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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Ms. DELAURO introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# 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 proximi-  
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.