



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 21 2017

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

The Honorable Jon Tester
Ranking Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Tester:

We write to provide our views on S. 646, the "Justice for Servicemembers and Veterans Act of 2017." The Department of Justice (Department) supports this bill, which would amend the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Servicemembers Civil Relief Act (SCRA) to strengthen important protections for servicemembers and veterans. The brave men and women of our Armed Forces risk their lives to preserve and defend our liberties, and these laws in return help protect them from financial exploitation and preserve their civilian employment opportunities so that they can focus on their mission of protecting the country without fear of adverse consequences for themselves and their families. The Department is committed to the enforcement of USERRA and SCRA protections, and believes the amendments proposed by S. 646 will further enhance its ability to effectively safeguard the rights of servicemembers.

The Department's views on S. 646 are as follows:

Title I of S. 646 would amend USERRA to expand the number and types of cases the United States can bring in defense of servicemembers attempting to return to their civilian employment upon completion of their military service, as well as investigative authorities available to the Attorney General to pursue such cases. However, we note that one provision of this Title may present constitutional problems.

- **Section 102**

Subsection (a)(2)(A) of section 102 of the bill would amend 38 U.S.C. § 4323(b)(2) to abrogate states' sovereign immunity under the Eleventh Amendment against private damages suits brought under USERRA. This would allow servicemembers to bring an action against a state employer in State court as well as federal district court. In making this amendment, the bill invokes Congress' authority under Article I, section 8 to raise and support armies. However, the Supreme Court has held that Congress generally may not "base its abrogation of the States' Eleventh Amendment immunity upon the powers enumerated in article I." *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 364 (2001). The Supreme Court recognized an exception to this principle in holding that Congress may abrogate state sovereign immunity using its Article I Bankruptcy Clause power, *see Central Virginia Community College v. Katz*, 546 U.S. 356, 378–79 (2006), but the logic of that opinion was based on a number of specific factors distinctively applicable to the Bankruptcy Clause, *id.* at 373–78, that would be difficult to transfer to other Article I powers.

While the Supreme Court has also repeatedly held that "judicial deference to [the] congressional exercise of authority is at its apogee" when Congress exercises its Article I authority to raise and support armies, *see Roskter v. Goldberg*, 453 U.S. 57, 70 (1981); *Rumsfeld v. FAIR*, 547 U.S. 47, 58 (2006), it has never addressed the question whether Congress may abrogate state sovereign immunity using those Article I powers, and the circuit courts are divided on the question. *Compare, e.g., Velasquez v. Frapwell*, 160 F.3d 389, 392–93 (7th Cir. 1998) (Posner, J.) (rejecting the argument that Congress may abrogate state sovereign immunity using its Article I War Powers), *vacated in part*, 165 F.3d 593 (7th Cir. 1999), *with Diaz-Gandia v. Dapena-Thompson*, 90 F.3d 609, 616 & n.9 (1st Cir. 1996) (holding that Congress can abrogate sovereign immunity using its War Powers). We therefore recommend that subsection (a)(2)(A) be deleted.

Title II of S. 646 would enhance various protections for servicemembers under the SCRA against financial exploitation, as well as Department authorities to investigate alleged violations. We fully support the changes made by this bill, but recommend the following amendments and additions to further strengthen the SCRA and to address potential implementation issues with the bill's existing provisions:

- **Section 201**

Section 3931 of the SCRA currently states that in any civil court proceeding in which the defendant servicemember does not make an appearance, the court must require a plaintiff creditor to file an affidavit stating that the defendant either is or is not in military service, or that the creditor has been unable to determine whether or not the defendant is in military service after making a good faith effort to determine that status. For civil court proceedings where a defendant servicemember has not made an appearance and it seems that he or she is in military service, a court may not enter a

default judgment against that defendant until after it appoints an attorney (a “Guardian Ad Litem”) to represent the interests of that defendant servicemember.

The bill strengthens these provisions in a number of ways, including by imposing an affirmative obligation on a Guardian Ad Litem to act in the best interests of a servicemember defendant, and by permitting a default judgment to be vacated, subject to certain timing requirements, where a Guardian Ad Litem failed to adequately represent the interests of the defendant.

The Department recommends that the bill further modify section 3931(b) of the SCRA to clarify that the burden is on the plaintiff to file an affidavit regarding the defendant’s military status (rather than on the court to ensure an affidavit gets filed), and that the plaintiff must take steps accordingly, including but not limited to reviewing Department of Defense (DOD) records and submitting to the court a DOD Defense Manpower Data Center (DMDC) certificate.

- **Section 202**

Section 4041 of the SCRA currently permits the Attorney General to file suit in any appropriate federal district court against a person or entity that engages in more than one violation of the SCRA, or that violates the SCRA in a manner that impacts the public at large. It also gives the Attorney General the authority to seek monetary damages on behalf of individual aggrieved servicemembers, as well as civil penalties, equitable relief, and declaratory relief.

The bill grants authority to the Attorney General to issue civil investigative demands in investigations under the SCRA, and clarifies that the Attorney General’s authority to enforce the Act applies to violations that occurred before enactment of the Veterans’ Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

The Department recommends that the bill further modify section 4041(b)(3) of the SCRA to double the amount of civil penalties currently authorized from \$55,000 to \$110,000 for a first violation, and from \$110,000 to \$220,000 for any subsequent violation.

- **Section 203**

Section 3937 of the SCRA currently limits the amount of interest that may be charged on certain financial obligations that were incurred prior to military service to no more than six percent per year, including most fees. In order to invoke this cap, a servicemember must provide the creditor with a written notice, along with a copy of his or her military orders.

The bill would enable a servicemember to submit either an oral or a written notice, and would eliminate the requirement to provide a copy of his or her military orders. Instead the burden would be on the creditor to complete an online records search of the DOD's DMDC system, a system that is able to instantly verify periods of military service using an individual's name and date of birth or social security number, information a creditor should possess. Under S. 646, only where the DOD's DMDC system is unable to confirm military service (as occasionally happens where an individual has a hyphenated last name or has undergone a name change) would the borrower have to submit a copy of his or her military orders. Finally, under S. 646 the creditor would have to retain a record of the servicemember's oral or written notice of their military service for an unspecified period of time.

The Department has concerns regarding the open-ended nature of this section's records retention proposal. Specifically, the records retention requirement necessarily raises the question of how long any given creditor must keep a copy of any such notification, and in what form. For example, if a creditor, consistent with the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601-2617, is required to retain the Closing Disclosure for five years post mortgage closing, for how long under this SCRA provision would that same creditor be required to keep a notice of military service for the same borrower? We recommend tying the proposed SCRA records retention requirement to an existing financial records retention requirement to eliminate any confusion for the financial community.

- **Section 205**

Section 3955 of the SCRA currently allows a servicemember to terminate early a residential lease without penalty upon entering military service, or receiving permanent change of station (PCS) orders or deployment orders for a period of at least 90 days.

The bill would extend this residential lease termination protection to individuals ordered to move onto a military base, add a definition for PCS orders "as defined in the Joint Federal Travel Regulations, chapter 5, paragraph U5000B," and prohibit the rights conferred under this section from being waived under any circumstances.

The Department notes that the citation associated with the bill's proposed definition of "PCS orders" is outdated based on the recent merging of different volumes of the Joint Federal Travel Regulations. The August 1, 2017 version of the regulations, Chapter 5, Part A, Section 1, Paragraph 5000(B) defines different forms of covered PCS travel. However, not all of these are necessarily appropriate for inclusion in the SCRA. See, e.g., Joint Travel Regulations, Chapter 5, Part A, Section 1, Paragraph 5000(B)(6)(a) & (b)(5). In the Department's enforcement experience, only one type of PCS order has ever been raised as a legal issue connected to a lack of clarity in the SCRA. Specifically, the Joint Travel Regulations, Chapter 5, Part A, Section 1, Paragraph 5000(B)(4) defines a PCS as including a "[d]ischarge, resignation, or

separation from the Service under honorable conditions.” We therefore recommend amending the proposed change in S. 646 to read as follows:

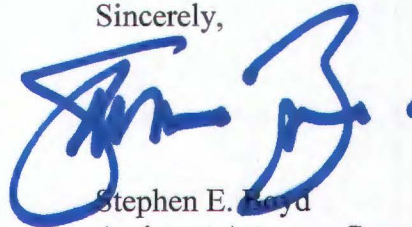
(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station, including any permanent change of station order as defined in the Joint Travel Regulations, Chapter 5, Part A, Section 1, Paragraph 5000(B)(4).

In addition, we caution that prohibiting waivers under Section 3955 could result in landlords electing not to rent to military members. As there is no statutory prohibition currently in place against this practice, one solution would be to incorporate a specific nondiscrimination provision into the SCRA. Specifically, section 3919 could be modified to include language stating that “an individual who is eligible, or may become eligible by virtue of current membership in the reserves or a commitment to perform future military service, for rights or protections under any provision of this Act may not be denied services, including access to housing, or refused credit or be subject to any other action described . . . [in Section 3919] by reason of such eligibility.”

We enclose with this letter a proposed redline of the bill, reflecting the amendments we have recommended above.

Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may be of further assistance on this legislation. We stand ready to work with the Committee on any issues related to this bill, and to provide any technical assistance as may be helpful. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Stephen E. Boyd
Assistant Attorney General

Enclosure

cc: The Honorable Richard Blumenthal
The Honorable Mazie Hirono
The Honorable Al Franken
The Honorable Dick Durbin
The Honorable Sheldon Whitehouse

115TH CONGRESS
1ST SESSION

S. 646

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

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2017

Mr. BLUMENTHAL (for himself, Ms. HIRONO, Mr. FRANKEN, Mr. DURBIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the enforcement of employment and reemployment rights of members of the uniformed services, to amend the Servicemembers Civil Relief Act to improve the protection 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; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Justice for Servicemembers and Veterans Act of 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYMENT AND REEMPLOYMENT RIGHTS

Sec. 101. Action for relief in enforcement of employment and reemployment rights of members of uniformed services with respect to a State or private employer.

Sec. 102. Waiver of sovereign immunity for enforcement of employment and reemployment rights of members of uniformed services.

Sec. 103. Venue for cases against private employers for violations of employment and reemployment rights of members of uniformed services.

Sec. 104. Standing in cases involving violations of employment and reemployment rights of members of uniformed services by States and private employers.

Sec. 105. Civil investigative demands by Attorney General in enforcement of employment and reemployment rights of members of uniformed services with respect to States and private employers.

Sec. 106. Treatment of disability discovered after employee entitled to reemployment by reason of uniformed service status resumes employment.

Sec. 107. Burden of identifying proper reemployment positions for employees entitled to reemployment by reason of uniformed service status.

Sec. 108. Clarifications regarding scope of employment and reemployment rights of members of the uniformed services.

TITLE II—CIVIL RELIEF

Sec. 201. Improved protection of members of uniformed services against default judgments.

Sec. 202. Authority for issuance and service of civil investigative demands by Attorney General.

Sec. 203. Oral notice sufficient to invoke interest rate cap.

Sec. 204. Harmonization of sections.

Sec. 205. Expansion of protection for termination of residential and motor vehicle leases.

Sec. 206. Portability of professional licenses of members of the uniformed services and their spouses.

1 **TITLE I—EMPLOYMENT AND**
2 **REEMPLOYMENT RIGHTS**

3 SEC. 101. ACTION FOR RELIEF IN ENFORCEMENT OF EM-
4 EMPLOYMENT AND REEMPLOYMENT RIGHTS OF
5 MEMBERS OF UNIFORMED SERVICES WITH
6 RESPECT TO A STATE OR PRIVATE EM-
7 PLOYER.

8 (a) INITIATION OF ACTIONS.—Paragraph (1) of sub-
9 section (a) of section 4323 of title 38, United States Code,
10 is amended by striking the third sentence and inserting
11 the following new sentences: “If the Attorney General is
12 reasonably satisfied that the person on whose behalf the
13 complaint is referred is entitled to the rights or benefits
14 sought, the Attorney General may commence an action for
15 relief under this chapter, including on behalf of the person.
16 The person on whose behalf the complaint is referred may,
17 upon timely application, intervene in such action and may
18 obtain such appropriate relief as provided in subsections
19 (d) and (e).”.

20 (b) ATTORNEY GENERAL NOTICE TO SERVICEMEM-
21 BER OF DECISION.—Paragraph (2) of such subsection is
22 amended to read as follows:

23 “(2)(A) Not later than 60 days after the date the
24 Attorney General receives a referral under paragraph (1),

1 the Attorney General shall transmit, in writing, to the per-
2 son on whose behalf the complaint is submitted—

3 “(i) if the Attorney General has made a deci-
4 sion about whether the United States will commence
5 an action for relief under paragraph (1) relating to
6 the complaint of the person, notice of the decision;
7 and

8 “(ii) if the Attorney General has not made such
9 a decision, notice of when the Attorney General ex-
10 pects to make such a decision.

11 “(B) If the Attorney General notifies a person of
12 when the Attorney General expects to make a decision
13 under subparagraph (A)(ii), the Attorney General shall,
14 not later than 30 days after the date on which the Attor-
15 ney General makes such decision, notify, in writing, the
16 person of such decision.”.

17 (c) PATTERN OR PRACTICE CASES.—Such subsection
18 is further amended—

19 (1) by redesignating paragraph (3) as para-
20 graph (4); and

21 (2) by inserting after paragraph (2) (as amend-
22 ed by paragraph (2) of this subsection) the following
23 new paragraph (3):

24 “(3) Whenever the Attorney General has reasonable
25 cause to believe that a State (as an employer) or a private

1 employer is engaged in a pattern or practice of resistance
 2 to the full enjoyment of any of the rights or benefits se-
 3 cured by this chapter, the Attorney General may com-
 4 mence an action under this chapter.”.

5 (d) ACTIONS BY PRIVATE PERSONS.—Subparagraph
 6 (C) of paragraph (4) of such subsection, as redesignated
 7 by paragraph (3)(A), is amended by striking “refused”
 8 and all that follows and inserting “notified by the Attorney
 9 General that the Attorney General does not intend to
 10 bring a civil action.”.

11 (e) CONFORMING AMENDMENT.—Subsection (h)(2)
 12 of such section is amended by striking “subsection (a)(2)”
 13 and inserting “subsection (a)(1) or subsection (a)(4)”.

14 SEC. 102. WAIVER OF SOVEREIGN IMMUNITY FOR EN-
 15 FORCEMENT OF EMPLOYMENT AND REEM-
 16 PLOYMENT RIGHTS OF MEMBERS OF UNI-
 17 FORMED SERVICES.

18 (a) IN GENERAL.—Paragraph (2) of section 4323(b)
 19 of title 38, United States Code, is amended to read as
 20 follows:

20 ~~“(2)(A) In the case of an action against a State (as~~
 20 ~~an employer), any instrumentality of a State, or any offi-~~
 20 ~~cer or employee of a State or instrumentality of a State~~
 20 ~~acting in that officer or employee’s official capacity, by~~
 20 ~~any person, the action may be brought in the appropriate~~

~~6 district court of the United States or in a State court of~~
~~7 competent jurisdiction, and the State, instrumentality of~~
~~8 the State, or officer or employee of the State or instrumen-~~
~~9 tality acting in that officer or employee's official capacity~~
~~10 shall not be immune under the Eleventh Amendment of~~
~~11 the Constitution, or under any other doctrine of sovereign~~
~~12 immunity, from such action.~~

131 “(B)(i) No State, instrumentality of such State, or
142 officer or employee of such State or instrumentality of
153 such State, acting in that officer or employee's official ca-
164 pacity, that receives or uses Federal financial assistance
175 for a program or activity shall be immune, under the Elev-
186 enth Amendment of the Constitution or under any other
197 doctrine of sovereign immunity, from suit in Federal or
208 State court by any person for any violation under this
219 chapter related to such program or activity.

2210 “(ii) In an action against a State brought pursuant
2311 to subsection (a), a court may award the remedies (includ-
2412 ing remedies both at law and in equity) that are available
2513 under subsections (d) and (e).”.

2614 (b) MODIFICATION OF PURPOSES.—Section 4301(a)
2715 of such title is amended, in the matter before paragraph
2816 (1), by striking “The” and inserting “Pursuant to the
2917 power of Congress to enact this chapter under section 8
3018 of article I of the Constitution of the United States, the”.

1 SEC. 103. VENUE FOR CASES AGAINST PRIVATE EMPLOY-
2 ERS FOR VIOLATIONS OF EMPLOYMENT AND
3 REEMPLOYMENT RIGHTS OF MEMBERS OF
4 UNIFORMED SERVICES.

5 Section 4323(c)(2) of title 38, United States Code,
6 is amended by striking “United States district court for
7 any district in which the private employer of the person
8 maintains a place of business.” and inserting “United
9 States district court for—

10 “(A) any district in which the employer main-
11 tains a place of business;

12 “(B) any district in which a substantial part of
13 the events or omissions giving rise to the claim oc-
14 curred; or

15 “(C) if there is no district in which an action
16 may otherwise be brought as provided in subpara-
17 graph (A) or (B), any district in which the employer
18 is subject to the court’s personal jurisdiction with re-
19 spect to such action.”.

20 SEC. 104. STANDING IN CASES INVOLVING VIOLATIONS OF
21 EMPLOYMENT AND REEMPLOYMENT RIGHTS
22 OF MEMBERS OF UNIFORMED SERVICES BY
23 STATES AND PRIVATE EMPLOYERS.

24 Section 4323(f) of title 38, United States Code, is
25 amended—

1 (1) by inserting “by the United States or” after
2 “may be initiated only”; and

3 (2) by striking “or by the United States under
4 subsection (a)(1)”.

5 SEC. 105. CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY
6 GENERAL IN ENFORCEMENT OF EMPLOY-
7 MENT AND REEMPLOYMENT RIGHTS OF MEM-
8 BERS OF UNIFORMED SERVICES WITH RE-
9 SPECT TO STATES AND PRIVATE EMPLOYERS.

10 Section 4323 of title 38, United States Code, is
11 amended—

12 (1) by redesignating subsection (i) as subsection
13 (j); and

14 (2) by inserting after subsection (h) the fol-
15 lowing new subsection (i):

16 “(i) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
17 TIVE DEMANDS BY ATTORNEY GENERAL.—(1) Whenever
18 the Attorney General has reason to believe that any person
19 may be in possession, custody, or control of any documen-
20 tary material relevant to an investigation under this chap-
21 ter, the Attorney General may, before commencing a civil
22 action under subsection (a), issue in writing and cause to
23 be served upon such person, a civil investigative demand
24 requiring—

1 “(A) the production of such documentary mate-
2 rial for inspection and copying;

3 “(B) that the custodian of such documentary
4 material answer in writing written questions withre-
5 spect to such documentary material; or

6 “(C) the production of any combination of such
7 documentary material or answers.

8 “(2) The provisions governing the authority to issue,
9 use, and enforce civil investigative demands under section
10 3733 of title 31 (known as the ‘False Claims Act’) shall
11 govern the authority to issue, use, and enforce civil inves-
12 tigative demands under paragraph (1), except that for
13 purposes of that paragraph—

14 “(A) a reference in that section to false claims
15 law investigators or investigations shall be applied as
16 referring to investigators or investigations under this
17 chapter;

18 “(B) a reference to interrogatories shall be ap-
19 plied as referring to written questions, and answers
20 to such need not be under oath;

21 “(C) the statutory definitions for purposes of
22 that section relating to ‘false claims law’ shall not
23 apply; and

24 “(D) provisions of that section relating to qui
25 tam relators shall not apply.”.

1 SEC. 106. TREATMENT OF DISABILITY DISCOVERED AFTER
 2 EMPLOYEE ENTITLED TO REEMPLOYMENT
 3 BY REASON OF UNIFORMED SERVICE STATUS
 4 RESUMES EMPLOYMENT.

5 Section 4313(a)(3) of title 38, United States Code,
 6 is amended, in the matter before subparagraph (A), by
 7 inserting “including a disability that is brought to the em-
 8 ployer’s attention within 5 years after the person resumes
 9 employment,” after “during, such service,”.

10 SEC. 107. BURDEN OF IDENTIFYING PROPER REEMPLOY-
 11 MENT POSITIONS FOR EMPLOYEES ENTITLED
 12 TO REEMPLOYMENT BY REASON OF UNI-
 13 FORMED SERVICE STATUS.

14 Section 4313 of title 38, United States Code, is
 15 amended by adding at the end the following new sub-
 16 section:

17 “(c) For purposes of this section, the employer shall
 18 have the burden of identifying the appropriate reemploy-
 19 ment positions.”.

20 SEC. 108. CLARIFICATIONS REGARDING SCOPE OF EMPLOY-
 21 MENT AND REEMPLOYMENT RIGHTS OF MEM-
 22 BERS OF THE UNIFORMED SERVICES.

23 (a) CLARIFICATION REGARDING DEFINITION OF
 24 RIGHTS AND BENEFITS.—Section 4303(2) of title 38,
 25 United States Code, is amended—

26 (1) by inserting “(A)” before “The term”; and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(B) Any procedural protections or provisions
4 set forth in this chapter shall also be considered a
5 right or benefit subject to the protection of this
6 chapter.”.

7 (b) CLARIFICATION REGARDING RELATION TO
8 OTHER LAW AND PLANS FOR AGREEMENTS.—Section
9 4302 of such title is amended by adding at the end the
10 following:

11 “(c)(1) Pursuant to this section and the procedural
12 rights afforded by subchapter III of this chapter, any
13 agreement to arbitrate a claim under this chapter is unen-
14 forceable, unless all parties consent to arbitration after a
15 complaint on the specific claim has been filed in court or
16 with the Merit Systems Protection Board and all parties
17 knowingly and voluntarily consent to have that particular
18 claim subjected to arbitration.

19 “(2) For purposes of this subsection, consent shall
20 not be considered voluntary when a person is required to
21 agree to arbitrate an action, complaint, or claim alleging
22 a violation of this chapter as a condition of future or con-
23 tinued employment, advancement in employment, or re-
24 ceipt of any right or benefit of employment.”.

1 TITLE II—CIVIL RELIEF

2 SEC. 201. IMPROVED PROTECTION OF MEMBERS OF UNI-
3 FORMED SERVICES AGAINST DEFAULT JUDG-
4 MENTS.

5 (a) CLARIFICATION OF AFFIDAVIT REQUIREMENT.—
Paragraph (1) of section 201(b) of the Servicemembers Civil
Relief Act (50 U.S.C. App. 521(b)) is amended to read as
follows:

“(1) PLAINTIFF TO FILE AFFIDAVIT.—

“(A) In any action or proceeding covered by this section, the
plaintiff, before seeking a default judgment, shall file with the
court an affidavit—

“(i) stating whether or not the defendant is in military
service and showing necessary facts to support the
affidavit; OR

“(ii) if the plaintiff is unable to determine whether or not the defendant is in
military service, stating that the plaintiff is unable to
determine whether or not the defendant is in military
service.

“(B) Before filing an affidavit under subparagraph (A), the plaintiff
shall conduct a diligent and reasonable investigation to determine
whether or not the defendant is in military service, including a
search of available Department of Defense records and any other
information available to the plaintiff. The affidavit shall set forth
all steps taken to determine the defendant’s military status and
shall have attached the records on which plaintiff relied in
preparing the affidavit. Attached records shall include at least a
copy of the certificate produced by the Department of Defense
Manpower Data Center.”.

56 (ab) APPOINTMENT OF ATTORNEY TO REPRESENT
67 DEFENDANT IN MILITARY SERVICE.—Paragraph (2) of
78 section 201(b) of the Servicemembers Civil Relief Act (50
89 U.S.C. 3931(b)) is amended to read as follows:

910 “(2) APPOINTMENT OF ATTORNEY TO REP-
1011 RESENT DEFENDANT IN MILITARY SERVICE.—

1112 “(A) IN GENERAL.—If in an action covered

~~12~~13 by this section it appears that the defendant is
~~13~~14 in military service, the court shall not enter a
~~14~~15 judgment until after the court appoints an at-
~~15~~16 torney to represent the defendant.

~~16~~17 “(B) ACTIONS OF ATTORNEY.—

~~17~~18 “(i) IN GENERAL.—The court ap-
~~18~~19 pointed attorney shall act only in the best
~~19~~20 interests of the defendant.

~~20~~21 “(ii) REQUEST FOR STAY OF PRO-
~~21~~22 CEEDINGS.—The court appointed attorney,
~~22~~23 when appropriate to represent the best in-
~~23~~24 terests of the defendant, shall request a
~~24~~25 stay of proceedings under this Act.

1 “(iii) FAITHFUL PERFORMANCE.—The
2 court shall require the court appointed at-
3 torney to perform duties faithfully and,
4 upon failure to do so, shall discharge the
5 attorney and appoint another.

6 “(C) LOCATION.—

7 “(i) IN GENERAL.—The court ap-
8 pointed attorney shall use due diligence to
9 locate and contact the defendant.

10 “(ii) PROVISION OF CONTACT INFOR-
11 MATION.—The plaintiff must provide to
12 the court appointed attorney all contact in-
13 formation it has for the defendant.

14 “(iii) REPORT ON EFFORTS TO LO-
15 CATE.—A court appointed attorney unable
16 to make contact with the defendant shall
17 report to the court on all of the attorney’s
18 efforts to make contact.

19 “(iv) IMPLICATIONS OF FAILURE TO
20 LOCATE.—If an attorney appointed under
21 this section to represent a defendant in
22 military service cannot locate the defend-
23 ant, actions by the attorney in the case
24 shall not waive any defense of the service-

1 member or otherwise bind the servicemem-
2 ber.

3 “(D) NOTIFICATION AND ASSERTION OF
4 RIGHTS.—

5 “(i) NOTIFICATION OF RIGHTS.—

6 Upon making contact with the defendant,
7 the court appointed attorney shall advise
8 the defendant of the nature of the lawsuit
9 and the defendant’s rights provided by this
10 Act, including rights to obtain a stay and
11 to request the court to adjust an obliga-
12 tion.

13 “(ii) ASSERTION OF RIGHTS.—Re-

14 gardless of whether contact is made under
15 clause (i), the court appointed attorney
16 shall assert such rights on behalf of de-
17 fendant if there is an adequate basis in law
18 and fact, unless the defendant provides in-
19 formed consent to not assert such rights.”.

20 (b) EXPANSION OF AUTHORITY FOR COURT TO VA-

21 CATE OR SET ASIDE JUDGMENT.—Paragraph (1) of sec-
22 tion 201(g) of the Servicemembers Civil Relief Act (50
23 U.S.C. 3931(g)) is amended by striking subparagraphs
24 (A) and (B) and inserting the following new subpara-
25 graphs (A) and (B):

1 “(A)(i) the servicemember was materially
2 affected by reason of that military service in
3 making a defense to the action; and

4 “(ii) the servicemember has a meritorious
5 or legal defense to the action or some part of
6 it; or

7 “(B) an attorney appointed to represent
8 the servicemember failed to adequately rep-
9 resent the best interests of the defendant.”.

10 SEC. 202. AUTHORITY FOR ISSUANCE AND SERVICE OF
11 CIVIL INVESTIGATIVE DEMANDS BY ATTOR-
12 NEY GENERAL.

13 (a) IN GENERAL.—Section 801 of the
14 Servicemembers Civil Relief Act (50 U.S.C. 4041) is
15 amended by adding at the end the following new sub-
16 section:

17 “(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
18 TIVE DEMANDS.—

19 “(1) IN GENERAL.—Whenever the Attorney
20 General has reason to believe that any person may
21 be in possession, custody, or control of any docu-
22 mentary material relevant to an investigation under
23 this Act, the Attorney General may, before com-
24 mencing a civil action under subsection (a), issue in

1 writing and serve upon such person, a civil investiga-
2 tive demand requiring—

3 “(A) the production of such documentary
4 material for inspection and copying;

5 “(B) that the custodian of such documen-
6 tary material answer in writing written ques-
7 tions with respect to such documentary mate-
8 rial; or

9 “(C) the production of any combination of
10 such documentary material or answers.

11 “(2) PROCEDURES.—The provisions of section
12 3733 of title 31, United States Code, governing the
13 authority to issue, use, and enforce civil investigative
14 demands shall apply with respect to the authority to
15 issue, use, and enforce civil investigative demands
16 under this section, except that, for purposes of ap-
17 plying such section 3733—

18 “(A) references in that section to false
19 claims law investigators or investigations shall
20 be read as references to investigators or inves-
21 tigations;

22 “(B) references in that section to interrog-
23 atories shall be read as references to written
24 questions, and answers to such need not be
25 under oath;

1 “(C) the statutory definitions relating to
2 ‘false claims law’ shall not apply; and

3 “(D) provisions relating to qui tam rela-
4 tors shall not apply.”.

5 (b) RETROACTIVE APPLICABILITY.—Section 801 of
6 such Act (50 U.S.C. 4041), as amended by subsection (a),
7 shall apply as if such section were included in the enact-
8 ment of the Soldiers’ and Sailors’ Civil Relief Act of 1940
9 (54 Stat. 1178, chapter 888) and included in the restate-
10 ment of such Act in Public Law 108–189.

11 (c) INCREASE IN CIVIL PENALTIES.—Subsection (b)(3) of section
12 801 of such Act (50 U.S.C. App. 597) is amended—

13 (1) in subparagraph (A), by striking “\$55,000” and
14 inserting “\$110,000”; and

15 (2) in subparagraph (B), by striking “\$110,000”
16 and inserting “\$220,000”.

17 SEC. 203. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST
18 RATE CAP.

19 Paragraphs (1) and (2) of section 207(b) of the
20 Servicemembers Civil Relief Act (50 U.S.C. 3937(b)) are
21 amended to read as follows:

22 “(1) NOTICE TO CREDITOR.—

23 “(A) IN GENERAL.—In order for an obliga-
24 tion or liability of a servicemember to be subject
25 to the interest rate limitation in subsection (a),
26 the servicemember shall provide to the creditor
27 oral or written notice of military service and

~~22~~25 _____ any further extension of military service, not
~~23~~26 _____ later than 180 days after the date of the
~~24~~27 _____ servicemember's termination or release from
~~25~~28 _____ military service.

1 “(B) RECORDS.—The creditor shall retain
2 a record of the servicemember’s oral or written
3 notification in accordance with the records
 retention requirements set forth in [insert relevant
 statute here].

4 “(2) LIMITATION EFFECTIVE AS OF DATE OF
5 ORDER TO ACTIVE DUTY.—

6 “(A) SEARCH OF RECORDS.—Upon receipt
7 of oral or written notice of military service, the
8 creditor shall conduct a search of Department
9 of Defense records available through the De-
10 partment of Defense Manpower Data Center.

11 “(B) MILITARY SERVICE CONFIRMED.—If
12 military service is confirmed by a search under
13 subparagraph (A), the creditor shall treat the
14 debt in accordance with subsection (a), effective
15 as of the date on which the servicemember is
16 called to military service.

17 “(C) MILITARY SERVICE NOT CON-
18 FIRMED.—If a search of Department of De-
19 fense records under subparagraph (A) does not
20 confirm military service, the creditor shall no-
21 tify the servicemember and may require the
22 servicemember to provide a copy of the
23 servicemember’s military orders before treating
24 the debt in accordance with subsection (a), ef-

1 fective as of the date on which the servicemem-
2 ber is called to military service.”.

3 SEC. 204. HARMONIZATION OF SECTIONS.

4 (a) IN GENERAL.—Section 303 of the
5 Servicemembers Civil Relief Act (50 U.S.C. 3953) is
6 amended—

7 (1) in subsection (b), in the matter before para-
8 graph (1), by striking “filed” and inserting “pend-
9 ing”; and

10 (2) in subsection (c)(1), by striking “with a re-
11 turn made and approved by the court”.

12 (b) REPEAL OF SUNSET.—Section 710(d) of the
13 Honoring America’s Veterans and Caring for Camp
14 Lejeune Families Act of 2012 (Public Law 112–154; 50
15 U.S.C. 3953 note) is amended—

16 (1) by striking “EXTENSION OF SUNSET” and
17 all that follows through “Subsection (c)” and insert-
18 ing “ELIMINATION OF PRIOR SUNSET.—Subsection
19 (c)”; and

20 (2) by striking paragraph (3).

21 SEC. 205. EXPANSION OF PROTECTION FOR TERMINATION
22 OF RESIDENTIAL AND MOTOR VEHICLE
23 LEASES.

24 (a) TERMINATION OF RESIDENTIAL LEASES.—

1 (1) IN GENERAL.—Section 305 of the
2 Servicemembers Civil Relief Act (50 U.S.C. 3955) is
3 amended—

4 (A) in subsection (a)—

5 (i) in paragraph (1)—

6 (I) in subparagraph (A), by strik-
7 ing “or” at the end;

8 (II) in subparagraph (B), by
9 striking the period at the end and in-
10 serting “; or”; and

11 (III) by adding at the end the
12 following new subparagraph:

13 “(C) in the case of a lease described in
14 subparagraph (C) of subsection (b)(1), the date
15 the lessee is assigned to or otherwise relocates
16 to quarters or a housing facility as described in
17 such subparagraph.”; and

18 (ii) in paragraph (2), by striking “de-
19 pendent of the lessee” and inserting “co-
20 lessee”; and

21 (B) in subsection (b)(1)—

22 (i) in subparagraph (A), by striking
23 “or” at the end;

24 (ii) in subparagraph (B)—

1 (I) by inserting “(as defined in
 2 the Joint Federal Travel Regulations,
 3 chapter 5, paragraph U5000B)” after
 4 “permanent change of station”; and

5 (II) by striking the period at the
 6 end and inserting “; or”; and

7 (iii) by adding at the end the fol-
 8 lowing new subparagraph:

9 ~~“(C) the servicemember, while in military service,~~
~~executes the lease and thereafter receives military~~
~~orders for a permanent change of station, including~~
~~any permanent change of station order as defined~~
~~in the Joint Travel Regulations, Chapter 5, Part A,~~
~~Section 1, Paragraph 5000(B)(4).”~~ the lease is
 executed by or on behalf

10 ~~of a person who thereafter and during the term~~
 11 ~~of the lease is assigned to or otherwise relocates~~
 12 ~~to quarters of the United States or a housing~~
 13 ~~facility under the jurisdiction of a uniformed~~
 14 ~~service (as defined in section 101 of title 37,~~
 15 ~~United States Code), including housing pro-~~
 16 ~~vided under the Military Housing Privatization~~
 17 ~~Initiative.”~~

18 (2) MANNER OF TERMINATION.—Subsection

19 (c)(1) of such section is amended—

20 (A) in subparagraph (A)—

~~24~~13 (i) by inserting “in the case of a lease
~~22~~14 described in subsection (b)(1) and sub-
~~23~~15 paragraph (A) or (B) of such subsection,”
~~24~~16 before “by delivery”; and
~~25~~17 (ii) by striking “and” at the end;

1 (B) by redesignating subparagraph (B) as
2 subparagraph (C); and

3 (C) by inserting after subparagraph (A)
4 the following new subparagraph (B):

5 “(B) in the case of a lease described in
6 subparagraph (C) of subsection (b)(1), by deliv-
7 ery by the lessee of written notice of such ter-
8 mination, and a letter from the servicemember’s
9 commanding officer indicating that the service-
10 member has been assigned to or is otherwise re-
11 locating to quarters of the United States or a
12 housing facility under the jurisdiction of a uni-
13 formed service (as defined in section 101 of
14 title 37, United States Code), to the lessor (or
15 the lessor’s grantee), or to the lessor’s agent (or
16 the agent’s grantee); and”.

17 (b) WAIVER IMPERMISSIBLE.—Such section is fur-
18 ther amended by adding at the end the following new sub-
19 section:

20 “(i) WAIVER NOT PERMITTED.—The provisions of
21 this section may not be waived or modified by the agree-
22 ment of the parties under any circumstances.”.

1 SEC. 206. PORTABILITY OF PROFESSIONAL LICENSES OF
2 MEMBERS OF THE UNIFORMED SERVICES
3 AND THEIR SPOUSES.

4 (a) IN GENERAL.—Title VII of the Servicemembers
5 Civil Relief Act (50 U.S.C. 4021 et seq.) is amended by
6 inserting after section 705 (50 U.S.C. 4025) the following
7 new section:

8 “SEC. 705A. PORTABILITY OF PROFESSIONAL LICENSES OF
9 SERVICEMEMBERS AND THEIR SPOUSES.

10 “In any case in which a servicemember has a profes-
11 sional license in good standing in a jurisdiction or the
12 spouse of a servicemember has a professional license in
13 good standing in a jurisdiction and such servicemember
14 or spouse relocates his or her residency because of military
15 orders to a location that is not in such jurisdiction, the
16 professional license or certification of such servicemember
17 or spouse shall be considered valid and in good standing
18 in the jurisdiction of such new residency for the duration
19 of such military orders if such servicemember or spouse—

20 “(1) provides a copy of such military orders to
21 the licensing authority in the jurisdiction in which
22 the new residency is located;

23 “(2) remains in good standing with the licens-
24 ing authority that issued the license; and

25 “(3) submits to the authority of the licensing
26 authority in the new jurisdiction for the purposes of

1 standards of practice, discipline, and fulfillment of
 2 any continuing education requirements.”.

3 (b) CLERICAL AMENDMENT.—The table of contents
 4 in section 1(b) of such Act is amended by inserting after
 5 the item relating to section 705 the following new item:

“Sec. 705A. Portability of professional licenses of servicemembers and their spouses.”.

SEC. 207. NON-DISCRIMINATION PROVISION.

**(a) PROHIBITION ON DISCRIMINATION AGAINST
 SERVICEMEMBERS.—Section 108 of the Servicemembers Civil
 Relief Act (50 U.S.C. App. 518) is amended—**

**(1) by striking “Application by a servicemember for, or receipt by a
 servicemember of, a stay, postponement, or suspension” and inserting “(a)
 APPLICATION OF RECEIPT.—Application by a servicemember for rights or
 protections.”; and**

(2) by adding at the end the following new subsection:

“(b) ELIGIBILITY.—

**“(1) IN GENERAL.—In addition to the rights and protections under
 subsection (a), an individual who is eligible, or may become eligible by
 virtue of current membership in the reserves or a commitment to perform
 future military service, for rights or protections under any provision of this
 Act may not be denied services, including access to housing, or refused
 credit or be subject to any other action described under paragraphs (1)
 through (6) of subsection (a) by reason of such eligibility.**

**“(2) CONSTRUCTION.—Nothing in this subsection shall be construed to
 prohibit a lender or service provider from considering all relevant factors,
 other than the potential eligibility of an individual for rights or protections
 under a provision of this Act, in making a determination as to whether it is
 appropriate to provide services or extend credit.”.**

(b) CLERICAL AMENDMENTS.—

**(1) SECTION HEADING.—The heading of such section is amended
 to read as follows:**

**“SEC. 108. PROHIBITION ON DISCRIMINATION AGAINST
 SERVICEMEMBERS.”**

**(2) TABLE OF CONTENTS.—The item relating to that section in
 the table of contents in section 1(b) of the SCRA is amended to read as follows:**

“108. Prohibition on discrimination against servicemembers.”.

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