

112TH CONGRESS
2D SESSION

H. R. 6293

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Mr. GARAMENDI (for himself, Mr. RANGEL, Mr. MCGOVERN, Mr. CARSON of Indiana, and Ms. CLARKE of New York) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend the Servicemembers Civil Relief Act and title 38, United States Code, to improve the provision of civil relief to members of the uniformed services and to improve the enforcement of employment and reemployment rights of such members, 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.**

4 This Act may be cited as the “Servicemembers Rights
5 Enforcement Improvement Act of 2012”.

1 **SEC. 2. MODIFICATION OF PLAINTIFF AFFIDAVIT FILING**
2 **REQUIREMENT FOR DEFAULT JUDGMENTS**
3 **AGAINST SERVICEMEMBERS.**

4 Paragraph (1) of section 201(b) of the Servicemem-
5 bers Civil Relief Act (50 U.S.C. App. 521(b)) is amended
6 to read as follows:

7 “(1) PLAINTIFF TO FILE AFFIDAVIT.—

8 “(A) IN GENERAL.—In any action or pro-
9 ceeding covered by this section, the plaintiff, be-
10 fore seeking a default judgment, shall file with
11 the court an affidavit—

12 “(i) stating whether or not the de-
13 fendant is in military service and showing
14 necessary facts to support the affidavit; or

15 “(ii) if the plaintiff is unable to deter-
16 mine whether or not the defendant is in
17 military service, stating that the plaintiff is
18 unable to determine whether or not the de-
19 fendant is in military service.

20 “(B) DUE DILIGENCE.—Before filing the
21 affidavit, the plaintiff shall conduct a diligent
22 and reasonable investigation to determine
23 whether or not the defendant is in military
24 service, including a search of available records
25 of the Department of Defense and any other in-
26 formation available to the plaintiff. The affi-

1 davit shall set forth in the affidavit all steps
2 taken to determine the defendant’s military sta-
3 tus.”.

4 **SEC. 3. PRIVATE RIGHT OF ACTION UNDER**
5 **SERVICEMEMBERS CIVIL RELIEF ACT.**

6 (a) INCREASE IN CIVIL PENALTIES FOR SCRA VIO-
7 LATIONS.—Section 801(b)(3) of the Servicemembers Civil
8 Relief Act (50 U.S.C. App. 597(b)(3)) is amended—

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

11 (2) in subparagraph (B), by striking
12 “\$110,000” and inserting “\$220,000”.

13 (b) CLARIFICATION OF APPLICATION OF ACTIONS BY
14 ATTORNEY GENERAL AND PRIVATE RIGHTS OF AC-
15 TION.—Section 801 of such Act (50 U.S.C. App. 597),
16 as amended by this section, and section 802 of such Act
17 (50 U.S.C. App. 597a) shall apply with respect to any vio-
18 lation of such Act, regardless of whether such violation
19 occurred on or before October 13, 2010, in accordance
20 with any statutory period of limitation regarding such vio-
21 lation.

1 **SEC. 4. ENFORCEMENT OF RIGHTS OF MEMBERS OF UNI-**
2 **FORMED SERVICES WITH RESPECT TO**
3 **STATES AND PRIVATE EMPLOYERS.**

4 (a) ACTION FOR RELIEF.—Subsection (a) of section
5 4323 of title 38, United States Code, is amended—

6 (1) in paragraph (1)—

7 (A) by striking “appear on behalf of, and
8 act as attorney for, the person on whose behalf
9 the complaint is submitted and”;

10 (B) by striking “for such person”;

11 (C) by striking the fourth sentence; and

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

13 “The person on whose behalf the complaint is
14 referred may, upon timely application, intervene
15 in such action, and may obtain such appro-
16 priate relief as is provided in subsections (d)
17 and (e).”;

18 (2) by striking paragraph (2) and inserting the
19 following new paragraph (2):

20 “(2)(A) Not later than 60 days after the date the
21 Attorney General receives a referral under paragraph (1),
22 the Attorney General shall transmit, in writing, to the per-
23 son on whose behalf the complaint is submitted—

24 “(i) if the Attorney General has made a deci-
25 sion to commence an action for relief under para-

1 graph (1) relating to the complaint of the person,
2 notice of the decision; and

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

6 “(B) If the Attorney General notifies a person that
7 the Attorney General expects to make a decision under
8 subparagraph (A)(ii), the Attorney General shall, not later
9 than 30 days after the date on which the Attorney General
10 makes such decision, notify, in writing, the person of such
11 decision.”;

12 (3) by redesignating paragraph (3) as para-
13 graph (4);

14 (4) by inserting after paragraph (2) the fol-
15 lowing new paragraph (3):

16 “(3) Whenever the Attorney General has reasonable
17 cause to believe that a State (as an employer) or a private
18 employer is engaged in a pattern or practice of resistance
19 to the full enjoyment of any of the rights and benefits pro-
20 vided for under this chapter, and that the pattern or prac-
21 tice is of such a nature and is intended to deny the full
22 exercise of such rights and benefits, the Attorney General
23 may commence an action for relief under this chapter.”;
24 and

1 (5) in paragraph (4), as redesignated by para-
 2 graph (3), by striking subparagraph (C) and insert-
 3 ing the following new subparagraph (C):

4 “(C) has been notified by the Attorney General
 5 that the Attorney General does not intend to com-
 6 mence an action for relief under paragraph (1) with
 7 respect to the complaint under such paragraph.”.

8 (b) STANDING.—Subsection (f) of such section is
 9 amended to read as follows:

10 “(f) STANDING.—An action under this chapter may
 11 be initiated only by the Attorney General or by a person
 12 claiming rights or benefits under this chapter under sub-
 13 section (a).”.

14 (c) CONFORMING AMENDMENT.—Subsection (h)(2)
 15 of such section is amended by striking “under subsection
 16 (a)(2)” and inserting “under paragraph (1) or (4) of sub-
 17 section (a)”.

18 **SEC. 5. SUBPOENA POWER FOR SPECIAL COUNSEL IN EN-**
 19 **FORCEMENT OF EMPLOYMENT AND REEM-**
 20 **PLOYMENT RIGHTS OF MEMBERS OF UNI-**
 21 **FORMED SERVICES WITH RESPECT TO FED-**
 22 **ERAL EXECUTIVE AGENCIES.**

23 Section 4324 of title 38, United States Code, is
 24 amended by adding at the end the following new sub-
 25 section:

1 “(e)(1) In order to carry out the Special Counsel’s
 2 responsibilities under this section, the Special Counsel
 3 may require by subpoena the attendance and testimony
 4 of Federal employees and the production of documents
 5 from Federal employees and Federal executive agencies.

6 “(2) In the case of contumacy or failure to obey a
 7 subpoena issued under paragraph (1), upon application by
 8 the Special Counsel, the Merit Systems Protection Board
 9 may issue an order requiring a Federal employee or Fed-
 10 eral executive agency to comply with a subpoena of the
 11 Special Counsel.

12 “(3) An order issued under paragraph (2) may be
 13 enforced by the Merit Systems Protection Board in the
 14 same manner as any order issued under section 1204 of
 15 title 5, United States Code.”.

16 **SEC. 6. ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE**
 17 **DEMANDS BY ATTORNEY GENERAL.**

18 (a) ISSUANCE UNDER SERVICEMEMBERS CIVIL RE-
 19 LIEF ACT.—Section 801 of the Servicemembers Civil Re-
 20 lief Act (50 U.S.C. App. 597) is amended by adding at
 21 the end the following:

22 “(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
 23 TIVE DEMANDS.—

24 “(1) IN GENERAL.—Whenever the Attorney
 25 General has reason to believe that any person may

1 be in possession, custody, or control of any docu-
2 mentary material relevant to an investigation under
3 this Act, the Attorney General may, before com-
4 mencing a civil action under subsection (a), issue in
5 writing and serve upon such person, a civil investiga-
6 tive demand requiring—

7 “(A) the production of such documentary
8 material for inspection and copying;

9 “(B) that the custodian of such documen-
10 tary material answer in writing written ques-
11 tions with respect to such documentary mate-
12 rial; or

13 “(C) the production of any combination of
14 such documentary material or answers.

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

22 “(A) references to false claims law inves-
23 tigators or investigations shall be considered
24 references to investigators or investigations
25 under this Act;

1 “(B) references to interrogatories shall be
2 considered references to written questions, and
3 answers to such need not be under oath;

4 “(C) the definitions relating to ‘false
5 claims law’ shall not apply; and

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

8 (b) ISSUANCE UNDER CHAPTER 43 OF TITLE 38,
9 UNITED STATES CODE.—Section 4323 of title 38, United
10 States Code, is amended—

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

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

15 “(i) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
16 TIVE DEMANDS.—(1) Whenever the Attorney General has
17 reason to believe that any person may be in possession,
18 custody, or control of any documentary material relevant
19 to an investigation under this subchapter, the Attorney
20 General may, before commencing a civil action under sub-
21 section (a), issue in writing and serve upon such person,
22 a civil investigative demand requiring—

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

1 “(B) that the custodian of such documentary
2 material answer in writing written questions with re-
3 spect to such documentary material; or

4 “(C) the production of any combination of such
5 documentary material or answers.

6 “(2) The provisions of section 3733 of title 31 gov-
7 erning the authority to issue, use, and enforce civil inves-
8 tigative demands shall apply with respect to the authority
9 to issue, use, and enforce civil investigative demands under
10 this section, except that, for purposes of applying such sec-
11 tion 3733—

12 “(A) references to false claims law investigators
13 or investigations shall be considered references to in-
14 vestigators or investigations under this subchapter;

15 “(B) references to interrogatories shall be con-
16 sidered references to written questions, and answers
17 to such need not be under oath;

18 “(C) the definitions relating to ‘false claims
19 law’ shall not apply; and

20 “(D) provisions relating to qui tam relators
21 shall not apply.”.

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