

106TH CONGRESS
2D SESSION

S. 3008

To amend the Age Discrimination in Employment Act of 1967 to require, as a condition of receipt of Federal funding, that States waive immunity to suit for certain violations of that Act, and to affirm the availability of certain suits for injunctive relief to ensure compliance with that Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2000

Mr. JEFFORDS (for himself, Mr. KENNEDY, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Age Discrimination in Employment Act of 1967 to require, as a condition of receipt of Federal funding, that States waive immunity to suit for certain violations of that Act, and to affirm the availability of certain suits for injunctive relief to ensure compliance with that Act.

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 “Older Workers Rights
5 Restoration Act of 2000”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Since 1974, the Age Discrimination in Em-
4 ployment Act of 1967 (29 U.S.C. 621 et seq.) has
5 prohibited States from discriminating in employment
6 on the basis of age. In *EEOC v. Wyoming*, 460 U.S.
7 226 (1983), the Supreme Court upheld Congress'
8 constitutional authority to prohibit States from dis-
9 criminating in employment on the basis of age. The
10 prohibitions of the Age Discrimination in Employ-
11 ment Act of 1967 remain in effect and continue to
12 apply to the States, as the prohibitions have for
13 more than 25 years.

14 (2) Age discrimination in employment remains
15 a serious problem both nationally and among State
16 agencies, and has invidious effects on its victims, the
17 labor force, and the economy as a whole. For exam-
18 ple, age discrimination in employment—

19 (A) increases the risk of unemployment
20 among older workers, who will as a result be
21 more likely to be dependent on government re-
22 sources;

23 (B) prevents the best use of available labor
24 resources;

25 (C) adversely effects the morale and pro-
26 ductivity of older workers; and

1 (D) perpetuates unwarranted stereotypes
2 about the abilities of older workers.

3 (3) Private civil suits by the victims of employ-
4 ment discrimination have been a crucial tool for en-
5 forcement of the Age Discrimination in Employment
6 Act of 1967 since the enactment of that Act. In
7 Kimel v. Florida Board of Regents, 120 S. Ct. 631
8 (2000), however, the Supreme Court held that Con-
9 gress lacks the power under the 14th amendment to
10 abrogate State sovereign immunity to suits by indi-
11 viduals under the Age Discrimination in Employ-
12 ment Act of 1967. The Federal Government has an
13 important interest in ensuring that Federal funds
14 are not used to facilitate violation of, the Age Dis-
15 crimination in Employment Act of 1967. Private
16 civil suits are a critical tool for advancing that inter-
17 est.

18 (4) As a result of the Kimel decision, although
19 age-based discrimination by State employers remains
20 unlawful, the victims of such discrimination lack im-
21 portant remedies for vindication of their rights that
22 are available to all other employees covered under
23 the Act, including employees in the private sector, of
24 local government, and of the Federal Government.
25 Unless a State chooses to waive sovereign immunity,

1 or the Equal Employment Opportunity Commission
2 brings an action on their behalf, State employees
3 victimized by violations of the Age Discrimination in
4 Employment Act of 1967 have no adequate Federal
5 remedy for violations of the Act. In the absence of
6 the deterrent effect that such remedies provide,
7 there is a greater likelihood that entities carrying
8 out federally funded programs and activities will use
9 Federal funds to violate the Act, or that the Federal
10 funds will otherwise subsidize or facilitate violations
11 of the Act.

12 (5) Federal law has long treated nondiscrimina-
13 tion obligations as a core component of programs or
14 activities that are, in whole or part, assisted by Fed-
15 eral funds. Federal funds should not be used, di-
16 rectly or indirectly, to subsidize invidious discrimina-
17 tion. Assuring nondiscrimination in employment is a
18 crucial aspect of assuring nondiscrimination in those
19 programs and activities.

20 (6) Discrimination on the basis of age in feder-
21 ally assisted programs or activities is, in contexts
22 other than employment, forbidden by the Age Dis-
23 crimination Act of 1975 (42 U.S.C. 6101 et seq.).
24 Congress determined that it was not necessary for
25 the Age Discrimination Act of 1975 to apply to em-

1 employment discrimination because the Age Discrimi-
2 nation in Employment Act of 1974 already forbade
3 discrimination in employment by, and authorized
4 suits against, State agencies and other entities that
5 receive Federal funds. In section 1003 of the Reha-
6 bilitation Act Amendments of 1986 (42 U.S.C.
7 2000d-7), Congress required all State recipients of
8 Federal assistance to waive any immunity from suit
9 for discrimination claims arising under the Age Dis-
10 crimination Act of 1975. The earlier limitation in
11 the Age Discrimination Act of 1975, originally in-
12 tended only to avoid duplicative coverage and rem-
13 edies, has in the wake of the Kimel decision become
14 a serious loophole leaving millions of State employ-
15 ees without an important Federal remedy for age
16 discrimination resulting in the use of such funds to
17 subsidize or facilitate violations of the Age Discrimi-
18 nation in Employment Act of 1967.

19 (7) The Supreme Court has upheld Congress'
20 authority to condition receipt of Federal funds on
21 acceptance by the States or other recipients of con-
22 ditions regarding or related to the use of those
23 funds, as in *Cannon v. University of Chicago*, 441
24 U.S. 677 (1979). The Court has further recognized
25 that Congress may require a State, as a condition of

1 receipt of Federal assistance, to waive the State's
2 sovereign immunity to suits for a violation of Fed-
3 eral law, as in *College Savings Bank v. Florida Pre-*
4 *paid Postsecondary Education Expense Board*, 527
5 U.S. 666 (1999). In the wake of the *Kimel* decision,
6 in order to assure compliance with, and to provide
7 effective remedies for violations of, the *Age Dis-*
8 *crimination in Employment Act of 1967* in State
9 programs or activities receiving Federal assistance,
10 and in order to ensure that Federal funds do not
11 subsidize or facilitate violations of the *Age Discrimi-*
12 *nation in Employment Act of 1967*, it is necessary
13 to require such a waiver as a condition of receipt
14 of that Federal financial assistance.

15 (8) The waiver resulting from the acceptance of
16 Federal funds by 1 State program or activity under
17 this Act will not eliminate a State's immunity with
18 respect to other programs or activities that do not
19 receive Federal funds; a State waives sovereign im-
20 munity only with respect to *Age Discrimination in*
21 *Employment Act of 1967* suits brought by employees
22 within the programs or activities that receive such
23 funds. With regard to those programs and activities
24 that are covered by the waiver, the State employees
25 will be accorded only the same remedies that were

1 available to State employees under the Age Discrimi-
2 nation in Employment Act of 1967 before Kimel and
3 that are accorded to all other covered employees
4 under the Act.

5 (9) The Supreme Court has repeatedly held
6 that State sovereign immunity does not bar suits for
7 prospective injunctive relief brought against State
8 officials, as in *ex parte Young*, 209 U.S. 123 (1908).
9 Clarification of the language of the Age Discrimina-
10 tion in Employment Act of 1967 will confirm that
11 the Act authorizes such suits. The injunctive relief
12 available in such suits will continue to be no broader
13 than the injunctive relief that was available under
14 the Act before the Kimel decision, and that is avail-
15 able to all other employees under that Act.

16 **SEC. 3. PURPOSES.**

17 The purposes of this Act are—

18 (1) to provide to State employees in federally
19 assisted programs or activities the same rights and
20 remedies for practices violating the Age Discrimina-
21 tion in Employment Act of 1967 as are available to
22 other employees under that Act, and that were avail-
23 able to State employees prior to the Supreme
24 Court's decision in *Kimel v. Florida Board of Re-*
25 *gents*, 120 S. Ct. 631 (2000);

1 (2) to provide that the receipt of Federal fund-
2 ing for use in a program or activity constitutes a
3 State waiver of sovereign immunity from suits by
4 employees within that program or activity for viola-
5 tions of the Age Discrimination in Employment Act
6 of 1967; and

7 (3) to affirm that suits for equitable relief are
8 available against State officials in their official ca-
9 pacities for violations of the Age Discrimination in
10 Employment Act of 1967.

11 **SEC. 4. REMEDIES FOR STATE EMPLOYEES.**

12 Section 7 of the Age Discrimination in Employment
13 Act of 1967 (29 U.S.C. 626) is amended by adding at
14 the end the following:

15 “(g)(1)(A) A State’s receipt or use of Federal finan-
16 cial assistance in any program or activity of a State shall
17 constitute a waiver of sovereign immunity, under the 11th
18 amendment to the Constitution or otherwise, to a suit
19 brought by an employee of that program or activity under
20 this Act for equitable, legal, or other relief authorized
21 under this Act.

22 “(B) In this paragraph, the term ‘program or activ-
23 ity’ has the meaning given the term in section 309 of the
24 Age Discrimination Act of 1975 (42 U.S.C. 6107).

1 “(2) An official of a State may be sued in the official
2 capacity of the official by any employee who has complied
3 with the procedures of subsections (d) and (e), for equi-
4 table relief that is authorized under this Act. In such a
5 suit the court may award to the prevailing party those
6 costs authorized by section 722 of the Revised Statutes
7 (42 U.S.C. 1988).”.

8 **SEC. 5. SEVERABILITY.**

9 If any provision of this Act, an amendment made by
10 this Act, or the application of such provision or amend-
11 ment to any person or circumstance is held to be unconsti-
12 tutional, the remainder of this Act, the amendments made
13 by this Act, and the application of such provision or
14 amendment to another person or circumstance shall not
15 be affected.

16 **SEC. 6. EFFECTIVE DATE.**

17 (a) **WAIVER OF SOVEREIGN IMMUNITY.**—With re-
18 spect to a particular program or activity, section 7(g)(1)
19 of the Age Discrimination in Employment Act of 1967 (29
20 U.S.C. 626(g)(1)) applies to conduct occurring on or after
21 the day, after the date of enactment of this Act, on which
22 a State first receives Federal financial assistance for use
23 in that program or activity.

24 (b) **SUITS AGAINST OFFICIALS.**—Section 7(g)(2) of
25 the Age Discrimination in Employment Act of 1967 (29

- 1 U.S.C. 626(g)(2)) applies to any suit pending on or after
- 2 the date of enactment of this Act.

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