

105TH CONGRESS  
1ST SESSION

# H. R. 166

To amend title 38, United States Code, to clarify the conditions under which an action may be brought against a State to enforce veterans' reemployment rights, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. FILNER introduced the following bill; which was referred to the  
Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to clarify the conditions under which an action may be brought against a State to enforce veterans' reemployment rights, 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' Job Protec-  
5 tion Act".

1 **SEC. 2. CLARIFICATION OF ACTIONS AGAINST STATES TO**  
2 **ENFORCE VETERANS' REEMPLOYMENT**  
3 **RIGHTS.**

4 (a) ACTION AGAINST A STATE.—Section 4323 of title  
5 38, United States Code, is amended—

6 (1) in subsection (a)(1), by striking out “a  
7 State (as an employer) or”;

8 (2) in subsection (a)(2), by inserting “against a  
9 private employer” after “commence an action” in  
10 the matter preceding subparagraph (A);

11 (3) in clauses (ii) and (iii) of subsection  
12 (c)(1)(A), by inserting “or the United States, as ap-  
13 propriate,” after “person” both places it appears;

14 (4) by redesignating the second sentence of sub-  
15 section (b) as paragraph (3) of subsection (a); and

16 (5) by amending subsection (b) to read as fol-  
17 lows:

18 “(b)(1) A person who receives from the Secretary a  
19 notification pursuant to section 4322(e) relating to a State  
20 (as an employer) may request that the Secretary refer the  
21 complaint to the Attorney General. If the Attorney Gen-  
22 eral is reasonably satisfied that the person on whose behalf  
23 the complaint is referred is entitled to the rights or bene-  
24 fits sought, the Attorney General may commence an action  
25 for appropriate relief in an appropriate United States dis-  
26 trict court. The action shall be brought in the name of

1 the United States. In the case that such relief includes  
2 an award of compensation under subsection (e)(1), such  
3 compensation shall be held in a special deposit account  
4 and shall be paid, on order of the Attorney General, di-  
5 rectly to the person. Any such moneys not paid to a person  
6 because of inability to do so within a period of 3 years  
7 shall be covered into the Treasury of the United States  
8 as miscellaneous receipts.

9 “(2) A person may commence an action against a  
10 State as an employer for relief with respect to a complaint  
11 if that person—

12 “(A) has chosen not to apply to the Secretary  
13 for assistance under section 4322(a);

14 “(B) has chosen not to request that the Sec-  
15 retary refer the complaint to the Attorney General  
16 under paragraph (1); or

17 “(C) has been refused representation by the At-  
18 torney General with respect to the complaint under  
19 such paragraph.

20 “(3)(A) In the case of an action commenced against  
21 a State as an employer under paragraph (2), the action  
22 shall be brought in the name of the United States.

23 “(B) A copy of the complaint and written disclosure  
24 of substantially all material evidence and information the

1 person possesses shall be served on the United States pur-  
2 suant to Rule 4(d)(4) of the Federal Rules of Civil Proce-  
3 dure.

4       “(C)(i) The person bringing the action shall have the  
5 right to conduct the action. If the United States so re-  
6 quests, it shall be served with copies of all pleadings filed  
7 in the action and shall be supplied with copies of all depo-  
8 sition transcripts (at the expense of the United States).  
9 When a person proceeds with the action, the court, with-  
10 out limiting the status and rights of the person initiating  
11 the action, may nevertheless permit the United States to  
12 intervene at a later date upon a showing of good cause.

13       “(ii) If the United States intervenes and thereafter  
14 proceeds with the action, it shall have the primary respon-  
15 sibility for prosecuting the action, and shall not be bound  
16 by an act of the person bringing the action. Such person  
17 shall have the right to continue as a party to the action.

18       “(iii) The United States may settle the action with  
19 the defendant notwithstanding the objections of the person  
20 initiating the action if the court determines, after a hear-  
21 ing, that the proposed settlement is fair, adequate, and  
22 reasonable under all the circumstances.

23       “(D) After intervention by the United States, upon  
24 a showing by the defendant that unrestricted participation  
25 during the course of the litigation by the person initiating

1 the action would be for purposes of harassment or would  
2 cause the defendant undue burden or unnecessary ex-  
3 pense, the court may limit the participation by the person  
4 in the litigation.

5 “(4) If the United States does not intervene under  
6 paragraph (3) and the person bringing the action prevails  
7 or settles the claim, the person shall receive appropriate  
8 relief, including an amount for compensation or liquidated  
9 damages under subsection (c)(1). The amount shall be  
10 paid out of the proceeds of the action or settlement. The  
11 person prevailing in the action or settling the claim shall  
12 also receive an amount for reasonable expenses which the  
13 court finds to have been necessarily incurred, plus reason-  
14 able attorneys’ fees and costs. All such expenses, fees, and  
15 costs shall be awarded against the defendant.

16 “(5) In the case of an action brought under this sub-  
17 section, the appropriate district court is the court for any  
18 district in which the State exercises any authority or car-  
19 ries out any function.

20 “(6) The United States is not liable for expenses  
21 which a person incurs in bringing an action under this  
22 subsection.”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 subsection (a) shall apply to all actions commenced under  
25 chapter 43 of title 38, United States Code, that are not

1 final on the date of the enactment of this Act. In the case  
2 of any such action, the court shall, upon motion of a party,  
3 substitute parties to the action so that such action may  
4 proceed in accordance with section 4323 of such title, as  
5 amended by subsection (a) of this section.

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