

111TH CONGRESS
1ST SESSION

S. 2782

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2009

Mrs. McCASKILL (for herself, Ms. COLLINS, Mr. BENNETT, Mr. BROWN, Mr. NELSON of Florida, Mr. LEMIEUX, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, 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 “Lieutenant Colonel
3 Dominic ‘Rocky’ Baragona Justice for American Heroes
4 Harmed by Contractors Act”.

5 **SEC. 2. DEBARMENT OR SUSPENSION OF UNITED STATES**
6 **GOVERNMENT CONTRACTORS FOR EVASION**
7 **OF PROCESS OR FAILURE TO APPEAR IN AC-**
8 **TIONS IN CONNECTION WITH GOVERNMENT**
9 **CONTRACTS.**

10 (a) IN GENERAL.—Not later than 90 days after the
11 date of enactment of this Act, the Federal Acquisition
12 Regulatory Council established under section 25(a) of the
13 Office of Federal Procurement Policy Act (41 U.S.C.
14 421(a)) shall amend the Federal Acquisition Regulation
15 to provide that a contractor with the United States may
16 be debarred or suspended from contracting with the
17 United States if—

18 (1) the contractor evades service of process in
19 any civil action or criminal prosecution brought
20 against the contractor by the United States or a cit-
21 izen or national of the United States in connection
22 with the performance of the contract; or

23 (2) the contractor refuses or fails to appear be-
24 fore a Federal court in a matter brought against the
25 contractor by the United States or a citizen or na-

1 tional of the United States in connection with the
 2 performance of the contract.

3 (b) APPLICABILITY.—The amendments to the Fed-
 4 eral Acquisition Regulation made under subsection (a)
 5 shall apply to any action of a contractor that occurs on
 6 or after the effective date of the amendments.

7 **SEC. 3. PERSONAL JURISDICTION IN COVERED CIVIL AC-**
 8 **TIONS BY MEMBERS OF THE ARMED FORCES,**
 9 **CIVILIAN EMPLOYEES OF THE UNITED**
 10 **STATES, AND UNITED STATES CITIZEN EM-**
 11 **PLOYEES OF COMPANIES PERFORMING**
 12 **WORK FOR THE UNITED STATES AGAINST EN-**
 13 **TITIES UNDER UNITED STATES GOVERNMENT**
 14 **CONTRACTS PERFORMED ABROAD.**

15 (a) IN GENERAL.—Not later than 90 days after the
 16 date of enactment of this Act, the Federal Acquisition
 17 Regulatory Council established under section 25(a) of the
 18 Office of Federal Procurement Policy Act (41 U.S.C.
 19 421(a)) shall amend the Federal Acquisition Regulation
 20 to require that any covered contract—

21 (1) requires that the contractor consent to per-
 22 sonal jurisdiction over the contractor by the Federal
 23 courts with respect to any covered civil action, in-
 24 cluding a covered civil action against 1 or more em-

1 employees of the contractor for which the contractor
2 may be liable under theories of vicarious liability;

3 (2) specifies that consent to personal jurisdic-
4 tion under paragraph (1) shall not operate to de-
5 prive or terminate personal jurisdiction of the con-
6 tractor in any court that otherwise has personal ju-
7 risdiction under another provision of law;

8 (3) requires the contractor to consent to per-
9 sonal jurisdiction in the United States District
10 Court for the District of Columbia for a covered civil
11 action in which—

12 (A) the events giving rise to the cause of
13 action occurred outside the United States; and

14 (B) personal jurisdiction cannot be estab-
15 lished in another Federal court; and

16 (4) if the covered contract has a value of not
17 less than \$5,000,000 and was awarded to a con-
18 tractor that does not maintain an office in the
19 United States, requires that the contractor designate
20 an agent located in the United States for service of
21 process in any covered civil action; and

22 (5) requires that—

23 (A) except as provided in subparagraph

24 (B), any covered civil action shall be analyzed

1 in accordance with the laws of the United
2 States; and

3 (B) the substantive law of the State in
4 which the covered civil action is brought shall
5 be the law applicable to a covered civil action
6 if—

7 (i) the substantive law otherwise ap-
8 plicable to the covered civil action would be
9 the law of the location where the events
10 giving rise to the cause action occurred;
11 and

12 (ii) the location is designated as a
13 hazardous duty zone by the Secretary of
14 Defense.

15 (b) APPLICABILITY.—

16 (1) IN GENERAL.—The amendments to the
17 Federal Acquisition Regulation made under sub-
18 section (a) shall apply with respect to any covered
19 contract that is entered into on or after the effective
20 date of the amendments under subsection (a).

21 (2) PROSPECTIVE APPLICABILITY UNDER CER-
22 TAIN CURRENT CONTRACTS.—For a covered contract
23 that is an indefinite delivery, indefinite quantity con-
24 tract or blanket purchase agreement in effect on the
25 effective date of the amendments to the Federal Ac-

quisition Regulation made under subsection (a), the amendments to the Federal Acquisition Regulation made under subsection (a) shall apply to any task order under the covered contract, including any subcontract of the covered contract, that is made on or after the effective date of the amendments.

SEC. 4. PERSONAL JURISDICTION FOR CIVIL OR CRIMINAL SUITS BROUGHT BY THE UNITED STATES GOVERNMENT ALLEGING WRONGDOING UNDER UNITED STATES GOVERNMENT CONTRACTS PERFORMED ABROAD.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation to require that any covered contract—

(1) requires that the contractor consent to personal jurisdiction over the contractor by the Federal courts with respect to any civil action or criminal prosecution brought by the United States alleging wrongdoing associated with the performance of the covered contract;

(2) specifies that consent to personal jurisdiction under paragraph (1) shall not operate to de-

1 prive or terminate personal jurisdiction of the con-
 2 tractor in any other court that has personal jurisdic-
 3 tion under another provision of law;

4 (3) requires the contractor to consent to per-
 5 sonal jurisdiction in the United States District
 6 Court for the District of Columbia for a civil action
 7 or criminal prosecution described in paragraph (1)
 8 in which—

9 (A) the events giving rise to the cause of
 10 action occurred outside the United States; and

11 (B) personal jurisdiction cannot be estab-
 12 lished in another Federal court; and

13 (4) if the covered contract has a value of not
 14 less than \$5,000,000 and was awarded to a con-
 15 tractor that does not maintain an office in the
 16 United States, requires that the contractor designate
 17 an agent located in the United States for service of
 18 process in any civil action or criminal prosecution
 19 described in paragraph (1).

20 (b) APPLICABILITY.—

21 (1) IN GENERAL.—The amendments to the
 22 Federal Acquisition Regulation made under sub-
 23 section (a) shall apply with respect to any covered
 24 contract that is entered into on or after the effective
 25 date of the amendments under subsection (a).

1 (2) PROSPECTIVE APPLICABILITY UNDER CER-
2 TAIN CURRENT CONTRACTS.—For a covered contract
3 that is an indefinite delivery, indefinite quantity con-
4 tract or blanket purchase agreement in effect on the
5 effective date of the amendments to the Federal Ac-
6 quisition Regulation made under subsection (a), the
7 amendments to the Federal Acquisition Regulation
8 made under subsection (a) shall apply to any task
9 order under the covered contract, including any sub-
10 contract of the covered contract, that is made on or
11 after the effective date of the amendments.

12 **SEC. 5. SAVINGS CLAUSE.**

13 Nothing in this Act shall be construed to limit any
14 cause of action or remedy under any other provision of
15 law.

16 **SEC. 6. DEFINITIONS.**

17 In this Act:

18 (1) CONTRACTOR.—The term “contractor”,
19 with respect to a contract, includes the contractor
20 under the contract, any subcontractor under the
21 contract, any subordinate contractor under the con-
22 tract, any subsidiary, parent company, or successor
23 entity of the contractor formed to act as a successor
24 in interest of the contractor, and any employee

1 thereof performing work under or in connection with
2 the contract.

3 (2) COVERED CIVIL ACTION.—The term “cov-
4 ered civil action” means a civil action alleging a rape
5 or sexual assault of or serious bodily injury to a
6 member of the Armed Forces of the United States,
7 civilian employee of the United States, or employee
8 of a company performing work for the United States
9 who is a citizen or national of the United States.

10 (3) COVERED CONTRACT.—The term “covered
11 contract”—

12 (A) means a contract, grant, or cooperative
13 agreement—

14 (i) for work to be performed outside
15 the United States that is awarded or en-
16 tered into by the United States (including
17 any executive department, independent es-
18 tablishment, or agency thereof); and

19 (ii) with a value of not less than
20 \$1,000,000; and

21 (B) includes any subcontract or subordi-
22 nate contract, grant, or cooperative agreement
23 under a contract, grant, or cooperative agree-
24 ment described in subparagraph (A).

1 (4) RAPE.—The term “rape” means conduct
 2 that would violate section 920(a) of title 10, United
 3 States Code (article 120(a) of the Uniform Code of
 4 Military Justice), if the conduct was committed by
 5 a person subject to chapter 47 of title 10, United
 6 States Code (the Uniform Code of Military Justice).

7 (5) SERIOUS BODILY INJURY.—The term “seri-
 8 ous bodily injury” has the meaning given that term
 9 in section 1365 of title 18, United States Code.

10 (6) SEXUAL ASSAULT.—The term “sexual as-
 11 sault” means conduct that would violate section
 12 920(c), (h), or (m) of title 10, United States Code
 13 (article 120(c), (h), or (m) of the Uniform Code of
 14 Military Justice), if the conduct was committed by
 15 a person subject to chapter 47 of title 10, United
 16 States Code (the Uniform Code of Military Justice).

17 (7) UNITED STATES.—The term “United
 18 States”, in a geographic sense—

19 (A) means the several States and the Dis-
 20 trict of Columbia; and

21 (B) does not include any military installa-
 22 tion or facility located outside the area de-
 23 scribed in subparagraph (A).

