		(Original Signature of Member)
112TH CONGRESS 1ST SESSION	H.R.	

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

## IN THE HOUSE OF REPRESENTATIVES

Ms.	DELAURO	introduced	the	following	bill;	which	was	referred	to	the
	Com	mittee on _								

## 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

1	have been unemployed is discriminatory and burdens com-
2	merce by—
3	(1) reducing personal consumption and under-
4	mining economic stability and growth;
5	(2) squandering human capital essential to the
6	Nation's economic vibrancy and growth;
7	(3) increasing demands for State and Federal
8	unemployment insurance benefits, reducing trust
9	fund assets, and leading to higher payroll taxes for
10	employers, cuts in benefits for jobless workers, or
11	both;
12	(4) imposing additional burdens on publicly
13	funded health and welfare programs; and
14	(5) depressing income, property, and other tax
15	revenues that states, localities and the Federal Gov-
16	ernment rely on to support operations and institu-
17	tions essential to commerce.
18	(b) Purpose.—The purpose of this Act is to prohibit
19	consideration of an individual's status as unemployed in
20	screening for or filling positions except where a require-
21	ment related to employment status is a bona fide occupa-
22	tional qualification reasonably necessary to successful per-
23	formance in the job and to eliminate the burdens imposed
24	on commerce by excluding such individuals from employ-
25	ment.

## 1 SEC. 3. DEFINITIONS.

2	As used in this Act—
3	(1) the term "employer" means any person en-
4	gaged in commerce or any industry or activity af-
5	fecting commerce who has 15 or more employees for
6	each working day in each of 20 or more calendar
7	weeks in the current or preceding calendar year, and
8	includes—
9	(A) any person who acts, directly or indi-
10	rectly, in the interest of an employer with re-
11	spect to employing individuals to work for the
12	employer; and
13	(B) any successor in interest of an em-
14	ployer.
15	(2) the term "employment agency" means any
16	person regularly undertaking with or without com-
17	pensation to procure employees for an employer or
18	to procure for individuals opportunities to work for
19	an employer and includes an agent of such a person,
20	and includes any person who maintains an Internet
21	website that publishes advertisements or announce-
22	ments of job openings;
23	(3) the term "affected individual" means any
24	person who was refused consideration for employ-
25	ment or was not hired by an employer because of the
26	person's current employment status, or any person

1	who was not considered, screened, or referred for
2	employment opportunities by an employment agency
3	because of the person's current employment status;
4	(4) the term "status as unemployed" means an
5	individual's present or past unemployment regard-
6	less of the length of time such individual was unem-
7	ployed; and
8	(5) the term "Secretary" means the Secretary
9	of Labor.
10	SEC. 4. PROHIBITED ACTS.
11	(a) Employers.—It shall be an unlawful practice for
12	an employer to—
13	(1) refuse to consider for employment or refuse
14	to offer employment to an individual because of the
15	individual's status as unemployed;
16	(2) publish in print, on the Internet, or in any
17	other medium, an advertisement or announcement
18	for any job that 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 an applicant for
24	employment based on that individual's status as
25	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 screening or referring applicants for em-
4	ployment.
5	(b) Employment Agencies.—It shall be an unlaw-
6	ful practice for an employment agency to—
7	(1) refuse to consider or refer an individual for
8	employment based on the individual's status as un-
9	employed;
10	(2) limit, segregate, or classify individuals in
11	any manner that may limit their access to informa-
12	tion about jobs or referral for consideration of jobs
13	because of their status as unemployed; or
14	(3) publish, in print or on the Internet or in
15	any other medium, an advertisement or announce-
16	ment for any job vacancy that includes—
17	(A) any provision stating or indicating that
18	an individual's status as unemployed disquali-
19	fies the individual for a job; and
20	(B) any provision stating or indicating that
21	an employer will not consider individuals for
22	employment based on that individual's status as
23	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) refuse to hire, to discharge, or in any other
8	manner to discriminate against any individual be-
9	cause 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 where an individual's employment in a
2	similar or related job for a period of time reasonably proxi-
3	mate to the hiring of such individual is a bona fide occupa-
4	tional qualification reasonably necessary to successful per-
5	formance of the job that is being filled.
6	SEC. 5. 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 section 4(a) and (b) shall be lia-
11	ble 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 a civil penalty of \$1000 per

1	violation per day, whichever is great-
2	er;
3	(ii) the interest on the amount de-
4	scribed in clause (i) calculated at the pre-
5	vailing rate; and
6	(iii) an additional amount as liq-
7	uidated damages equal to the sum of the
8	amount described in clause (i) and the in-
9	terest described in clause (ii), except that
10	if an employer or employment agency that
11	has violated section 4 proves to the satis-
12	faction of the court that the act or omis-
13	sion that violated section 4 was in good
14	faith and that the employer had reasonable
15	grounds for believing that the act or omis-
16	sion was not a violation of section 4, such
17	court may, in its discretion, reduce the
18	amount of the liability to the amount and
19	interest determined under clauses (i) and
20	(ii), respectively; and
21	(B) for such equitable relief as may be ap-
22	propriate, including employment and compen-
23	satory and punitive damages.
24	(2) Right of action.—An action to recover
25	the damages or equitable relief prescribed in para-

1	graph (1) of this subsection may be maintained
2	against any employer or employment agency in any
3	Federal or State court of competent jurisdiction by
4	any one or more persons for and in behalf of—
5	(A) the affected individual; or
6	(B) the affected individual and other indi-
7	viduals similarly situated.
8	(3) FEES AND COSTS.—The court in such an
9	action shall, in addition to any judgment awarded to
10	the plaintiff, allow a reasonable attorney's fee, rea-
11	sonable expert witness fees, and other costs of the
12	action to be paid by the defendant.
13	(4) Limitations.—The right provided by para-
14	graph (2) of this subsection to bring an action by or
15	on behalf of any affected individual shall termi-
16	nate—
17	(A) on the filing of a complaint by the Sec-
18	retary in an action under subsection (d) in
19	which restraint is sought of any violation of sec-
20	tion 4; or
21	(B) on the filing of a complaint by the Sec-
22	retary in an action under subsection (b) in
23	which a recovery is sought of the damages de-
24	scribed in paragraph (1)(A) owing to an af-
25	fected individual by an employer or employment

1	agency liable under paragraph (1), unless the
2	action described in subparagraph (A) or (B) is
3	dismissed without prejudice on motion of the
4	Secretary.
5	(b) ACTION BY THE SECRETARY.—
6	(1) Administrative action.—The Secretary
7	shall receive, investigate, and attempt to resolve
8	complaints of violations of section 4 in the same
9	manner that the Secretary receives, investigates, and
10	attempts to resolve complaints of violations of sec-
11	tions 6 and 7 of the Fair Labor Standards Act of
12	1938 (29 U.S.C. 206 and 207).
13	(2) Civil action.—The Secretary may bring
14	an action in any court of competent jurisdiction—
15	(A) to enjoin violations of this title and
16	seek other relief going forward necessary to pre-
17	vent future violations;
18	(B) to recover—
19	(i) the damages described in sub-
20	section $(a)(1)(A)$ ;
21	(ii) in the case of a violation of section
22	4(c), a civil penalty of not less than \$250
23	per violation; or
24	(iii) such other equitable relief the
25	Court deems appropriate.

1	(3) Sums recovered.—Any sums recovered by
2	the Secretary pursuant to paragraph (2)(A) shall be
3	held in a special deposit account and shall be paid,
4	on order of the Secretary, directly to each affected
5	individual. Any such sums recovered pursuant to
6	paragraph (2)(A) that are not paid to an affected in-
7	dividual because of inability to do so within a period
8	of 3 years and any sums recovered pursuant to para-
9	graph (2)(B) shall be deposited into the Treasury of
10	the United States as miscellaneous receipts.
11	(c) Limitation.—
12	(1) In general.—Except as provided in para-
13	graph (2), an action under subsection (a) may be
14	brought not later than 2 years after the date of the
15	last event constituting the alleged violation for which
16	the action is brought, provided that the limitations
17	for filing an action shall be tolled during the period
18	that the Secretary is considering a complaint against
19	any defendant named in a complaint filed with the
20	Secretary under subsection (b)(1) above.
21	(2) WILLFUL VIOLATION.—In the case of such
22	action brought for a willful violation of section 4,
23	such action may be brought within 3 years of the
24	date of the last event constituting the alleged viola-
25	tion for which such action is brought, provided that

1	the limitations for filing an action by an individual
2	shall be tolled during the period that the Secretary
3	is considering a complaint pursuant to subsection
4	(b)(1).
5	(3) Commencement.—In determining when an
6	action is commenced by the Secretary under this
7	section for the purposes of this subsection, it shall
8	be considered to be commenced on the date when the
9	Secretary files a complaint in a court of competent
10	jurisdiction.
11	(d) Action for Injunction by Secretary.—The
12	district courts of the United States shall have jurisdiction,
13	for cause shown, in an action brought by the Secretary—
14	(1) to restrain violations of section 4; and ?
15	(2) to award such other equitable relief as may
16	be appropriate, including employment and monetary
17	damages.
18	(e) Solicitor of Labor.—The Solicitor of Labor
19	may appear for and represent the Secretary on any litiga-
20	tion brought under this section.