

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3943
OFFERED BY MR. C. SCOTT FRANKLIN OF
FLORIDA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Servicemember Em-
3 ployment Protection Act of 2023”.

4 SEC. 2. IMPROVEMENTS TO REEMPLOYMENT RIGHTS OF
5 MEMBERS OF THE ARMED FORCES.

6 (a) **USERRA PURPOSES.**—Section 4301(a)(1) of
7 such title is amended by striking “encourage noncareer
8 service in the uniformed services” and inserting “encour-
9 age service in the uniformed services”.

10 (b) **PROHIBITION OF RETALIATION.**—Subsection (b)
11 of section 4311 of title 38, United States Code, is amend-
12 ed by inserting “or other retaliatory action” after “em-
13 ployment action”.

14 (c) **EXPANSION OF INJUNCTIVE RELIEF.**—Sub-
15 section (e) of section 4323 of such title is amended—

16 (1) by striking “The court shall use” and in-
17 serting “(1) The court shall use”; and

1 (2) by adding at the end the following new
2 paragraphs:

3 “(2) A person bringing an action to enforce a provi-
4 sion of this chapter pursuant to subsection (a) shall be
5 entitled to an injunction under paragraph (1) if such per-
6 son demonstrates—

7 “(A) a violation—

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

9 “(ii) of the provisions of this chapter is
10 threatened or is imminent;

11 “(B) the harm to the person outweighs the in-
12 jury to the employer;

13 “(C) a likelihood of success on the merits of
14 such action; and

15 “(D) awarding such relief is in the public inter-
16 est.

17 “(3) The court may not deny a motion for injunctive
18 relief on the basis that a party bringing an action to en-
19 force a provision of this chapter may be awarded wages
20 unearned due to an unlawful termination or denial of em-
21 ployment at the conclusion of such action.”.

22 (d) DAMAGES AGAINST A STATE OR PRIVATE EM-
23 PLOYER.—Section 4323 of such title is further amended,
24 in paragraph (1) of subsection (d), by striking subpara-
25 graph (C) and inserting the following new subparagraphs:

1 “(C) The court may require the employer to
2 pay the person the amount referred to in subpara-
3 graph (B) and interest on such amount, calculated
4 at a rate of 3 percent per year.

5 “(D) The court may require the employer to
6 pay the person the greater of \$50,000 or the amount
7 equal to the amounts referred to in subparagraphs
8 (B) and (C) as liquidated damages, if the court de-
9 termines that the employer knowingly failed to com-
10 ply with the provisions of this chapter.”.

11 (e) MANDATORY ATTORNEY FEES AWARD IN SUC-
12 CESSFUL ACTIONS FOR REEMPLOYMENT.—

13 (1) MSPB ACTIONS.—Paragraph (4) of sub-
14 section (c) of section 4324 of such title is amended
15 by striking “the Board may, in its discretion, award
16 such person reasonable attorney fees.” and inserting
17 “the Board shall award such person reasonable at-
18 torney fees. The Board may, in its discretion, award
19 reasonable attorney fees in a case settled before the
20 issuance of an order if the person can demonstrate
21 that significant attorney fees were incurred and that
22 justice requires such an award.”.

23 (2) FEDERAL CIRCUIT ACTIONS.—Subsection
24 (d) of such section is amended by adding at the end
25 the following new paragraph:

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

4 “(A) prevails in such Federal Circuit pro-
5 ceeding; and

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

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

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

13 (B) by striking “the court may award any
14 such person who prevails in such action or pro-
15 ceeding reasonable attorney fees” and inserting
16 “the court shall award any such person who
17 prevails in such action or proceeding reasonable
18 attorney fees”.

19 (f) GAO REVIEW AND REPORT ON USERRA.—

20 (1) REVIEW.—The Comptroller General of the
21 United States shall review the methods through
22 which the Secretary of Labor, acting through the
23 Veterans’ Employment and Training Service, proc-
24 esses actions for relief under chapter 43 of title 38,
25 United States Code.

1 (2) ELEMENTS.—Not later than one year after
2 the date of the enactment of this Act, the Comp-
3 troller General shall submit to the Committees on
4 Veterans' Affairs of the House of Representatives
5 and the Senate a report that includes—

6 (A) the findings of the review required
7 under paragraph (1);

8 (B) an identification of the number of ac-
9 tions for relief under chapter 43 of title 38,
10 United States Code, initiated during the period
11 covered by the report, disaggregated by size of
12 employer and geographic region;

13 (C) an identification of the number of such
14 actions for relief that were erroneously dis-
15 missed, as determined by the Comptroller Gen-
16 eral;

17 (D) an identification of the number of such
18 actions for relief that were referred to the De-
19 partment of Justice; and

20 (E) an assessment of trends, if any, in
21 such actions for relief initiated during such pe-
22 riod.

23 (g) GAO REVIEW OF PROTECTIONS FOR MEMBERS
24 OF THE UNIFORMED SERVICES BY FEDERAL INTEL-
25 LIGENCE AGENCIES.—

1 (1) IN GENERAL.—Not later than one year
2 after the date of the enactment of this Act, the
3 Comptroller General of the United States shall sub-
4 mit to the appropriate congressional committees a
5 report on the processes and procedures adopted and
6 used by the intelligence community to provide the
7 protections for members of the uniformed services
8 otherwise established under chapter 43 of title 38,
9 United States Code.

10 (2) DEFINITIONS.—In this subsection:

11 (A) The term “appropriate congressional
12 committees” means the Committees on Vet-
13 erans’ Affairs of the House of Representatives
14 and Senate, the Permanent Select Committee
15 on Intelligence of the House of Representatives,
16 and the Select Committee on Intelligence of the
17 Senate.

18 (B) The term “intelligence community”
19 has the meaning given such term in section
20 3(4) of the National Security Act of 1947 (50
21 U.S.C. 3003(4)).

1 **SEC. 3. REVIEW OF INVESTIGATIONS MANUAL OF VET-**
2 **ERANS' EMPLOYMENT AND TRAINING SERV-**
3 **ICE.**

4 (a) IN GENERAL.—Not later than one year after the
5 date of the enactment of this Act, and once every two
6 years thereafter for the period of five years beginning on
7 such date, the Secretary of Labor, shall review the manual
8 of the Department of Labor titled “Veterans’ Employment
9 and Training Service Investigations Manual: USERRA,
10 VEOA, and VP” (or a successor manual) and make such
11 revisions to such manual as the Secretary determines ap-
12 propriate.

13 (b) REPORT.—Not later than 90 days after any date
14 on which the Secretary completes a review required under
15 subsection (a), the Secretary shall submit to the Commit-
16 tees on Veterans’ Affairs of the House of Representatives
17 and the Senate—

18 (1) a report that includes a description of any
19 revision to such manual made pursuant to such re-
20 view; and

21 (2) a copy of the entire such manual which—
22 (A) shall be provided to the Chairman and
23 Ranking Member of each such committee; and

1 (B) may contain a separate addendum for
2 portions of the manual that contain law en-
3 forcement sensitive materials.

