

IMPROVING SCRA AND USERRA PROTECTIONS ACT OF  
 2008

JULY 28, 2008.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. FILNER, from the Committee on Veterans' Affairs,  
 submitted the following

R E P O R T

[To accompany H.R. 6225]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 6225) to amend title 38, United States Code, relating to equitable relief with respect to a State or private employer, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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## AMENDMENT

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

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

**SEC. 2. EQUITY POWERS.**

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

**SEC. 3. RELIEF FOR STUDENTS WHO ARE MEMBERS OF ARMED FORCES DURING PERIOD OF MILITARY SERVICE.**

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

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

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

“(1) provide a credit or refund to the servicemember the tuition and fees paid by the servicemember (other than from the proceeds of a grant or scholarship) for the portion of the program of education for which the servicemember did not receive academic credit after such withdrawal or leave; and

“(2) provide the servicemember an opportunity to reenroll with the same educational and academic status in such program of education that the servicemember had when activated for military service.

“(b) **INSTITUTION OF HIGHER EDUCATION DEFINED.**—In this section, the term ‘institution of higher education’ means a 2-year or 4-year institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).”.

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

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

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

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

**SEC. 4. TERMINATION OR SUSPENSION BY SERVICEMEMBERS OF CERTAIN SERVICE CONTRACTS ENTERED INTO BEFORE PERMANENT CHANGE OF STATION OR DEPLOYMENT ORDERS.**

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

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

(2) by inserting after section 307 the following:

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

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

“(b) **SPECIAL RULES.**—(1) A suspension under subsection (a) of a contract by a person in military service shall continue for the length of the person’s deployment pursuant to the person’s military orders.

“(2) A service provider under a contract suspended or terminated under subsection (a) by a person in military service may not impose a suspension fee or early termination fee in connection with the suspension or termination of the contract, other than a nominal fee for the suspension; except that the service provider may impose a reasonable fee for any equipment remaining on the premises of the person in military service during the period of the suspension. The person in military service may defer, without penalty, payment of such a

nominal fee or reasonable fee for the length of the person's deployment pursuant to the person's military orders.

"(3) In any case in which the contract being suspended under subsection (a) is for cellular telephone service or telephone exchange service, the person in military service, after the date on which the suspension of the contract ends, may keep, to the extent practicable and in accordance with all applicable laws and regulations, the same telephone number the person had before the person suspended the contract.

"(c) COVERED CONTRACTS.—This section applies to a contract for cellular telephone service, telephone exchange service, multichannel video programming service, Internet access service, water, electricity, oil, gas, or other utility if the person enters into the contract and thereafter receives military orders—

"(1) to deploy with a military unit, or as an individual, in support of a contingency operation for a period of not less than 90 days; or

"(2) for a change of permanent station to a location that does not support the contract.

"(d) MANNER OF TERMINATION OR SUSPENSION.—

"(1) IN GENERAL.—Termination or suspension of a contract under subsection (a) is made by delivery by the person in military service of written notice of such termination or suspension and a copy of the servicemember's military orders to the other party to the contract (or to that party's grantee or agent).

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

"(A) by hand delivery;

"(B) by private business carrier;

"(C) by facsimile; or

"(D) by placing the written notice and a copy of the servicemember's military orders in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the party to be notified (or that party's grantee or agent), and depositing the envelope in the United States mails.

"(e) DATE OF CONTRACT TERMINATION OR SUSPENSION.—Termination or suspension of a service contract under subsection (a) is effective as of the date on which the notice under subsection (d) is delivered.

"(f) OTHER OBLIGATIONS AND LIABILITIES.—The service provider under the contract may not impose an early termination or suspension charge, but any tax or any other obligation or liability of the person in military service that, in accordance with the terms of the contract, is due and unpaid or unperformed at the time of termination or suspension of the contract shall be paid or performed by the person in military service.

"(g) FEES PAID IN ADVANCE.—A fee or amount paid in advance for a period after the effective date of the termination of the contract shall be refunded to the person in military service by the other party (or that party's grantee or agent) within 60 days of the effective date of the termination of the contract.

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

"(i) PENALTIES.—

"(1) MISDEMEANOR.—Whoever knowingly violates or attempts to violate this section shall be fined not more than \$5,000 in the case of an individual or \$10,000 in the case of an organization.

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

"(j) EQUITABLE RELIEF.—

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

"(A) bring an action to enjoin the violation in any appropriate United States district court or in any other court of competent jurisdiction; or

"(B) bring an action in any appropriate United States district court or in any other court of competent jurisdiction to recover damages equal to three times the amount for which the other party is liable to the person in military service under this section.

"(2) ATTORNEY FEES.—If a person in military service is awarded damages under an action described under paragraph (1), the person shall be awarded,

in addition, the costs of the action and reasonable attorney fees, as determined by the court.

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

“(1) MULTICHANNEL VIDEO PROGRAMMING SERVICE.—The term ‘multichannel video programming service’ means video programming service provided by a multichannel video programming distributor, as such term is defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)).

“(2) INTERNET ACCESS SERVICE.—The term ‘Internet access service’ has the meaning given that term under section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

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

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

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

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

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

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

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

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

“(f) RIGHTS OF SERVICEMEMBERS.—

“(1) EQUITABLE RELIEF.—

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

“(i) bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction; and

“(ii) bring an action to recover damages equal to three times the amount of the interest charged in violation of this section (plus interest) for which the creditor is liable to the servicemember under this section as a result of the violation.

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

“(i) the servicemember properly provided to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service under subsection (b); and

“(ii) the creditor failed to treat in accordance with subsection (a).

“(2) ATTORNEY FEES.—If a servicemember is awarded damages under an action described under paragraph (1), the servicemember shall be awarded, in addition, the costs of the action and reasonable attorney fees, as determined by the court.

“(g) PRESERVATION OF OTHER REMEDIES.—The rights and remedies provided under subsections (e) and (f) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages.”.

**SEC. 6. GUARANTEE OF RESIDENCY FOR SPOUSES OF MILITARY PERSONNEL.**

(a) GUARANTEE OF RESIDENCY.—Section 705 of the Servicemembers Civil Relief Act (50 U.S.C. App. 595) is amended—

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

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

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

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

“(2) be deemed to have acquired a residence or domicile in any other State;  
or  
“(3) be deemed to have become a resident in or a resident of any other State.”.

(b) CLERICAL AMENDMENTS.—

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

“**SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND SPOUSES OF MILITARY PERSONNEL.**”.

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

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

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

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

(1) by striking “A servicemember” and inserting the following:

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

(2) by adding at the end the following:

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

Amend the title so as to read:

A bill to amend title 38, United States Code, relating to equitable relief with respect to a State or private employer, and for other purposes.

PURPOSE AND SUMMARY

H.R. 6225 was introduced by Representative Stephanie Herseth Sandlin of South Dakota, the Chairwoman of the Subcommittee on Economic Opportunity of the Committee on Veterans’ Affairs, on June 10, 2008. This legislation, as amended, includes provisions from H.R. 2910, introduced by Representative Susan Davis of California; H.R. 3298, introduced by Representative Patrick Murphy of Pennsylvania; and, H.R. 6070 introduced by Representative John R. Carter of Texas.

H.R. 6225, as amended, would encourage courts, when appropriate and at the discretion of the court, to use equity powers in suits involving the Uniformed Services Employment and Reemployment Rights Act (USERRA) and amends the Servicemembers Civil Relief Act (SCRA) to provide additional protections to servicemembers enrolled in institutes of higher education; to servicemembers relating to certain service contracts; and to spouses of servicemembers regarding the state of domicile for tax and voting purposes.

BACKGROUND AND NEED FOR LEGISLATION

EQUITY POWERS

On February 13, 2008, the Subcommittee on Economic Opportunity conducted a hearing titled “Review of Expiring Programs.” This hearing provided the Subcommittee the opportunity to entertain recommendations on ways to improve programs and expand veterans’ rights. One such recommendation came from Mr. Matthew B. Tully, founding partner of Tully Rinckey PLLC, who is a USERRA specialist.

Mr. Tully described to the Subcommittee a situation where a servicemember sought injunctive relief from his employer but the

court denied his request. Mr. Tully recommended that the Subcommittee consider amending USERRA to reiterate that a court may utilize, when appropriate, its powers of equitable relief under USERRA. The Committee agrees that it is important to statutorily underline the equitable relief powers that courts already possess, and has included language specifically highlighting a court's ability to grant equitable relief where appropriate.

RELIEF FOR STUDENTS WHO ARE MEMBERS OF THE ARMED FORCES  
DURING PERIOD OF MILITARY SERVICE

Since the attacks that occurred on September 11, 2001, many of our servicemembers have experienced multiple deployments in support of missions throughout the globe to include operations in Iraq and Afghanistan. Many of these men and women have been members of the Reserve Forces whose military commitment required them to interrupt their college education. Students who serve in the military face unique hardships when colleges and universities do not refund tuition and fees to students when they are activated during the academic year.

In addition to situations where colleges and universities do not refund tuition and fees, there have been instances where servicemembers have received failing grades after leaving school for required military service in the middle of the quarter or semester—even after notifying the school administration of their military commitment. Servicemembers also face hardships when it comes to remaining current with their student loans. Activated military personnel have been known to receive collection notices for student loans while serving in combat zones.

H.R. 6225 adds provisions to the SCRA requiring colleges and universities to refund servicemembers' tuition and fees for any unearned credit for the semester or quarter when they are activated for duty. The legislation would also require schools to re-admit student veterans after completion of their active duty at their previous academic status.

Under current law, servicemembers, while deployed, are generally not required to pay more than a six percent interest rate on all forms of debt under the SCRA. However, this interest rate cap has not been applied to student loans. H.R. 6225 specifically adds student loan obligations to this interest rate cap.

TERMINATION OR SUSPENSION BY SERVICEMEMBERS OF CERTAIN  
SERVICE CONTRACTS

There is a growing problem that many deployed servicemembers are currently facing in having their credit damaged during their deployments over issues concerning contracts with cellular telephone or internet service providers. The Committee has also learned that some financial institutions have been recalcitrant or unwilling to reduce servicemembers' interest rates during their deployments on certain types of loans such as mortgages, even though these creditors are already required to do so under current law.

H.R. 6225 would extend SCRA protections to enable servicemembers with deployment orders to more easily terminate or suspend service contracts without fee or penalty for such services as cellular phones, utilities, cable television, or internet access.

These protections currently exist for residential and automobile leases.

Unfortunately, some families of servicemembers have been faced with repeated harassment by collection agencies because of these situations. Currently, creditors who knowingly or negligently fail to reduce interest rates upon notification from a servicemember with deployment orders face no specific penalty. Therefore, this measure would add a penalty provision to the SCRA that would apply to those creditors who refuse to reduce interest rates as currently required under the SCRA.

#### GUARANTEE OF RESIDENCY FOR SPOUSES OF MILITARY PERSONNEL

The SCRA provides basic civil relief to our men and women in the Armed Services in exchange for their voluntary service. These protections include an option to maintain a single state of domicile regardless of where their military orders may send them. This enables servicemembers to simplify their state income tax requirements, maintain a driver's license in a single state, and continue to vote for the elected officials from their hometown.

However, while servicemembers receive this important protection, the SCRA does not currently offer these same protections to the spouse of the servicemember. Although the servicemember is provided the stability of a single state of domicile over the course of his or her career, with every move or deployment the spouse must change voter registration, obtain a new driver's license, and pay income tax to a state where they never intended to live.

H.R. 6225 would enable military spouses to claim the same state of domicile as the servicemember for the purposes of state income and property taxes as well as voter registration.

#### HEARINGS

On January 17, 2008, the Subcommittee on Economic Opportunity held a hearing titled the "Review of Pending Montgomery G.I. Bill Legislation." The following witnesses testified: Colonel Robert F. Norton, USA (Ret.), Deputy Director, Government Relations, Military Officers Association of America; Mr. Patrick Campbell, Legislative Director, Iraq and Afghanistan Veterans of America; Mr. Eric A. Hilleman, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Ronald F. Chamrin, Assistant Director, Economic Commission, The American Legion; Mr. Thomas L. Bush, Acting Deputy Assistant Secretary of Defense for Reserve Affairs, U.S. Department of Defense; Dr. Curtis L. Gilroy, Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, U.S. Department of Defense; and, Mr. Keith M. Wilson, Director of Education Service for the Veterans Benefits Administration, U.S. Department of Veterans Affairs. Those submitting statements for the record included: The Honorable Rick Larsen of Washington; The Honorable Jim Matheson of Utah; The Honorable Robert C. "Bobby" Scott of Virginia; the Paralyzed Veterans of America; and, Mr. Jim Pace, President, Washington State Council, Vietnam Veterans of America.

On April 16, 2008, the Subcommittee on Economic Opportunity held a hearing on a number of bills introduced in the 110th Con-

gress, including H.R. 3298. The following witnesses testified: The Honorable Bob Filner of California; The Honorable Steve Buyer of Indiana; The Honorable Cliff Stearns of Florida; The Honorable Ciro D. Rodriguez of Texas; The Honorable John A. Yarmuth of Kentucky; The Honorable Robin Hayes of North Carolina; The Honorable Artur Davis of Alabama; The Honorable Patrick J. Murphy of Pennsylvania; Mr. Ronald F. Chamrin, Assistant Director of the Economic Commission, The American Legion; Mr. Justin Brown, Legislative Associate of National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Richard Daley, Associate Legislative Director, Paralyzed Veterans of America; Mr. Patrick M. Campbell, Legislative Director, Iraq and Afghanistan Veterans of America; Colonel Robert F. Norton, USA (Ret.), Deputy Director of Government Relations, Military Officers Association of America; The Honorable Charles S. Ciccolella, Assistant Secretary for Veterans' Employment and Training Service, U.S. Department of Labor; Mr. Thomas L. Bush, Acting Deputy Assistant Secretary of Defense for Reserve Affairs, U.S. Department of Defense; Dr. Curtis L. Gilroy, Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, U.S. Department of Defense; and, Mr. Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management for the Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Mr. John Brizzi, Staff Attorney of the Office of General Counsel, U.S. Department of Veterans Affairs. Those submitting statements for the record included: Mr. Jot D. Carpenter, Jr., Vice President of Government Affairs, CTIA—The Wireless Association; Mr. Kerry Baker, Associate National Legislative Director, Disabled American Veterans; and, Mr. Kyle McSlarrow, President and Chief Executive Officer, National Cable and Telecommunications Association.

On June 19, 2008, the Subcommittee on Economic Opportunity held a legislative hearing on a number of bills introduced in the 110th Congress, including H.R. 6070 and H.R. 6225. The following witnesses testified: The Honorable Bob Filner of California; The Honorable Dennis A. Cardoza of California; The Honorable Zoe Lofgren of California; The Honorable John R. Carter of Texas; The Honorable John Boozman of Arkansas; The Honorable Stephanie Herseth Sandlin of South Dakota; The Honorable Peter Welch of Vermont; Mr. Charles Huebner, Chief of Paralympics, United States Olympic Committee; Mr. Bobby Franklin, Executive Vice President, CTIA The Wireless Association; Mr. Kerry Baker, Associate National Legislative Director, Disabled American Veterans; Mr. Joseph C. Sharpe, Jr., Deputy Director, National Economic Commission, The American Legion; Mr. Richard Daley, Associate Legislation Director, Paralyzed Veterans of America; Mr. Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America; and Mr. Keith Pedigo, Associate Deputy Under Secretary for Policy and Program Management for the Veterans Benefits Administration, U.S. Department of Veterans Affairs, accompanied by Ms. Diane Hartmann, Director, National Programs and Special Events, U.S. Department of Veterans Affairs. Those submitting statements for the record included: The Honorable Michael L. Dominguez, Principal Deputy Under Secretary of Defense (Personnel and Readiness), U.S. Department of

Defense; The Honorable Charles S. Ciccolella, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor; and Ms. Rebecca Noah Poynter, Owner, OnPoynt Communications, Dallas, Texas.

#### SUBCOMMITTEE CONSIDERATION

On June 26, 2008, the Subcommittee on Economic Opportunity met in open markup session and ordered favorably forwarded to the full Committee H.R. 6225; H.R. 6070; H.R. 2910, as amended; and, H.R. 3298, as amended, by voice vote. During consideration of H.R. 2910 the following amendment was considered: An amendment in the nature of a substitute by Mr. Hall of New York to remove section 3 as duplicative of current law, was agreed to by voice vote.

During consideration of H.R. 3298 the following amendment was considered: An amendment in the nature of a substitute by Mr. Hall of New York to include technical terminology for the various affected industries as established in the Communications Act of 1944, was agreed to by voice vote.

This amendment also permits a servicemember to pay a nominal fee to keep the account active and a reasonable fee for any equipment that the servicemember retains during suspension. It also stipulates that, to the extent practicable, the servicemember should be able to retain his or her phone number. Furthermore, the amendment includes a penalty for whoever knowingly violates the law and shall be fined \$5,000 in the case of an individual or \$10,000 in the case of an organization.

#### COMMITTEE CONSIDERATION

On July 16, 2008, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 6225, as amended, reported favorably to the House of Representatives, by voice vote. During consideration of the bill the following amendment was considered: An amendment in the nature of a substitute by Ms. Herseth Sandlin of South Dakota to incorporate language of H.R. 6070, and amended language of H.R. 2910 and H.R. 3298, was agreed to by voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 6225 reported to the House. A motion by Mr. Buyer of Indiana to order H.R. 6225, as amended, reported favorably to the House of Representatives was agreed to by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 6225 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 6255 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 6255 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 24, 2008.*

Hon. BOB FILNER,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6225, the Improving SCRA and USERRA Protections Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Neil Hood, who can be reached at 225-3220.

Sincerely,

ROBERT A. SUNSHINE  
(For Peter R. Orszag, Director).

Enclosure.

*H.R. 6225—Improving SCRA and USERRA Protections Act of 2008*

Summary: H.R. 6225 would require courts to grant injunctive relief, when appropriate, to veterans filing claims against state or private employers under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The bill also would apply to

student loans the current 6 percent cap on interest on outstanding debt obligations of people serving in the military. CBO estimates that implementing the bill would not have a significant effect on the federal budget.

H.R. 6225 would impose several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require public institutions of higher education to refund tuition and fees to servicemembers if they must leave school because of military service commitments. The bill also would prohibit governmental entities from charging fees to some servicemembers for terminating utility contracts, and it would prohibit state and local governments from imposing certain taxes on some spouses of servicemembers. In aggregate, CBO estimates that the costs of the intergovernmental mandates in the bill would total between \$40 million and \$50 million in 2008 and similar amounts annually thereafter; such costs would not exceed the threshold established in UMRA (\$68 million in 2008, adjusted annually for inflation).

Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that section 6 of H.R. 6225 would fall within that exclusion because it would protect individuals' voting rights. Therefore, CBO has not reviewed that section of the bill for mandates.

The bill contains provisions related to education expenses (in section 3) and service contract fees (in section 4) for certain members of the military that would impose private-sector mandates as defined in UMRA. CBO estimates that the cost of complying with those mandates would likely be below the annual threshold established in that act (\$136 million in 2008, adjusted annually for inflation).

Basis of estimate: H.R. 6225 would require courts to grant injunctive relief, when appropriate, to veterans filing claims against state or private employers under USERRA. Servicemembers can file USERRA claims if they believe they have been terminated from their job or lost certain promotions or benefits as a result of their military obligations. Information from the Department of Justice (DOJ) indicates that in 2006 four complaints were filed in federal district courts on behalf of USERRA claimants. Because CBO expects that the bill would not appreciably change the workload of federal court personnel and DOJ, we estimate implementing this provision would have no significant effect on the federal budget.

The bill also would extend to student loans the current 6 percent cap on interest on outstanding debt obligations of people serving in the military. This cap would only be in effect while the person is on active duty and only for debt accrued prior to active duty. CBO estimates that this change would have a minimal cost for several reasons. First, many current borrowers have loans with interest rates below the cap. Second, many of those loans already carry a deferment from repayment for those serving in areas of conflict. Finally, the statutory payments to private lenders would not be altered by this proposed change.

Estimated impact on State, local, and tribal governments: H.R. 6225 contains intergovernmental mandates as defined in UMRA. CBO estimates that the costs of complying with those mandates would total between \$40 million and \$50 million in 2008 and simi-

lar amounts annually thereafter. Such costs would not exceed the threshold established in UMRA (\$68 million in 2008, adjusted annually for inflation).

The bill would require public institutions of higher education to refund or credit tuition and fees paid by servicemembers who have to leave school because of military service commitments. In addition, those institutions would be required to provide servicemembers who discontinued an educational program because of military service an opportunity to reenroll with the same educational and academic status held prior to their military service. Information from state and higher education officials indicates that public institutions of higher education in approximately half the states already extend similar benefits to servicemembers, either because of state law or institutional policies. CBO estimates that those institutions not extending such benefits would incur costs of between \$40 million and \$50 million in 2008, and that the total costs would remain under the threshold established in UMRA through 2012.

The bill would impose additional intergovernmental mandates by limiting the ability of state and local governments to collect taxes and levy fees on some servicemembers and their spouses. The bill would prohibit public utilities from charging early termination fees to servicemembers and would require them to refund fees or payments made in advance for services not rendered. The bill also would limit the ability of a state or local government to levy certain taxes on the personal property or income of a spouse of a servicemember if the spouse moves into the government's jurisdiction to be with the servicemember. These requirements would be intergovernmental mandates as defined in UMRA, but CBO estimates that the costs, if any, would be small.

Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that section 6 of H.R. 6225 would fall within that exclusion because it would protect individuals' voting rights. Therefore, CBO has not reviewed this section of the bill for mandates.

Estimated impact on the private sector: The bill contains private-sector mandates as defined in UMRA, but CBO estimates that the total cost of the mandates would likely be below the annual threshold established in UMRA (\$136 million in 2008, adjusted annually for inflation). Section 3 would require institutions of higher education to refund tuition and fees paid by students called to military service, reflecting the portion of the education program for which servicemembers did not receive academic credit. That section also would limit the interest rate on student loans to 6 percent per year for certain servicemembers during their period of military service, regardless of their ability to pay.

Section 4 of the bill would prevent cellular telephone, Internet access, utility, and other service providers from imposing suspension and early termination fees on certain servicemembers, except for a nominal fee for the suspension and a reasonable fee for any equipment remaining on such servicemembers' premises. The waiver would be applicable for those servicemembers who are deployed to contingency operations or are assigned to permanent stations in locations that do not support the service contracts.

CBO expects that the number of servicemembers called to military service while enrolled at an institution of higher education would be small. Based on estimates of total student loan debt for servicemembers entering the military, CBO also expects that the annual costs to lenders resulting from a reduction in the maximum allowable interest rate for those loans would be small. Finally, CBO estimates that the costs of the mandate on service providers would be well below the annual threshold, particularly since all major cellular phone carriers currently waive cancellation fees for military personnel going abroad and for customers moving to areas with no coverage.

Previous CBO estimate: On August 28, 2007, CBO transmitted a cost estimate for S. 1315, the Veterans' Benefits Enhancement Act of 2007, as ordered reported by the Senate Committee on Veterans' Affairs on June 27, 2007. Section 804 of that bill is similar to section 4 of H.R. 6225. The earlier bill, however, included provisions only for the suspension or termination of cellular phone contracts. CBO determined that S. 1315 contained a private-sector mandate only on cellular telephone service contractors, and the costs of that mandate would likely be below the threshold established in UMRA.

Estimate prepared by: Federal Spending: Veterans' Affairs—Neil Hood. Injunctive Relief—Leigh Angres. Student Loans—Deborah Kalcevic. Impact on State, Local, and Tribal Governments: Elizabeth Cove, Neil Hood, and Lisa Ramirez-Branum. Impact on the Private Sector: Daniel Frisk.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 6225 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 6225.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 6225 is provided by Article I, section 8 of the Constitution of the United States.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section would provide the short title of H.R. 6225 as the “Improving SCRA and USERRA Protections Act of 2008.”

*Section 2. Equity powers*

This section would encourage courts to utilize equity powers when deemed appropriate in USERRA cases.

*Section 3. Relief for students who are members of the Armed Forces during period of military service*

This section would require colleges and universities to refund a student’s tuition and fees for unearned credit for the semester or quarter when they are activated for duty and requires colleges and universities to allow students to reenter the institution with the identical educational and academic status they had when they activated for duty. In addition, this section would extend the current interest rate cap in the SCRA to student loan obligations.

*Section 4. Termination or suspension by servicemembers of certain service contracts entered into before permanent change of station or deployment orders*

This section would extend SCRA protections to enable servicemembers with deployment orders to more easily terminate or suspend service contracts without fee or penalty for such services as cellular phones, utilities, cable television, or internet access, protections that currently exist for residential and automobile leases.

*Section 5. Penalties for violation of interest rate limitation under SCRA*

This section would add a penalty provision to the SCRA that would apply to those creditors who refuse to reduce interest rates as currently required under the SCRA.

*Section 6. Guarantee of residency for spouses of military personnel*

This section would allow a military spouse to vote in the same location of Federal, state and local elections as the servicemember.

*Section 7. Residency for tax purposes*

This section would allow the spouse of a servicemember to pay taxes in the same state as the servicemember.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 38, UNITED STATES CODE**

\* \* \* \* \*

**PART III—READJUSTMENT AND RELATED BENEFITS**

\* \* \* \* \*

**CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

\* \* \* \* \*

**SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION**

\* \* \* \* \*

**§ 4323. Enforcement of rights with respect to a State or private employer**

(a) \* \* \*

\* \* \* \* \*

(e) EQUITY POWERS.—The court [may use] *shall use, in any case in which the court determines it is appropriate*, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.

\* \* \* \* \*

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**SERVICEMEMBERS CIVIL RELIEF ACT**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) \* \* \*

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

\* \* \* \* \*

**TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES**

\* \* \* \* \*

**[Sec. 308. Extension of protections to dependents.]**  
*Sec. 308. Termination or suspension of service contracts.*  
*Sec. 309. Extension of protections to dependents.*

\* \* \* \* \*

**TITLE VII—FURTHER RELIEF**

\* \* \* \* \*

**[Sec. 705. Guarantee of residency for military personnel.]**  
*Sec. 705. Guarantee of residency for military personnel and spouses of military personnel.*

\* \* \* \* \*

*Sec. 707. Tuition, reenrollment, and student loan relief for postsecondary students called to military service.*

\* \* \* \* \*

**TITLE II—GENERAL RELIEF**

\* \* \* \* \*

**SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.**

(a) \* \* \*

\* \* \* \* \*

(c) CREDITOR PROTECTION.—A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember’s military service. *This subsection shall not apply with respect to an obligation or liability that is incurred by a servicemember who, at the time the servicemember is called to military service, is a student enrolled within six months of activation at an institution of higher education on a full-time basis, as determined by that institution.*

\* \* \* \* \*

(e) PENALTY.—*Whoever knowingly violates subsection (a) shall be fined not more than \$5,000 in the case of an individual or \$10,000 in the case of an organization.*

(f) RIGHTS OF SERVICEMEMBERS.—

(1) EQUITABLE RELIEF.—

(A) IN GENERAL.—*In addition to any other remedies as are provided under Federal or State law, if a servicemember has reason to believe that a creditor has violated or is violating this section, the servicemember may—*

*(i) bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction; and*

*(ii) bring an action to recover damages equal to three times the amount of the interest charged in violation of this section (plus interest) for which the creditor is liable to the servicemember under this section as a result of the violation.*

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

*(i) the servicemember properly provided to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service under subsection (b); and*

*(ii) the creditor failed to treat in accordance with subsection (a).*

(2) ATTORNEY FEES.—*If a servicemember is awarded damages under an action described under paragraph (1), the servicemember shall be awarded, in addition, the costs of the action and reasonable attorney fees, as determined by the court.*

(g) PRESERVATION OF OTHER REMEDIES.—*The rights and remedies provided under subsections (e) and (f) are in addition to and do not preclude any other remedy available under law to a person claiming relief under this section, including any award for consequential or punitive damages.*

## TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

\* \* \* \* \*

### SEC. 308. TERMINATION OR SUSPENSION OF SERVICE CONTRACTS.

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

(b) *SPECIAL RULES.*—(1) A suspension under subsection (a) of a contract by a person in military service shall continue for the length of the person's deployment pursuant to the person's military orders.

(2) A service provider under a contract suspended or terminated under subsection (a) by a person in military service may not impose a suspension fee or early termination fee in connection with the suspension or termination of the contract, other than a nominal fee for the suspension; except that the service provider may impose a reasonable fee for any equipment remaining on the premises of the person in military service during the period of the suspension. The person in military service may defer, without penalty, payment of such a nominal fee or reasonable fee for the length of the person's deployment pursuant to the person's military orders.

(3) In any case in which the contract being suspended under subsection (a) is for cellular telephone service or telephone exchange service, the person in military service, after the date on which the suspension of the contract ends, may keep, to the extent practicable and in accordance with all applicable laws and regulations, the same telephone number the person had before the person suspended the contract.

(c) *COVERED CONTRACTS.*—This section applies to a contract for cellular telephone service, telephone exchange service, multichannel video programming service, Internet access service, water, electricity, oil, gas, or other utility if the person enters into the contract and thereafter receives military orders—

(1) to deploy with a military unit, or as an individual, in support of a contingency operation for a period of not less than 90 days; or

(2) for a change of permanent station to a location that does not support the contract.

(d) *MANNER OF TERMINATION OR SUSPENSION.*—

(1) *IN GENERAL.*—Termination or suspension of a contract under subsection (a) is made by delivery by the person in military service of written notice of such termination or suspension and a copy of the servicemember's military orders to the other party to the contract (or to that party's grantee or agent).

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

(A) by hand delivery;

(B) by private business carrier;

(C) by facsimile; or

(D) by placing the written notice and a copy of the servicemember's military orders in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the party to be notified (or that party's grantee or agent), and depositing the envelope in the United States mails.

(e) *DATE OF CONTRACT TERMINATION OR SUSPENSION.*—Termination or suspension of a service contract under subsection (a) is effective as of the date on which the notice under subsection (d) is delivered.

(f) *OTHER OBLIGATIONS AND LIABILITIES.*—The service provider under the contract may not impose an early termination or suspension charge, but any tax or any other obligation or liability of the person in military service that, in accordance with the terms of the contract, is due and unpaid or unperformed at the time of termination or suspension of the contract shall be paid or performed by the person in military service.

(g) *FEES PAID IN ADVANCE.*—A fee or amount paid in advance for a period after the effective date of the termination of the contract shall be refunded to the person in military service by the other party (or that party's grantee or agent) within 60 days of the effective date of the termination of the contract.

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

(i) *PENALTIES.*—

(1) *MISDEMEANOR.*—Whoever knowingly violates or attempts to violate this section shall be fined not more than \$5,000 in the case of an individual or \$10,000 in the case of an organization.

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

(j) *EQUITABLE RELIEF.*—

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

(A) bring an action to enjoin the violation in any appropriate United States district court or in any other court of competent jurisdiction; or

(B) bring an action in any appropriate United States district court or in any other court of competent jurisdiction to recover damages equal to three times the amount for which the other party is liable to the person in military service under this section.

(2) *ATTORNEY FEES.*—If a person in military service is awarded damages under an action described under paragraph (1), the person shall be awarded, in addition, the costs of the action and reasonable attorney fees, as determined by the court.

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

(1) *MULTICHANNEL VIDEO PROGRAMMING SERVICE.*—The term “multichannel video programming service” means video programming service provided by a multichannel video programming distributor, as such term is defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)).

(2) *INTERNET ACCESS SERVICE.*—The term “Internet access service” has the meaning given that term under section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

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

(4) *TELEPHONE EXCHANGE SERVICE.*—The term “telephone exchange service” has the meaning given that term under section 3 of the Communications Act of 1934 (47 U.S.C. 153).

**SEC. [308.] 309. EXTENSION OF PROTECTIONS TO DEPENDENTS.**

Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent’s ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember’s military service.

\* \* \* \* \*

**TITLE V—TAXES AND PUBLIC LANDS**

\* \* \* \* \*

**SEC. 511. RESIDENCE FOR TAX PURPOSES.**

(a) **RESIDENCE OR DOMICILE.**—[A servicemember]

(1) *SERVICEMEMBER.*—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

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

\* \* \* \* \*

**TITLE VII—FURTHER RELIEF**

\* \* \* \* \*

**SEC. 705. [GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.]  
GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL  
AND SPOUSES OF MILITARY PERSONNEL.**

[For] (a) For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971

(2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) \* \* \*

\* \* \* \* \*

(b) *For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State because the person is accompanying the person's spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—*

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

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

(3) *be deemed to have become a resident in or a resident of any other State.*

\* \* \* \* \*

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

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

(1) *provide a credit or refund to the servicemember the tuition and fees paid by the servicemember (other than from the proceeds of a grant or scholarship) for the portion of the program of education for which the servicemember did not receive academic credit after such withdrawal or leave; and*

(2) *provide the servicemember an opportunity to reenroll with the same educational and academic status in such program of education that the servicemember had when activated for military service.*

(b) **INSTITUTION OF HIGHER EDUCATION DEFINED.**—*In this section, the term "institution of higher education" means a 2-year or 4-year institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).*