

110TH CONGRESS
1ST SESSION

H. R. 3393

To amend title 38, United States Code, to improve veterans' reemployment rights under chapter 43 of such title, to exempt claims brought under that chapter from arbitration under chapter 1 of title 9 of such Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. DAVIS of Alabama (for himself, Mr. WALZ of Minnesota, and Mr. ALTMIRE) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve veterans' reemployment rights under chapter 43 of such title, to exempt claims brought under that chapter from arbitration under chapter 1 of title 9 of such Code, 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 "Reservist Access to
5 Justice Act of 2007".

1 SEC. 2. IMPROVEMENTS TO VETERANS' REEMPLOYMENT

2 **RIGHTS.**

3 (a) LIQUIDATED DAMAGES.—

4 (1) STATE AND PRIVATE EMPLOYERS.—Section
5 4323(d)(1)(C) of title 38, United States Code, is
6 amended to read as follows:7 “(C) If the court determines that the employ-
8 er’s failure to comply with the provisions of this
9 chapter was willful, the court may require the em-
10 ployer to pay the person an amount equal to the
11 greater of—12 “(i) the amount referred to in subpara-
13 graph (B) as liquidated damages; or
14 “(ii) \$20,000.”.15 (2) FEDERAL GOVERNMENT EMPLOYERS.—Sec-
16 tion 4324 of such title is amended by adding at the
17 end the following new subsection:18 “(e)(1) In any action under this section, the court
19 may award relief as follows:20 “(A) The court may require the employer to
21 comply with the provisions of this chapter.22 “(B) The court may require the employer to
23 compensate the person for any loss of wages or ben-
24 efits suffered by reason of such employer’s failure to
25 comply with the provisions of this chapter.

1 “(C) If the court determines that the employ-
2 er’s failure to comply with the provisions of this
3 chapter was willful, the court may require the em-
4 ployer to pay the person an amount equal to the
5 greater of—

6 “(i) the amount referred to in subpara-
7 graph (B) as liquidated damages; or
8 “(ii) \$20,000.

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

13 “(B) In the case of an action commenced in the name
14 of the United States for which the relief includes com-
15 pensation awarded under subparagraph (B) or (C) of
16 paragraph (1), such compensation shall be held in a spe-
17 cial deposit account and shall be paid, on order of the At-
18 torney General, directly to the person. If the compensation
19 is not paid to the person because of inability to do so with-
20 in a period of 3 years, the compensation shall be covered
21 into the Treasury of the United States as miscellaneous
22 receipts.”.

23 (b) INJUNCTIVE RELIEF.—Section 4323(e) of such
24 title is amended by striking “may” and inserting “shall”.

1 (c) PUNITIVE DAMAGES AUTHORIZED FOR CERTAIN
2 STATE AND PRIVATE EMPLOYERS WHO VIOLATE CHAP-
3 TER 43 OF TITLE 38, UNITED STATES CODE.—Section
4 4323(d) of title 38, United States Code, is amended by
5 adding at the end the following new subparagraph:

6 “(D) In the case of an employer with 15 or
7 more employees, the court may require the employer
8 to pay the person punitive damages, if the court de-
9 termines that the employer’s failure to comply with
10 the provisions of this chapter was done with malice
11 or reckless indifference to the federally-protected
12 rights of the person.”.

13 (d) CLARIFICATION OF RIGHT OF ACTION UNDER
14 USERRA.—Section 4323 of title 38, United States Code,
15 is amended—

16 (1) in subsection (b), by striking paragraphs
17 (2) and (3) and inserting the following new para-
18 graph (2):

19 “(2) In the case of an action against a State
20 (as an employer) or a private employer by a person,
21 the action may be brought in a district court of the
22 United States or State court of competent jurisdic-
23 tion.”;

24 (2) by redesignating subsection (j) as sub-
25 section (k); and

1 (3) by inserting after subsection (i) the fol-
2 lowing new subsection (j):

3 “(j)(1)(A) A State’s receipt or use of Federal finan-
4 cial assistance for any program or activity of a State shall
5 constitute a waiver of sovereign immunity, under the elev-
6 enth amendment to the Constitution or otherwise, to a suit
7 brought by an employee of that program or activity under
8 this chapter for the rights or benefits authorized the em-
9 ployee by this chapter.

10 "(B) In this paragraph, the term 'program or activ-
11 ity' has the meaning given the term in section 309 of the
12 Age Discrimination Act of 1975 (42 U.S.C. 6107).

13 “(2) An official of a State may be sued in the official
14 capacity of the official by any person covered by paragraph
15 (1) who seeks injunctive relief against a State (as an em-
16 ployer) under subsection (e). In such a suit the court may
17 award to the prevailing party those costs authorized by
18 section 722 of the Revised Statutes (42 U.S.C. 1988).”.

19 SEC. 3. EXEMPTION FROM CHAPTER 1 OF TITLE 9, UNITED
20 STATES CODE, OF CLAIMS BY MEMBERS OF
21 THE UNIFORMED SERVICES FOR EMPLOY-
22 MENT AND REEMPLOYMENT RIGHTS AND
23 BENEFITS.

24 Section 4322 of title 38, United States Code, is
25 amended by adding at the end the following:

1 “(g) Chapter 1 of title 9 shall not apply with respect
2 to employment or reemployment rights or benefits claimed
3 under this subchapter.”.

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

5 The amendments made by this Act shall apply with
6 respect to an action commenced after the date of the en-
7 actment of this Act.

○