

110TH CONGRESS
2^D SESSION

H. R. 6225

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, relating to equitable relief with respect to a State or private employer, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Improving SCRA and
3 USERRA Protections Act of 2008”.

4 **SEC. 2. EQUITY POWERS.**

5 Section 4323(e) of title 38, United States Code, is
6 amended by striking “may use” and inserting “shall use,
7 in any case in which the court determines it is appro-
8 priate,”.

9 **SEC. 3. RELIEF FOR STUDENTS WHO ARE MEMBERS OF**
10 **ARMED FORCES DURING PERIOD OF MILI-**
11 **TARY SERVICE.**

12 (a) IN GENERAL.—Title VII of the Servicemembers
13 Civil Relief Act (50 U.S.C. App. 591 et seq.) is amended
14 by adding at the end the following new section:

15 **“SEC. 707. TUITION, REENROLLMENT, AND STUDENT LOAN**
16 **RELIEF FOR POSTSECONDARY STUDENTS**
17 **CALLED TO MILITARY SERVICE.**

18 “(a) TUITION AND REENROLLMENT.—Whenever a
19 servicemember is called, activated, or ordered to military
20 service and withdraws or takes a leave of absence from
21 an institution of higher education in which the
22 servicemember is enrolled, the institution shall—

23 “(1) provide a credit or refund to the
24 servicemember the tuition and fees paid by the
25 servicemember (other than from the proceeds of a
26 grant or scholarship) for the portion of the program

1 of education for which the servicemember did not re-
2 ceive academic credit after such withdrawal or leave;
3 and

4 “(2) provide the servicemember an opportunity
5 to reenroll with the same educational and academic
6 status in such program of education that the
7 servicemember had when activated for military serv-
8 ice.

9 “(b) INSTITUTION OF HIGHER EDUCATION DE-
10 FINED.—In this section, the term ‘institution of higher
11 education’ means a 2-year or 4-year institution of higher
12 education as defined in section 102 of the Higher Edu-
13 cation Act of 1965 (20 U.S.C. 1002).”.

14 (b) EXEMPTION OF STUDENT DEBTS FROM CRED-
15 ITOR PROTECTION BASED ON INCOME LEVEL.—Section
16 207(c) of such Act (50 U.S.C. App. 527(c)) is amended
17 by adding at the end the following new sentence: “This
18 subsection shall not apply with respect to an obligation
19 or liability that is incurred by a servicemember who, at
20 the time the servicemember is called to military service,
21 is a student enrolled within six months of activation at
22 an institution of higher education on a full-time basis, as
23 determined by that institution.”.

1 (c) CLERICAL AMENDMENT.—The table of contents
 2 in section 1(b) of such Act is amended by adding at the
 3 end the following new item:

“Sec. 707. Tuition, reenrollment, and student loan relief for postsecondary stu-
 dents called to military service.”.

4 (d) EFFECTIVE DATE.—The amendments made by
 5 this section shall take effect for periods of military service
 6 beginning after the date of the enactment of this section.

7 **SEC. 4. TERMINATION OR SUSPENSION BY**
 8 **SERVICEMEMBERS OF CERTAIN SERVICE**
 9 **CONTRACTS ENTERED INTO BEFORE PERMA-**
 10 **NENT CHANGE OF STATION OR DEPLOYMENT**
 11 **ORDERS.**

12 (a) TERMINATION.—Title III of the Servicemembers
 13 Civil Relief Act (50 U.S.C. App. 531 et seq.) is amended—

14 (1) by redesignating section 308 as section 309;

15 and

16 (2) by inserting after section 307 the following:

17 **“SEC. 308. TERMINATION OR SUSPENSION OF SERVICE**
 18 **CONTRACTS.**

19 “(a) TERMINATION OR SUSPENSION BY
 20 SERVICEMEMBER.—A person in military service who is
 21 party to or enters into a contract described in subsection
 22 (c) may terminate or suspend, at the person’s option, the
 23 contract at any time after the date of the person’s military
 24 orders, as described in subsection (c).

1 “(b) SPECIAL RULES.—(1) A suspension under sub-
2 section (a) of a contract by a person in military service
3 shall continue for the length of the person’s deployment
4 pursuant to the person’s military orders.

5 “(2) A service provider under a contract suspended
6 or terminated under subsection (a) by a person in military
7 service may not impose a suspension fee or early termi-
8 nation fee in connection with the suspension or termi-
9 nation of the contract, other than a nominal fee for the
10 suspension; except that the service provider may impose
11 a reasonable fee for any equipment remaining on the
12 premises of the person in military service during the pe-
13 riod of the suspension. The person in military service may
14 defer, without penalty, payment of such a nominal fee or
15 reasonable fee for the length of the person’s deployment
16 pursuant to the person’s military orders.

17 “(3) In any case in which the contract being sus-
18 pended under subsection (a) is for cellular telephone serv-
19 ice or telephone exchange service, the person in military
20 service, after the date on which the suspension of the con-
21 tract ends, may keep, to the extent practicable and in ac-
22 cordance with all applicable laws and regulations, the
23 same telephone number the person had before the person
24 suspended the contract.

1 “(c) COVERED CONTRACTS.—This section applies to
2 a contract for cellular telephone service, telephone ex-
3 change service, multichannel video programming service,
4 Internet access service, water, electricity, oil, gas, or other
5 utility if the person enters into the contract and thereafter
6 receives military orders—

7 “(1) to deploy with a military unit, or as an in-
8 dividual, in support of a contingency operation for a
9 period of not less than 90 days; or

10 “(2) for a change of permanent station to a lo-
11 cation that does not support the contract.

12 “(d) MANNER OF TERMINATION OR SUSPENSION.—

13 “(1) IN GENERAL.—Termination or suspension
14 of a contract under subsection (a) is made by deliv-
15 ery by the person in military service of written no-
16 tice of such termination or suspension and a copy of
17 the servicemember’s military orders to the other
18 party to the contract (or to that party’s grantee or
19 agent).

20 “(2) NATURE OF NOTICE.—Delivery of notice
21 under paragraph (1) may be accomplished—

22 “(A) by hand delivery;

23 “(B) by private business carrier;

24 “(C) by facsimile; or

1 “(D) by placing the written notice and a
2 copy of the servicemember’s military orders in
3 an envelope with sufficient postage and with re-
4 turn receipt requested, and addressed as des-
5 ignated by the party to be notified (or that par-
6 ty’s grantee or agent), and depositing the enve-
7 lope in the United States mails.

8 “(e) DATE OF CONTRACT TERMINATION OR SUSPEN-
9 SION.—Termination or suspension of a service contract
10 under subsection (a) is effective as of the date on which
11 the notice under subsection (d) is delivered.

12 “(f) OTHER OBLIGATIONS AND LIABILITIES.—The
13 service provider under the contract may not impose an
14 early termination or suspension charge, but any tax or any
15 other obligation or liability of the person in military serv-
16 ice that, in accordance with the terms of the contract, is
17 due and unpaid or unperformed at the time of termination
18 or suspension of the contract shall be paid or performed
19 by the person in military service.

20 “(g) FEES PAID IN ADVANCE.—A fee or amount paid
21 in advance for a period after the effective date of the ter-
22 mination of the contract shall be refunded to the person
23 in military service by the other party (or that party’s
24 grantee or agent) within 60 days of the effective date of
25 the termination of the contract.

1 “(h) RELIEF TO OTHER PARTY.—Upon application
2 by the other party to the contract to a court before the
3 termination date provided in the written notice, relief
4 granted by this section to a person in military service may
5 be modified as justice and equity require.

6 “(i) PENALTIES.—

7 “(1) MISDEMEANOR.—Whoever knowingly vio-
8 lates or attempts to violate this section shall be fined
9 not more than \$5,000 in the case of an individual
10 or \$10,000 in the case of an organization.

11 “(2) PRESERVATION.—The remedy and rights
12 provided under this section are in addition to and do
13 not preclude any remedy for wrongful conversion
14 otherwise available under law to the person claiming
15 relief under this section, including any award for
16 consequential or punitive damages.

17 “(j) EQUITABLE RELIEF.—

18 “(1) IN GENERAL.—In addition to any other
19 remedy available under law, if a person in military
20 service has reason to believe that another party to
21 a contract has violated or is violating this section,
22 the person in military service may—

23 “(A) bring an action to enjoin the violation
24 in any appropriate United States district court

1 or in any other court of competent jurisdiction;
2 or

3 “(B) bring an action in any appropriate
4 United States district court or in any other
5 court of competent jurisdiction to recover dam-
6 ages equal to three times the amount for which
7 the other party is liable to the person in mili-
8 tary service under this section.

9 “(2) ATTORNEY FEES.—If a person in military
10 service is awarded damages under an action de-
11 scribed under paragraph (1), the person shall be
12 awarded, in addition, the costs of the action and rea-
13 sonable attorney fees, as determined by the court.

14 “(k) DEFINITIONS.—For the purposes of this section,
15 the following definitions apply:

16 “(1) MULTICHANNEL VIDEO PROGRAMMING
17 SERVICE.—The term ‘multichannel video program-
18 ming service’ means video programming service pro-
19 vided by a multichannel video programming dis-
20 tributor, as such term is defined in section 602(13)
21 of the Communications Act of 1934 (47 U.S.C.
22 522(13)).

23 “(2) INTERNET ACCESS SERVICE.—The term
24 ‘Internet access service’ has the meaning given that

1 term under section 231(e)(4) of the Communications
2 Act of 1934 (47 U.S.C. 231(e)(4)).

3 “(3) CELLULAR TELEPHONE SERVICE.—The
4 term ‘cellular telephone service’ means commercial
5 mobile service, as that term is defined in section
6 332(d) of the Communications Act of 1934 (47
7 U.S.C. 332(d)).

8 “(4) TELEPHONE EXCHANGE SERVICE.—The
9 term ‘telephone exchange service’ has the meaning
10 given that term under section 3 of the Communica-
11 tions Act of 1934 (47 U.S.C. 153).”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of such Act is amended by striking the
14 item relating to section 308 and inserting the following
15 new items:

“Sec. 308. Termination or suspension of service contracts.

“Sec. 309. Extension of protections to dependents.”.

16 **SEC. 5. PENALTIES FOR VIOLATION OF INTEREST RATE**
17 **LIMITATION UNDER SERVICEMEMBERS CIVIL**
18 **RELIEF ACT.**

19 Section 207 of the Servicemembers Civil Relief Act
20 (50 U.S.C. App. 527) is amended by adding at the end
21 the following new subsections:

22 “(e) PENALTY.—Whoever knowingly violates sub-
23 section (a) shall be fined not more than \$5,000 in the case
24 of an individual or \$10,000 in the case of an organization.

1 “(f) RIGHTS OF SERVICEMEMBERS.—

2 “(1) EQUITABLE RELIEF.—

3 “(A) IN GENERAL.—In addition to any
4 other remedies as are provided under Federal
5 or State law, if a servicemember has reason to
6 believe that a creditor has violated or is vio-
7 lating this section, the servicemember may—

8 “(i) bring an action to enjoin such
9 violation in any appropriate United States
10 district court or in any other court of com-
11 petent jurisdiction; and

12 “(ii) bring an action to recover dam-
13 ages equal to three times the amount of
14 the interest charged in violation of this
15 section (plus interest) for which the cred-
16 itor is liable to the servicemember under
17 this section as a result of the violation.

18 “(B) DETERMINATION OF NUMBER OF
19 VIOLATIONS.—In determining the number of
20 violations by a creditor for which a penalty is
21 imposed under subsection (e) or subparagraph
22 (A), the court shall count as a single violation
23 each obligation or liability of a servicemember
24 with respect to which—

1 (1) by striking “For” and inserting “(a) For”;
2 and

3 (2) by adding at the end the following new sub-
4 section:

5 “(b) For the purposes of voting for any Federal office
6 (as defined in section 301 of the Federal Election Cam-
7 paign Act of 1971 (2 U.S.C. 431)) or a State or local
8 office, a person who is absent from a State because the
9 person is accompanying the person’s spouse who is absent
10 from that same State in compliance with military or naval
11 orders shall not, solely by reason of that absence—

12 “(1) be deemed to have lost a residence or
13 domicile in that State, without regard to whether or
14 not the person intends to return to that State;

15 “(2) be deemed to have acquired a residence or
16 domicile in any other State; or

17 “(3) be deemed to have become a resident in or
18 a resident of any other State.”.

19 (b) CLERICAL AMENDMENTS.—

20 (1) The heading for such section is amended to
21 read as follows:

1 **“SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PER-**
2 **SONNEL AND SPOUSES OF MILITARY PER-**
3 **SONNEL.”.**

4 (2) The item relating to such section in the
5 table of contents in section 1(b) of such Act is
6 amended to read as follows:

“Sec. 705. Guarantee of residency for military personnel and spouses of military personnel.”.

7 **SEC. 7. RESIDENCE FOR TAX PURPOSES.**

8 Section 511(a) of the Servicemembers Civil Relief Act
9 (50 U.S.C. App. 571(a)) is amended—

10 (1) by striking “A servicemember” and insert-
11 ing the following:

12 “(1) SERVICEMEMBER.—A servicemember”;
13 and

14 (2) by adding at the end the following:

15 “(2) SPOUSE OF SERVICEMEMBER.—A spouse
16 of a servicemember shall neither lose nor acquire a
17 residence or domicile for purposes of taxation with
18 respect to the person, personal property, or income
19 of the spouse by reason of being absent or present
20 in any tax jurisdiction of the United States solely to
21 be with the servicemember in compliance with the
22 servicemember’s military orders if the residence or
23 domicile, as the case may be, is the same for the
24 servicemember and the spouse.”.

1 **SEC. 8. SPOUSE'S COMPENSATION DURING MILITARY SERV-**
2 **ICE.**

3 Section 511 of the Servicemembers Civil Relief Act
4 (50 U.S.C. App. 571(b)) is amended—

5 (1) by striking the subsection designation and
6 heading and all that follows through “Compensa-
7 tion” and inserting the following:

8 “(b) MILITARY SERVICE AND SPOUSE’S COMPENSA-
9 TION.—

10 “(1) MILITARY SERVICE COMPENSATION.—
11 Compensation”; and

12 (2) by adding at the end the following:

13 “(2) SPOUSE’S COMPENSATION.—Compensation
14 of a spouse of a servicemember shall not be deemed
15 to be income for services performed or from sources
16 within a tax jurisdiction of the United States if,
17 when the compensation is earned, the spouse of the
18 servicemember is not a resident or domiciliary of the
19 jurisdiction and the jurisdiction is the jurisdiction in
20 which the servicemember is serving in compliance
21 with military orders.”.

Passed the House of Representatives July 31, 2008.

Attest: LORRAINE C. MILLER,
Clerk.