

# **EXHIBIT A**

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5375

To amend title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Ms. SCHWARTZ (for herself, Mr. DOYLE, Mr. CONNOLLY, Mr. CARTWRIGHT, Mr. BRADY of Pennsylvania, Mr. FATTAH, Mr. COURTNEY, and Ms. BONAMICI) introduced the following bill; which was referred to the Committee on Veterans' Affairs, and in addition to the Committees on Armed Services and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services, 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 “Servicemembers Access  
5 to Justice Act of 2014”.

1 **SEC. 2. WAIVER OF SOVEREIGN IMMUNITY UNDER THE**  
2 **ELEVENTH AMENDMENT WITH RESPECT TO**  
3 **ENFORCEMENT OF EMPLOYMENT AND REEM-**  
4 **PLOYMENT RIGHTS OF MEMBERS OF THE**  
5 **UNIFORMED SERVICES.**

6 (a) IN GENERAL.—Section 4323 of title 38, United  
7 States Code, is amended—

8 (1) in subsection (b), by striking paragraph (2)  
9 and inserting the following new paragraph:

10 “(2) In the case of an action against a State (as an  
11 employer) by a person, the action may be brought in the  
12 appropriate district court of the United States or State  
13 court of competent jurisdiction.”;

14 (2) by redesignating subsection (i) as subsection  
15 (j); and

16 (3) by inserting after subsection (h) the fol-  
17 lowing new subsection:

18 “(i) WAIVER OF STATE SOVEREIGN IMMUNITY.—(1)  
19 A State’s receipt or use of Federal financial assistance for  
20 any program or activity of a State shall constitute a waiver  
21 of sovereign immunity, under the eleventh amendment to  
22 the Constitution or otherwise, to a suit brought by—

23 “(A) a person who is or was an employee in  
24 that program or activity for the rights or benefits  
25 authorized the person by this chapter;

1           “(B) a person applying to be such an employee  
2           in that program or activity for the rights or benefits  
3           authorized the person by this chapter; or

4           “(C) a person seeking reemployment as an em-  
5           ployee in that program or activity for the rights or  
6           benefits authorized the person by this chapter.

7           “(2) In this subsection, the term ‘program or activity’  
8           has the meaning given that term in section 309 of the  
9           Age Discrimination Act of 1975 (42 U.S.C. 6107).”.

10          (b) APPLICATION.—The amendments made by sub-  
11          section (a) shall apply to—

12               (1) any failure to comply with a provision of or  
13               any violation of chapter 43 of title 38, United States  
14               Code, that occurs before, on, or after the date of the  
15               enactment of this Act; and

16               (2) to all actions or complaints filed under such  
17               chapter 43 that are commenced after the date of the  
18               enactment of this Act.

19          **SEC. 3. UNENFORCEABILITY OF AGREEMENTS TO ARBI-**  
20                               **TRATE DISPUTES REGARDING EMPLOYMENT**  
21                               **AND REEMPLOYMENT RIGHTS OF MEMBERS**  
22                               **OF THE UNIFORMED SERVICES.**

23          (a) IN GENERAL.—Subchapter III of chapter 43 of  
24          title 38, United States Code, is amended by adding at the  
25          end the following new section:

1 **“§ 4328. Unenforceability of agreements to arbitrate**  
2 **disputes**

3 “(a) PROTECTION OF EMPLOYEE RIGHTS.—Notwith-  
4 standing any other provision of law, any clause of any  
5 agreement between an employer and an employee that re-  
6 quires arbitration of a dispute arising under this chapter  
7 shall not be enforceable.

8 “(b) EXCEPTIONS.—(1) Subsection (a) shall not  
9 apply with respect to any dispute if, after such dispute  
10 arises, the parties involved knowingly and voluntarily  
11 agree to submit such dispute to arbitration.

12 “(2) Subsection (a) shall not preclude the enforce-  
13 ment of any of the rights or terms of a valid collective  
14 bargaining agreement.

15 “(c) VALIDITY AND ENFORCEMENT.—Any issue as to  
16 whether this section applies to an arbitration clause shall  
17 be determined by Federal law. Except as otherwise pro-  
18 vided in chapter 1 of title 9, the validity or enforceability  
19 of an agreement to arbitrate referred to in subsection (a)  
20 or (b)(1), shall be determined by a court, rather than the  
21 arbitrator, irrespective of whether the party resisting arbi-  
22 tration challenges the agreement to arbitrate specifically  
23 or in conjunction with other terms of the agreement.

24 “(d) APPLICATION.—This section shall apply with re-  
25 spect to all contracts and agreements between an employer

1 and an employee in force before, on, or after the date of  
2 the enactment of this section.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for such chapter is amended by inserting after the item  
5 relating to section 4326 the following new item:

“4328. Unenforceability of agreements to arbitrate disputes.”.

6 (c) APPLICATION.—The provisions of section 4328 of  
7 title 38, United States Code, as added by subsection (a),  
8 shall apply to—

9 (1) any failure to comply with a provision of or  
10 any violation of chapter 43 of title 38, United States  
11 Code, that occurs before, on, or after the date of the  
12 enactment of this Act; and

13 (2) to all actions or complaints filed under such  
14 chapter 43 that are pending on or after the date of  
15 the enactment of this Act.

16 **SEC. 4. ENHANCED REMEDIES FOR ENFORCEMENT OF EM-**  
17 **PLOYMENT AND REEMPLOYMENT RIGHTS OF**  
18 **MEMBERS OF THE UNIFORMED SERVICES.**

19 (a) STATE AND PRIVATE EMPLOYERS.—Section  
20 4323(d) of title 38, United States Code, is amended—

21 (1) by redesignating paragraphs (2) and (3) as  
22 paragraphs (4) and (5), respectively;

23 (2) in paragraph (4) (as so redesignated)—

24 (A) by inserting “or damages” after “com-  
25 pensation” each place it appears;

1 (B) by striking “subparagraph (B) or (C)  
2 of paragraph (1)” the first place it appears and  
3 inserting “paragraph (1) or (3)”; and

4 (C) by striking “subparagraph (B) or (C)  
5 of paragraph (1)” the second place it appears  
6 and inserting “paragraph (1) or (3)”; and

7 (3) by striking the subsection enumerator and  
8 heading and paragraph (1) and inserting the fol-  
9 lowing:

10 “(d) REMEDIES.—(1) A State or private employer  
11 who violates the provisions of this chapter shall be liable  
12 to any person affected—

13 “(A) for damages in the amount of—

14 “(i) any wages, salary, benefits, or other  
15 compensation denied or lost by such person by  
16 reason of the violation; or

17 “(ii) in a case in which wages, salary, ben-  
18 efits, or other compensation have not been de-  
19 nied or lost to the person, any actual monetary  
20 losses sustained by the person as a result of the  
21 violation;

22 “(B) the interest on the amount described in  
23 subparagraph (A) calculated at the prevailing inter-  
24 est rates over the period of time for which the dam-  
25 ages are due; and

1           “(C) an additional amount as liquidated dam-  
2           ages equal to the sum of the amount described in  
3           subparagraph (A) and the interest described in sub-  
4           paragraph (B), or \$10,000, whichever is greater ex-  
5           cept that, if the employer proves to the satisfaction  
6           of the court that the act or omission giving rise to  
7           the person’s action was in good faith and that the  
8           employer had reasonable grounds for believing the  
9           act or omission was not a violation of the provisions  
10          of this chapter, the court may award, in its discre-  
11          tion, no liquidated damages or award any amount of  
12          liquidated damages not to exceed 100 percent of the  
13          compensation or damages awarded under subpara-  
14          graph (A) and the interest described in subpara-  
15          graph (B).

16          “(2) In any action under this section, the court may  
17          require the employer to comply with the provisions of this  
18          chapter.”.

19          (b) PUNITIVE DAMAGES.—Section 4323(d) of such  
20          title is further amended by inserting after paragraph (2)  
21          (as inserted by subsection (a)(3) of this section) the fol-  
22          lowing new paragraph:

23          “(3) In the case of a violation of this chapter by a  
24          State or private employer with 25 or more employees, the  
25          court shall require the employer to pay the person affected

1 punitive damages if the court determines that the employ-  
2 er’s violation of this chapter was done with malice or reck-  
3 less indifference to the rights of the person under this  
4 chapter.”.

5 (c) RIGHT TO JURY TRIAL.—Section 4323(d) of such  
6 title is further amended by adding at the end the fol-  
7 lowing:

8 “(6) A person who commences an action under this  
9 section shall be entitled to a trial by jury.”.

10 (d) FEDERAL GOVERNMENT EMPLOYERS.—Para-  
11 graph (2) of section 4324(c) of such title is amended to  
12 read as follows:

13 “(2) If the Board determines that a Federal executive  
14 agency or the Office of Personnel Management has vio-  
15 lated the provisions of this chapter relating to the employ-  
16 ment or reemployment of a person by the agency, the  
17 Board shall enter an order requiring the agency or Office  
18 to comply with such provisions and to compensate such  
19 person—

20 “(A) for damages in the amount of—

21 “(i) any wages, salary, benefits, or other  
22 compensation denied or lost by such person by  
23 reason of the violation; or

24 “(ii) in a case in which wages, salary, ben-  
25 efits, or other compensation has not been de-

1           nied or lost to the person, any actual monetary  
2           losses sustained by the person as a result of the  
3           violation;

4           “(B) the interest on the amount described in  
5           subparagraph (A) calculated at the prevailing inter-  
6           est rates over the period of time for which the dam-  
7           ages are due; and

8           “(C) an additional amount as liquidated dam-  
9           ages equal to the sum of the amount described in  
10          subparagraph (A) and the interest described in sub-  
11          paragraph (B), or \$10,000, whichever is greater; ex-  
12          cept that, if the Federal executive agency or the Of-  
13          fice of Personnel Management proves to the satisfac-  
14          tion of the Board that the act or omission giving rise  
15          to such person’s complaint was in good faith and  
16          that the agency or Office had reasonable grounds for  
17          believing that the act or omission was not a violation  
18          of the provisions of this chapter, the Board may  
19          award, in the discretion of the Board, no liquidated  
20          damages or award any amount of liquidated dam-  
21          ages not to exceed 100 percent of the compensation  
22          or damages awarded under subparagraph (A) and  
23          the interest described in subparagraph (B).”.

24          (e) APPLICATION.—The amendments made by this  
25          section shall apply to—

1           (1) any failure to comply with a provision of or  
2 any violation of chapter 43 of title 38, United States  
3 Code, that occurs before, on, or after the date of the  
4 enactment of this Act; and

5           (2) to all actions or complaints filed under such  
6 chapter 43 that are commenced after the date of the  
7 enactment of this Act.

8 **SEC. 5. REQUIRED AWARD OF ATTORNEY FEES IN ACTIONS**  
9           **TO ENFORCE EMPLOYMENT AND REEMPLOY-**  
10           **MENT RIGHTS OF MEMBERS OF THE UNI-**  
11           **FORMED SERVICES.**

12           (a) ENFORCEMENT OF RIGHTS WITH RESPECT TO  
13 A STATE OR PRIVATE EMPLOYER.—Section 4323(h)(2) of  
14 title 38, United States Code, is amended by striking  
15 “may” and inserting “shall”.

16           (b) ENFORCEMENT OF RIGHTS WITH RESPECT TO  
17 FEDERAL EXECUTIVE AGENCIES.—Section 4324(c)(4) of  
18 such title is amended by striking “the Board may, in its  
19 discretion, award” and inserting “the Board shall award”.

20           (c) APPLICATION.—The amendments made by sub-  
21 sections (a) and (b) shall apply to—

22           (1) any failure to comply with a provision of or  
23 any violation of chapter 43 of title 38, United States  
24 Code, that occurs before, on, or after the date of the  
25 enactment of this Act; and

1           (2) all actions or complaints filed under such  
2           chapter 43 that are pending on or after the date of  
3           the enactment of this Act.

4 **SEC. 6. REQUIRING EQUITABLE RELIEF WHEN APPRO-**  
5 **PRIATE.**

6           (a) IN GENERAL.—Section 4323(e) of title 38,  
7 United States Code, is amended—

8           (1) by striking “The court shall use,” and in-  
9           serting “(1) The court shall use,”; and

10           (2) by adding at the end the following new  
11 paragraph:

12           “(2) Notwithstanding rule 65 of the Federal Rules  
13 of Civil Procedure or any other provision of law, for pur-  
14 poses of determining whether to issue an injunction or re-  
15 straining order pursuant to paragraph (1)—

16           “(A) an employer’s denial of reemployment or  
17 retention in employment shall constitute irreparable  
18 harm to a person who is denied reemployment or re-  
19 tention in employment if an injunction to reinstate  
20 such person is not issued, and such person shall be  
21 considered to have no adequate remedy at law;

22           “(B) if the court balances the hardships be-  
23 tween the parties, there shall be a rebuttable pre-  
24 sumption that the balance of harm to a person who  
25 is denied reemployment or retention in employment

1 if an injunction to reinstate such person is not  
2 issued outweighs the harm to such person’s employer  
3 or former employer if an injunction is issued to rein-  
4 state such person; and

5 “(C) if the court considers the public interest or  
6 public policy, there shall be a rebuttable presumption  
7 that the issuance of an injunction to reinstate a per-  
8 son who is denied reemployment or retention in em-  
9 ployment is in the public interest and advances pub-  
10 lic policy.”.

11 (b) APPLICATION.—The amendments made by sub-  
12 section (a) shall apply to—

13 (1) any failure to comply with a provision of or  
14 any violation of chapter 43 of title 38, United States  
15 Code, that occurs before, on, or after the date of the  
16 enactment of this Act; and

17 (2) to all actions or complaints filed under such  
18 chapter 43 that are pending on or after the date of  
19 the enactment of this Act.

20 **SEC. 7. REQUIREMENT THAT FEDERAL AGENCIES PROVIDE**  
21 **NOTICE TO CONTRACTORS OF POTENTIAL**  
22 **OBLIGATIONS RELATING TO EMPLOYMENT**  
23 **AND REEMPLOYMENT RIGHTS OF MEMBERS**  
24 **OF THE UNIFORMED SERVICES.**

25 (a) CIVILIAN AGENCIES.—



1 **“§ 2338. Notice to contractors of potential obligations**  
2 **relating to employment and reemploy-**  
3 **ment rights of members of the uniformed**  
4 **services**

5 “Each contract for the procurement of property or  
6 services that is entered into by the head of an executive  
7 agency shall include a notice to the contractor that the  
8 contractor may have obligations under chapter 43 of title  
9 38.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-  
11 tions for such chapter is amended by adding at the  
12 end the following new item:

“2338. Notice to contractors of potential obligations relating to employment and  
reemployment rights of members of the uniformed services.”.

13 **SEC. 8. CLARIFYING THAT PROVISIONS OF SECTION 4302**  
14 **OF TITLE 38, UNITED STATES CODE, APPLY**  
15 **TO BOTH SUBSTANTIVE AND PROCEDURAL**  
16 **RIGHTS.**

17 Section 4302 of title 38, United States Code, is  
18 amended by inserting “substantive or procedural” before  
19 “right or benefit” each place it occurs.

1 **SEC. 9. COMPTROLLER GENERAL OF THE UNITED STATES**  
2 **STUDY ON EFFECTIVENESS OF FEDERAL**  
3 **PROGRAMS OF EDUCATION AND OUTREACH**  
4 **ON EMPLOYER OBLIGATIONS REGARDING**  
5 **EMPLOYMENT AND REEMPLOYMENT RIGHTS**  
6 **OF MEMBERS OF THE UNIFORMED SERVICES.**

7 (a) **STUDY REQUIRED.**—The Comptroller General of  
8 the United States shall conduct a study on the effective-  
9 ness of Federal programs of education and outreach on  
10 employer obligations under chapter 43 of title 38, United  
11 States Code.

12 (b) **CONTENTS OF STUDY.**—In carrying out the study  
13 required by subsection (a), the Comptroller General  
14 shall—

15 (1) assess current practices and procedures of  
16 Federal agencies for educating employers about their  
17 obligations under chapter 43 of title 38, United  
18 States Code;

19 (2) identify best practices for bringing the em-  
20 ployment practices of small businesses into compli-  
21 ance with such chapter;

22 (3) determine whether the Employer Support  
23 for the Guard and Reserve, the Small Business Ad-  
24 ministration, or other agencies could collaborate to  
25 develop a program to educate employers regarding  
26 their obligations under such chapter; and

1           (4) determine the effect on recruitment and re-  
2           tention in the National Guard and Reserves of the  
3           failure of employers to meet their reemployment ob-  
4           ligations under such chapter.

5           (c) REPORT TO CONGRESS.—Not later than Decem-  
6           ber 31, 2015, the Comptroller General shall submit to  
7           Congress a report on the study conducted under sub-  
8           section (a), including the following:

9           (1) The findings of the Comptroller General  
10          with respect to such study.

11          (2) The recommendations of the Comptroller  
12          General for the improvement of education and out-  
13          reach for employers with respect to their obligations  
14          under chapter 43 of title 38, United States Code.

○