECESSITY NO DEFENSE TO IN-  
15 TENTIONAL DISCRIMINATION.—A demonstration  
16 that an employment practice is required by business  
17 necessity may not be used as a defense against a  
18 claim of intentional discrimination under this sec-  
19 tion.

20 (3) RULES CONCERNING CONTROLLED SUB-  
21 STANCES.—Notwithstanding any other provision of  
22 this section, a rule barring the employment of an in-  
23 dividual who currently and knowingly uses or pos-  
24 sesses a controlled substance, as defined in section  
25 102(6) of the Controlled Substances Act (21 U.S.C.

1 802(6)) and included in schedule I or II of the  
2 schedules specified in that section, other than the  
3 use or possession of a drug taken under the super-  
4 vision of a licensed health care professional, or any  
5 other use or possession authorized by the Controlled  
6 Substances Act (21 U.S.C. 801 et seq.) or any other  
7 provision of Federal law, shall be considered an un-  
8 lawful employment practice under this section only if  
9 such rule is adopted or applied with an intent to dis-  
10 criminate because of military service.

11 (k) PROHIBITION OF DISCRIMINATORY USE OF TEST  
12 SCORES.—It shall be an unlawful employment practice for  
13 a respondent, in connection with the selection or referral  
14 of applicants or candidates for employment or promotion,  
15 to adjust the scores of, use different cutoff scores for, or  
16 otherwise alter the results of, employment related tests on  
17 the basis of military service.

18 (l) IMPERMISSIBLE CONSIDERATION OF MILITARY  
19 SERVICE IN EMPLOYMENT PRACTICES.—Except as other-  
20 wise provided in this section, an unlawful employment  
21 practice is established when the complaining party dem-  
22 onstrates that military service was a motivating factor for  
23 any employment practice, even though other factors also  
24 motivated the practice.

1 (m) RESOLUTION OF CHALLENGES TO EMPLOYMENT  
2 PRACTICES IMPLEMENTING LITIGATED OR CONSENT  
3 JUDGMENTS OR ORDERS.—

4 (1) PRACTICES NOT CHALLENGEABLE.—

5 (A) PRACTICES TO IMPLEMENT A LITI-  
6 GATED OR CONSENT JUDGMENT OR ORDER.—

7 Notwithstanding any other provision of law,  
8 and except as provided in paragraph (2), an  
9 employment practice that implements and is  
10 within the scope of a litigated or consent judg-  
11 ment or order that resolves a claim of employ-  
12 ment discrimination under the Constitution or  
13 Federal civil rights laws may not be challenged  
14 under the circumstances described in subpara-  
15 graph (B).

16 (B) CIRCUMSTANCES.—A practice de-  
17 scribed in subparagraph (A) may not be chal-  
18 lenged in a claim under the Constitution or  
19 Federal civil rights laws—

20 (i) by a person who, prior to the entry  
21 of the judgment or order described in sub-  
22 paragraph (A), had—

23 (I) actual notice of the proposed  
24 judgment or order sufficient to ap-  
25 prise such person that such judgment

1 or order might adversely affect the in-  
2 terests and legal rights of such person  
3 and that an opportunity was available  
4 to present objections to such judg-  
5 ment or order by a future date cer-  
6 tain; and

7 (II) a reasonable opportunity to  
8 present objections to such judgment  
9 or order; or

10 (ii) by a person whose interests were  
11 adequately represented by another person  
12 who had previously challenged the judg-  
13 ment or order on the same legal grounds  
14 and with a similar factual situation, unless  
15 there has been an intervening change in  
16 law or fact.

17 (2) RULE OF CONSTRUCTION.—Nothing in this  
18 subsection shall be construed to—

19 (A) alter the standards for intervention  
20 under rule 24 of the Federal Rules of Civil Pro-  
21 cedure or apply to the rights of parties who  
22 have successfully intervened pursuant to such  
23 rule in the proceeding in which the parties in-  
24 tervened;

1 (B) apply to the rights of parties to the ac-  
2 tion in which a litigated or consent judgment or  
3 order was entered, or of members of a class  
4 represented or sought to be represented in such  
5 action, or of members of a group on whose be-  
6 half relief was sought in such action by the  
7 Federal Government;

8 (C) prevent challenges to a litigated or  
9 consent judgment or order on the ground that  
10 such judgment or order was obtained through  
11 collusion or fraud, or is transparently invalid or  
12 was entered by a court lacking subject matter  
13 jurisdiction; or

14 (D) authorize or permit the denial to any  
15 person of the due process of law required by the  
16 Constitution.

17 (3) COURT FOR ACTIONS THAT ARE  
18 CHALLENGEABLE.—Any action not precluded under  
19 this subsection that challenges an employment con-  
20 sent judgment or order described in paragraph (1)  
21 shall be brought in the court, and if possible before  
22 the judge, that entered such judgment or order.  
23 Nothing in this subsection shall preclude a transfer  
24 of such action pursuant to section 1404 of title 28,  
25 United States Code.

1           (n) DISCRIMINATION FOR MAKING CHARGES, TESTI-  
2 FYING, ASSISTING, OR PARTICIPATING IN ENFORCEMENT  
3 PROCEEDINGS.—It shall be an unlawful employment prac-  
4 tice for an employer to discriminate against any of the  
5 employer’s employees or applicants for employment, for an  
6 employment agency, or joint labor-management committee  
7 controlling apprenticeship or other training or retraining,  
8 including on-the-job training programs, to discriminate  
9 against any individual, or for a labor organization to dis-  
10 criminate against any member thereof or applicant for  
11 membership, because the employee, applicant, individuals,  
12 or member involved has opposed any practice made an un-  
13 lawful employment practice by this section, or has made  
14 a charge, testified, assisted, or participated in any manner  
15 in an investigation, proceeding, or hearing under this sec-  
16 tion.

17           (o) PRINTING OR PUBLICATION OF NOTICES OR AD-  
18 VERTISEMENTS.—It shall be an unlawful employment  
19 practice for an employer, labor organization, employment  
20 agency, or joint labor-management committee controlling  
21 apprenticeship or other training or retraining, including  
22 on-the-job training programs, to print or publish or cause  
23 to be printed or published any notice or advertisement re-  
24 lating to employment by such an employer or membership  
25 in or any classification or referral for employment by such

1 a labor organization, or relating to any classification or  
2 referral for employment by such an employment agency,  
3 or relating to admission to, or employment in, any pro-  
4 gram established to provide apprenticeship or other train-  
5 ing by such a joint labor-management committee, indi-  
6 cating any preference, limitation, specification, or dis-  
7 crimination, based on military service, except that such a  
8 notice or advertisement may indicate a preference, limita-  
9 tion, specification, or discrimination based on military  
10 service when military service is a bona fide occupational  
11 qualification for employment.

12 (p) EXEMPTIONS.—

13 (1) INAPPLICABILITY OF TITLE TO CERTAIN  
14 ALIENS.—This section shall not apply to an em-  
15 ployer with respect to the employment of aliens out-  
16 side any State.

17 (2) COMPLIANCE WITH STATUTE AS VIOLATION  
18 OF FOREIGN LAW.—It shall not be unlawful under  
19 this section for an employer (or a corporation con-  
20 trolled by an employer), labor organization, employ-  
21 ment agency, or joint labor-management committee  
22 controlling apprenticeship or other training or re-  
23 training (including on-the-job training programs) to  
24 take any action otherwise prohibited by such section,  
25 with respect to an employee in a workplace in a for-

1       eign country if compliance with such section would  
2       cause such employer (or such corporation), such or-  
3       ganization, such agency, or such committee to vio-  
4       late the law of the foreign country in which such  
5       workplace is located.

6               (3) CONTROL OF CORPORATION INCORPORATED  
7       IN FOREIGN COUNTRY.—

8               (A) IN GENERAL.—If an employer controls  
9       a corporation whose place of incorporation is a  
10      foreign country, any practice prohibited by this  
11      section engaged in by such corporation shall be  
12      presumed to be engaged in by such employer.

13              (B) FOREIGN PERSON NOT CONTROLLED  
14      BY EMPLOYER.—This section shall not apply  
15      with respect to the foreign operations of an em-  
16      ployer that is a foreign person not controlled by  
17      an American employer.

18              (C) CONTROL.—For purposes of this sub-  
19      section, the determination of whether an em-  
20      ployer controls a corporation shall be based  
21      on—

22                      (i) the interrelation of operations;

23                      (ii) the common management;

24                      (iii) the centralized control of labor re-

25                      lations; and

1 (iv) the common ownership or finan-  
2 cial control,  
3 of the employer and the corporation.

4 (4) CLAIMS OF NO MILITARY SERVICE.—Noth-  
5 ing in this section shall provide the basis for a claim  
6 by an individual without military service that the in-  
7 dividual was subject to discrimination because of the  
8 individual's lack of military service.

9 (q) POSTING NOTICES.—Every employer, employ-  
10 ment agency, labor organization, or joint labor-manage-  
11 ment committee covered under this section shall post no-  
12 tices to applicants, employees, and members describing the  
13 applicable provisions of this section, in the manner pre-  
14 scribed by section 711 of the Civil Rights Act of 1964  
15 (42 U.S.C. 2000e-10).

16 (r) REGULATIONS.—Not later than 90 days after the  
17 date of enactment of this Act, the Commission shall issue  
18 regulations to carry out this section in accordance with  
19 subchapter II of chapter 5 of title 5, United States Code.

20 (s) ENFORCEMENT.—The powers, remedies, and pro-  
21 cedures set forth in sections 705, 706, 707, 708, 709, 710,  
22 and 712 of the Civil Rights Act of 1964 (42 U.S.C.  
23 2000e-4, 2000e-5, 2000e-6, 2000e-7, 2000e-8, 2000e-  
24 9, and 2000e-11) shall be the powers, remedies, and pro-  
25 cedures this section provides to the Equal Employment

1 Opportunity Commission, to the Attorney General, or to  
 2 any person alleging discrimination on the basis of military  
 3 service in violation of any provision of this section, or reg-  
 4 ulations promulgated under subsection (r), concerning em-  
 5 ployment.

6 **SEC. 3. ENDING HOUSING DISCRIMINATION AGAINST MEM-**  
 7 **BERS OF THE UNIFORMED SERVICES.**

8 (a) DEFINITIONS.—Section 802 of the Fair Housing  
 9 Act (42 U.S.C. 3602) is amended by adding at the end  
 10 the following:

11 “(p) ‘Member of the uniformed services’ means an  
 12 individual who—

13 “(1) is a member of—

14 “(A) the uniformed services (as defined in  
 15 section 101 of title 10, United States Code); or

16 “(B) the National Guard in State status  
 17 under title 32, United States Code; or

18 “(2) was discharged or released from service in  
 19 the uniformed services (as so defined) or the Na-  
 20 tional Guard in such status under conditions other  
 21 than dishonorable.”.

22 (b) DISCRIMINATION IN THE SALE OR RENTAL OF  
 23 HOUSING AND OTHER PROHIBITED PRACTICES.—Section  
 24 804 of the Fair Housing Act (42 U.S.C. 3604) is amend-  
 25 ed—

1           (1) in subsection (a), by inserting “or because  
2 the person is a member of the uniformed services”  
3 after “national origin”;

4           (2) in subsection (b), by inserting “or because  
5 the person is a member of the uniformed services”  
6 after “national origin”;

7           (3) in subsection (c), by inserting “or because  
8 a person is a member of the uniformed services,”  
9 after “national origin,”; and

10           (4) in subsection (d), by inserting “, or because  
11 the person is a member of the uniformed services,”  
12 after “national origin”.

13           (c) DISCRIMINATION IN RESIDENTIAL REAL ESTATE-  
14 RELATED TRANSACTIONS.—Section 805 of the Fair  
15 Housing Act (42 U.S.C. 3605) is amended—

16           (1) in subsection (a), by inserting “or because  
17 the person is a member of the uniformed services”  
18 after “national origin”; and

19           (2) in subsection (c), by striking “, or familial  
20 status” and inserting “familial status, or whether a  
21 person is a member of the uniformed services”.

22           (d) DISCRIMINATION IN THE PROVISION OF BROKER-  
23 AGE SERVICES.—Section 806 of the Fair Housing Act (42  
24 U.S.C. 3606) is amended by inserting “or because a per-

1 son is a member of the uniformed services” after “national  
2 origin”.

3 (e) RELIGIOUS ORGANIZATION OR PRIVATE CLUB  
4 EXEMPTION.—Section 807(a) of the Fair Housing Act  
5 (42 U.S.C. 3607(a)) is amended, in the first sentence by  
6 inserting “or to persons who are not members of the uni-  
7 formed services” after “national origin”.

8 (f) ADMINISTRATION.—Section 808(e)(6) of the Fair  
9 Housing Act (42 U.S.C. 3608(e)(6)) is amended, in the  
10 first sentence, by inserting “(including whether such per-  
11 sons and households are or include a member of the uni-  
12 formed services)” after “persons and households”.

13 (g) PREVENTION OF DISCRIMINATION.—Section 901  
14 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is  
15 amended—

16 (1) in subsection (a), by inserting “, or because  
17 the person is a member of the uniformed services (as  
18 such term is defined in section 802 of this Act),”  
19 after “national origin”;

20 (2) in subsection (b)(1), by inserting “or be-  
21 cause a person is a member of the uniformed serv-  
22 ices (as such term is defined in section 802 of this  
23 Act),” after “national origin,”; and

24 (3) in subsection (c), by inserting “or because  
25 a person is a member of the uniformed services (as

1 such term is defined in section 802 of this Act),”  
2 after “national origin,”.

3 (h) **RULE OF CONSTRUCTION.**—The Fair Housing  
4 Act (42 U.S.C. 3601 et seq.) is amended by adding at  
5 the end the following:

6 **“SEC. 821. RULE OF CONSTRUCTION RELATING TO THE**  
7 **TREATMENT OF MEMBERS OF THE UNI-**  
8 **FORMED SERVICES.**

9 “(a) **RULE OF CONSTRUCTION.**—Nothing in this Act  
10 may be construed to prohibit any person from—

11 “(1) making available to an individual a benefit  
12 with respect to a dwelling, a residential real estate-  
13 related transaction (as defined in section 805 of this  
14 Act), or a service described in section 806 of this  
15 Act because the individual is a member of the uni-  
16 formed services; or

17 “(2) selling or renting a dwelling only to mem-  
18 bers of the uniformed services.

19 “(b) **DEFINITION.**—For purposes of this section, the  
20 term ‘benefit’ includes a term, condition, privilege, pro-  
21 motion, discount, or other favorable treatment (including  
22 an advertisement for such treatment) having the purpose  
23 or effect of providing an advantage to a member of the  
24 uniformed services.”.

1 **SEC. 4. EFFECTIVE DATE.**

2       This Act shall become effective 120 days after the  
3 date of enactment of this Act.

○