

112TH CONGRESS
1ST SESSION

S. 1471

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2011

Mr. BLUMENTHAL (for himself, Mrs. GILLIBRAND, and Mr. BROWN of Ohio) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit discrimination in employment on the basis of an individual's status or history of unemployment.

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 “Fair Employment Op-
5 portunity Act of 2011”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that denial of em-
8 ployment opportunities to individuals because they are or
9 have been unemployed is discriminatory and burdens com-
10 merce by—

1 (1) reducing personal consumption and under-
2 mining economic stability and growth;

3 (2) squandering human capital essential to the
4 Nation's economic vibrancy and growth;

5 (3) increasing demands for Federal and State
6 unemployment insurance benefits, reducing trust
7 fund assets, and leading to higher payroll taxes for
8 employers, cuts in benefits for jobless workers, or
9 both;

10 (4) imposing additional burdens on publicly
11 funded health and welfare programs; and

12 (5) depressing income, property, and other tax
13 revenues that the Federal Government, States, and
14 localities rely on to support operations and institu-
15 tions essential to commerce.

16 (b) PURPOSES.—The purposes of this Act are—

17 (1) to prohibit consideration of an individual's
18 status as unemployed in considering applicants for,
19 screening for, or hiring for positions, except where
20 a requirement related to employment status is a
21 bona fide occupational qualification reasonably nec-
22 essary to successful performance in the job; and

23 (2) to eliminate the burdens imposed on com-
24 merce due to the exclusion of such individuals from
25 employment.

1 **TITLE I—FAIR EMPLOYMENT**
2 **FOR NONFEDERAL EMPLOYEES**

3 **SEC. 101. DEFINITIONS.**

4 As used in this Act—

5 (1) the term “affected individual” means any
6 person who was not considered for employment, or
7 was not hired by an employer, as an employee, be-
8 cause of the person’s current employment status
9 (current as of the date of the decision concerning
10 consideration or hiring), or any person who was not
11 considered, screened, or referred for an employment
12 opportunity, as an employee, by an employment
13 agency because of the person’s current employment
14 status (current as of the date of the decision con-
15 cerning consideration, screening, or referral);

16 (2) the term “employee” has the meaning given
17 the term in section 3 of the Fair Labor Standards
18 Act of 1938 (29 U.S.C. 203), but shall not include
19 an employee covered under subchapter V of chapter
20 63 of title 5, United States Code;

21 (3) the term “employer”—

22 (A) means any person engaged in com-
23 merce or any industry or activity affecting com-
24 merce who has 15 or more employees for each
25 working day in each of 20 or more calendar

1 weeks in the current or preceding calendar
2 year;

3 (B) includes—

4 (i) any person who acts, directly or in-
5 directly, in the interest of an employer de-
6 scribed in subparagraph (A) with respect
7 to employing individuals to work for the
8 employer; and

9 (ii) any successor in interest of an em-
10 ployer described in subparagraph (A);

11 (C) includes any public agency, as defined
12 in section 3 of the Fair Labor Standards Act
13 of 1938 (29 U.S.C. 203), but shall not include
14 an employing agency covered under subchapter
15 V of chapter 63 of title 5, United States Code;
16 and

17 (D) includes the Government Printing Of-
18 fice and the Library of Congress;

19 (4) the term “employment agency” means any
20 person regularly undertaking with or without com-
21 pensation to procure employees for an employer or
22 to procure for individuals opportunities to work as
23 employees for an employer and includes an agent of
24 such a person, and includes any person who main-
25 tains an Internet website that publishes advertise-

1 ments or announcements of openings in jobs for em-
2 ployees;

3 (5) the term “Secretary” means the Secretary
4 of Labor; and

5 (6) the term “status as unemployed”, used with
6 respect to an individual, means the individual’s
7 present or past unemployment, regardless of the
8 length of time such individual was unemployed.

9 **SEC. 102. PROHIBITED ACTS.**

10 (a) EMPLOYERS.—It shall be an unlawful practice for
11 an employer to—

12 (1) fail or refuse to consider for employment, or
13 fail or refuse to hire, an individual as an employee,
14 because of the individual’s status as unemployed;

15 (2) publish in print, on the Internet, or in any
16 other medium, an advertisement or announcement
17 for an employee for any job that includes—

18 (A) any provision stating or indicating that
19 an individual’s status as unemployed disquali-
20 fies the individual for a job; and

21 (B) any provision stating or indicating that
22 an employer will not consider or hire an indi-
23 vidual for employment based on that individ-
24 ual’s status as unemployed; and

1 (3) direct or request that an employment agen-
2 cy take an individual's status as unemployed into ac-
3 count in considering, screening, or referring appli-
4 cants for employment as an employee.

5 (b) EMPLOYMENT AGENCIES.—It shall be an unlaw-
6 ful practice for an employment agency to—

7 (1) fail or refuse to consider, screen, or refer an
8 individual for employment as an employee based on
9 the individual's status as unemployed;

10 (2) limit, segregate, or classify individuals in
11 any manner that may limit their access to informa-
12 tion about jobs, or consideration, screening, or refer-
13 ral for jobs, as employees, because of their status as
14 unemployed; or

15 (3) publish, in print or on the Internet or in
16 any other medium, an advertisement or announce-
17 ment for any vacancy in a job, as an employee, that
18 includes—

19 (A) any provision stating or indicating that
20 an individual's status as unemployed disquali-
21 fies the individual for a job; and

22 (B) any provision stating or indicating that
23 an employer will not consider or hire an indi-
24 vidual for employment based on that individ-
25 ual's status as unemployed.

1 (c) INTERFERENCE WITH RIGHTS, PROCEEDINGS OR
2 INQUIRIES.—It shall be unlawful for any employer or em-
3 ployment agency to—

4 (1) interfere with, restrain, or deny the exercise
5 of or the attempt to exercise, any right provided
6 under this Act; or

7 (2) fail or refuse to hire, to discharge, or in any
8 other manner to discriminate against any individual,
9 as an employee, because such individual—

10 (A) opposed any practice made unlawful by
11 this Act;

12 (B) has filed any charge, or has instituted
13 or caused to be instituted any proceeding,
14 under or related to this Act;

15 (C) has given, or is about to give, any in-
16 formation in connection with any inquiry or
17 proceeding relating to any right provided under
18 this Act; or

19 (D) has testified, or is about to testify, in
20 any inquiry or proceeding relating to any right
21 provided under this Act.

22 (d) BONA FIDE OCCUPATIONAL QUALIFICATION.—
23 Notwithstanding any other provision of this Act, consider-
24 ation by an employer or employment agency of an individ-
25 ual's status as unemployed shall not be an unlawful em-

1 ployment practice under this Act if an individual's employ-
 2 ment in a similar or related job for a period of time rea-
 3 sonably proximate to the hiring of such individual is a
 4 bona fide occupational qualification reasonably necessary
 5 to successful performance in the job that is being filled.

6 **SEC. 103. ENFORCEMENT.**

7 (a) CIVIL ACTION BY INDIVIDUAL.—

8 (1) LIABILITY FOR EMPLOYERS AND EMPLOY-
 9 MENT AGENCIES.—Any employer or employment
 10 agency that violates subsection (a) or (b) of section
 11 4 shall be liable to any affected individual—

12 (A) for actual damages equal to—

13 (i) the amount of—

14 (I) any wages, salary, employ-
 15 ment benefits, or other compensation
 16 denied or lost to such individual by
 17 reason of the violation; or

18 (II) in a case in which wages,
 19 salary, employment benefits, or other
 20 compensation have not been denied or
 21 lost to the individual, any actual mon-
 22 etary losses sustained by the indi-
 23 vidual as a direct result of the viola-
 24 tion or an amount of \$1,000 per viola-
 25 tion per day, whichever is greater;

1 (ii) the interest on the amount de-
2 scribed in clause (i) calculated at the pre-
3 vailing rate; and

4 (iii) an additional amount as liq-
5 uidated damages equal to the sum of the
6 amount described in clause (i) and the in-
7 terest described in clause (ii), and any pu-
8 nitive damages, except that if an employer
9 or employment agency that has violated
10 section 4 proves to the satisfaction of the
11 court that the act or omission that violated
12 section 4 was in good faith and that the
13 employer had reasonable grounds for be-
14 lieving that the act or omission was not a
15 violation of section 4, such court may, in
16 its discretion, reduce the amount of the li-
17 ability to the amount and interest deter-
18 mined under clauses (i) and (ii), respec-
19 tively; and

20 (B) for such equitable relief as may be ap-
21 propriate, including employment.

22 (2) RIGHT OF ACTION.—An action to recover
23 the damages or equitable relief prescribed in para-
24 graph (1) may be maintained against any employer
25 or employment agency in any Federal or State court

1 of competent jurisdiction by any 1 or more persons
2 for and on behalf of—

3 (A) the affected individual; or

4 (B) the affected individual and other indi-
5 viduals similarly situated.

6 (3) FEES AND COSTS.—The court in such an
7 action shall, in addition to any judgment awarded to
8 the plaintiff, allow a reasonable attorney’s fee, rea-
9 sonable expert witness fees, and other costs of the
10 action to be paid by the defendant.

11 (4) LIMITATIONS.—The right provided by para-
12 graph (2) to bring an action by or on behalf of any
13 affected individual shall terminate—

14 (A) on the filing of a complaint by the Sec-
15 retary in an action under subsection (d) in
16 which restraint is sought of any violation of sec-
17 tion 4; or

18 (B) on the filing of a complaint by the Sec-
19 retary in an action under subsection (b) in
20 which a recovery is sought of the damages de-
21 scribed in paragraph (1)(A) owing to an af-
22 fected individual by an employer or employment
23 agency liable under paragraph (1),

1 unless the action described in subparagraph (A) or
2 (B) is dismissed without prejudice on motion of the
3 Secretary.

4 (b) ACTION BY THE SECRETARY.—

5 (1) ADMINISTRATIVE ACTION.—The Secretary
6 shall receive, investigate, and attempt to resolve
7 complaints of violations of section 4 in the same
8 manner that the Secretary receives, investigates, and
9 attempts to resolve complaints of violations of sec-
10 tions 6 and 7 of the Fair Labor Standards Act of
11 1938 (29 U.S.C. 206 and 207).

12 (2) CIVIL ACTION.—The Secretary may bring
13 an action in any court of competent jurisdiction—

14 (A) to enjoin violations of this title and
15 seek other relief and necessary to prevent fu-
16 ture violations;

17 (B) to recover—

18 (i) the damages described in sub-
19 section (a)(1)(A);

20 (ii) in the case of a violation of section
21 4(c), a civil penalty of not less than \$250
22 per violation (in addition to any other re-
23 lief available under this subparagraph); or

24 (iii) such other equitable relief as the
25 court determines to be appropriate.

1 (3) SUMS RECOVERED.—Any sums recovered by
2 the Secretary pursuant to paragraph (2)(B)(i) shall
3 be held in a special deposit account and shall be
4 paid, on order of the Secretary, directly to each af-
5 fected individual. Any such sums recovered pursuant
6 to paragraph (2)(B)(i) that are not paid to an af-
7 fected individual because of inability to do so within
8 a period of 3 years and any sums recovered pursu-
9 ant to paragraph (2)(B)(ii) shall be deposited into
10 the Treasury of the United States as miscellaneous
11 receipts.

12 (c) LIMITATION.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), an action under subsection (a) may be
15 brought not later than 2 years after the date of the
16 last event constituting the alleged violation for which
17 the action is brought, except that the limitation pe-
18 riod for filing an action by an individual shall be
19 tolled during the period during which the Secretary
20 is considering a complaint against any defendant
21 named in a complaint filed with the Secretary under
22 subsection (b)(1).

23 (2) WILLFUL VIOLATION.—In the case of such
24 action brought for a willful violation of section 4,
25 such action may be brought not later than 3 years

1 after the date of the last event constituting the al-
2 leged violation for which such action is brought, ex-
3 cept that the limitation period for filing an action by
4 an individual shall be tolled during the period during
5 which the Secretary is considering a complaint,
6 against the defendant involved, that is filed with the
7 Secretary under subsection (b)(1).

8 (3) COMMENCEMENT.—In determining when an
9 action is commenced by the Secretary under this
10 section for the purposes of this subsection, it shall
11 be considered to be commenced on the date when the
12 Secretary files a complaint in a court of competent
13 jurisdiction.

14 (d) ACTION FOR INJUNCTION BY SECRETARY.—The
15 district courts of the United States shall have jurisdiction,
16 for cause shown, in an action brought by the Secretary—

17 (1) to restrain violations of section 4;

18 (2) to award such other equitable relief as may
19 be appropriate, including employment; and

20 (3) to award monetary damages.

21 (e) SOLICITOR OF LABOR.—The Solicitor of Labor
22 may appear for and represent the Secretary on any litiga-
23 tion brought under this section.

24 (f) GOVERNMENT PRINTING OFFICE AND LIBRARY
25 OF CONGRESS.—With respect to the Government Printing

1 Office (acting as an employer or employment agency), and
 2 with respect to the Library of Congress (acting as an em-
 3 ployer or employment agency), the authority of the Sec-
 4 retary of Labor under this title shall be exercised respec-
 5 tively by the Public Printer and the Librarian of Congress.

6 **TITLE II—FAIR EMPLOYMENT**
 7 **FOR FEDERAL EMPLOYEES**

8 **SEC. 201. PROHIBITED ACTS.**

9 Title 5, United States Code, is amended by inserting
 10 after chapter 23 the following:

11 **“CHAPTER 25—PROHIBITION ON DIS-**
 12 **CRIMINATION BASED ON EMPLOY-**
 13 **MENT STATUS**

14 **“§ 2501. Definitions**

15 “As used in this chapter—

16 “(1) the term ‘affected individual’ means any
 17 person who was not considered for employment, or
 18 was not hired by an employing agency, as an em-
 19 ployee, because of the person’s current employment
 20 status (current as of the date of the decision con-
 21 cerning consideration or hiring), or any person who
 22 was not considered, screened, or referred for an em-
 23 ployment opportunity, as an employee, by an em-
 24 ployment agency because of the person’s current em-
 25 ployment status (current as of the date of the deci-

1 sion concerning consideration, screening, or refer-
2 ral);

3 “(2) the term ‘employee’ means an individual
4 described in section 6381(1)(A);

5 “(3) the term ‘employing agency’ means an
6 agency covered under subchapter V of chapter 63;

7 “(4) the term ‘employment agency’ means any
8 person regularly undertaking with or without com-
9 pensation to procure employees for an employing
10 agency or to procure for individuals opportunities to
11 work as employees for an employing agency and in-
12 cludes an agent of such a person, and includes any
13 person who maintains an Internet website that pub-
14 lishes advertisements or announcements of openings
15 in jobs for employees;

16 “(5) the term ‘Secretary’ means the Secretary
17 of Labor; and

18 “(6) the term ‘status as unemployed’, used with
19 respect to an individual, means the individual’s
20 present or past unemployment, regardless of the
21 length of time such individual was unemployed.

22 **“§ 2502. Prohibited acts**

23 “(a) It shall be an unlawful practice for an employing
24 agency to—

1 “(1) fail or refuse to consider for employment,
2 or fail or refuse to hire, an individual as an em-
3 ployee, because of the individual’s status as unem-
4 ployed;

5 “(2) publish in print, on the Internet, or in any
6 other medium, an advertisement or announcement
7 for an employee for any job that includes—

8 “(A) any provision stating or indicating
9 that an individual’s status as unemployed dis-
10 qualifies the individual for a job; and

11 “(B) any provision stating or indicating
12 that an employing agency will not consider or
13 hire an individual for employment based on that
14 individual’s status as unemployed; and

15 “(3) direct or request that an employment
16 agency take an individual’s status as unemployed
17 into account in considering, screening, or referring
18 applicants for employment as an employee.

19 “(b) It shall be an unlawful practice for an employ-
20 ment agency to—

21 “(1) fail or refuse to consider, screen, or refer
22 an individual for employment as an employee based
23 on the individual’s status as unemployed;

24 “(2) limit, segregate, or classify individuals in
25 any manner that may limit their access to informa-

1 tion about jobs, or consideration, screening, or refer-
2 ral for jobs, as employees, because of their status as
3 unemployed; or

4 “(3) publish, in print or on the Internet or in
5 any other medium, an advertisement or announce-
6 ment for any vacancy in a job, as an employee, that
7 includes—

8 “(A) any provision stating or indicating
9 that an individual’s status as unemployed dis-
10 qualifies the individual for a job; and

11 “(B) any provision stating or indicating
12 that an employing agency will not consider or
13 hire an individual for employment based on that
14 individual’s status as unemployed.

15 “(c) It shall be unlawful for any employing agency
16 or employment agency to—

17 “(1) interfere with, restrain, or deny the exer-
18 cise of or the attempt to exercise, any right provided
19 under this chapter; or

20 “(2) fail or refuse to hire, to discharge, or in
21 any other manner to discriminate against any indi-
22 vidual, as an employee, because such individual—

23 “(A) opposed any practice made unlawful
24 by this chapter;

1 “(B) has filed any charge, or has insti-
2 tuted or caused to be instituted any proceeding,
3 under or related to this chapter;

4 “(C) has given, or is about to give, any in-
5 formation in connection with any inquiry or
6 proceeding relating to any right provided under
7 this chapter; or

8 “(D) has testified, or is about to testify, in
9 any inquiry or proceeding relating to any right
10 provided under this chapter.

11 “(d) Notwithstanding any other provision of this
12 chapter, consideration by an employing agency or employ-
13 ment agency of an individual’s status as unemployed shall
14 not be an unlawful employment practice under this chap-
15 ter if an individual’s employment in a similar or related
16 job for a period of time reasonably proximate to the hiring
17 of such individual is a bona fide occupational qualification
18 reasonably necessary to successful performance in the job
19 that is being filled.

20 **“§ 2503. Enforcement**

21 “The Office of Personnel Management shall prescribe
22 regulations necessary for the administration of this chap-
23 ter. The regulations prescribed under this chapter shall,
24 to the extent appropriate, be consistent with the regula-

1 tions prescribed by the Secretary of Labor to carry out
2 title I of the Fair Employment Opportunity Act of 2011.”.

○