

TESTIMONY
OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

THE SERVICEMEMBERS LEGAL PROTECTION ACT OF 2004
DRAFT BILL

THE SAFEGUARDING SCHOOLCHILDREN OF DEPLOYED SOLDIERS ACT OF
2004
H.R. 3779

THE USERRA HEALTH CARE COVERAGE EXPANSION ACT OF 2004
DRAFT BILL

THE PATRIOTIC EMPLOYER ACT OF 2004
H.R. 4477

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Mr. Chairman and members of the Committee, thank you for giving me the opportunity to come before you this morning to discuss several proposed improvements to the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

The Department of Defense supports enactment of the Servicemembers Legal Protection Act of 2004, which would amend several provisions of the SCRA to reflect our experience with the SCRA during its first six months. Each proposed amendment in the draft bill addresses a problem that has been encountered by servicemembers and brought to the attention of the Department through the legal assistance programs of the Military Services. Legal assistance attorneys play a key role in ensuring that servicemembers are able to fully exercise the rights and protections afforded by the SCRA, and we have been attentive to their experiences during this initial shakedown period under the new law. The Department passed on its concerns and recommendations to your staff, and you have responded expeditiously with this draft bill and this hearing. I commend and thank the Committee and its staff for this impressive responsiveness to the needs of our servicemembers.

Section 2 of the draft bill would amend the SCRA by defining the term “judgment” to include any judgment, decree, order, or ruling, final or temporary. Defining this term, which is used in several key provisions of the Act, will ensure that servicemembers are not excluded from any of the Act’s rights or protections, such as the section 201

protection against default judgments, by a narrower State definition of the term “judgment.”

Section 3 of the draft bill would require that written waivers of SCRA rights or protections be executed as an instrument separate from the obligation or liability to which they apply and that any such waiver that applies to a contract, lease, or similar legal instrument be in at least 12-point type. This amendment would protect servicemembers from fine print embedded in, for example, residential and motor vehicle leases that would waive the right under section 305 of the SCRA to terminate those leases under certain circumstances.

Section 4 of the draft bill would simply clarify that the right to request a stay of proceedings under section 202 of the SCRA applies to servicemembers who are plaintiffs in civil proceedings as well as those who are defendants. The applicability of the stay provisions to both plaintiffs and defendants was clear in the predecessor Soldiers’ and Sailors’ Civil Relief Act, and this amendment would provide the same clarity in the SCRA.

Section 5 of the draft bill has several purposes. First, it would clarify that when a servicemember terminates a residential or motor vehicle lease under section 305 of the SCRA, any obligation of a dependent who is jointly liable under the lease is also terminated. This clarification is essential if the full intent of this lease-termination

provision is to be realized and military family members are to have the flexibility they need when a servicemember is deployed. For example, this amendment will ensure that if a servicemember's spouse chooses to return to his or her hometown and the family support network there, he or she will not be deterred from doing so because of a residential lease obligation.

Second, section 5 would also extend the ability to terminate a motor vehicle lease upon a permanent change-of-station to servicemembers stationed in States or Territories outside the continental United States, such as Alaska, Hawaii, and Puerto Rico. This amendment would simply correct the unintentional exclusion of these servicemembers resulting from the current wording of section 305 of the SCRA.

Third, section 5 would define the term "military orders" to mean official military orders, or any notification, certification, or verification from a servicemember's commanding officer with respect to the servicemember's current or future military-duty status. This amendment recognizes that, in the case of deployments, servicemembers are usually not issued official orders that could be provided to a lessor as required by section 305 of the SCRA when terminating a residential or motor vehicle lease. Under this broad definition of "military orders", a servicemember could satisfy this procedural requirement by presenting the lessor with, for example, a letter from his or her commanding officer confirming the particulars of an upcoming deployment.

Fourth, section 5 would clarify that the deployments that trigger a servicemember's ability to terminate a residential or motor vehicle lease under section 305 of the SCRA include not only deployments with a military unit, but also deployments by individuals in support of a military operation. This amendment recognizes that some servicemembers deployed in support of a military operation do not deploy with a unit, but as individuals.

Section 6 of the draft bill would amend section 511 of the SCRA to state that a tax jurisdiction may not impose a use, excise, or similar tax on the property of a nonresident servicemember when the laws of the tax jurisdiction fail to provide a credit against such sales, use, exercise, or similar taxes previously paid on the same property to another tax jurisdiction. This amendment is needed to protect servicemembers from double taxation, which is possible under the current wording of section 511, as interpreted by the Supreme Court (Sullivan v. United States, 395 U.S. 169 (1969)) when it considered identical language in the Soldiers' and Sailors' Civil Relief Act.

With respect to H.R. 3779, the Safeguarding Schoolchildren of Deployed Soldiers Act of 2004, we note that we are not aware that the situation that the bill addresses is at all widespread or merits Federal legislation. In fact, it has not come to our attention through legal assistance or reserve component channels. Since the Global War on Terrorism and the ongoing reserve mobilization began, these channels have proved extremely effective in identifying deployment related problems servicemembers and their families are experiencing. This leads us to believe that the incidence of children of deployed servicemembers suddenly being treated as nonresidents of school districts where they have previously been considered residents may be isolated to no more than a few school districts, and that to the extent it exists, this problem may be better addressed at the State level than through Federal legislation.

The Department of Defense supports section 2 of the draft USERRA Health Care Coverage Extension Act of 2004. Increasing from 18 months to 24 months the maximum period of employer-provided health care plan coverage that an employee covered by USERRA may elect to continue is an important amendment that will align this coverage period with the length of time for which reservists can be mobilized under the current mobilization authority.

We defer to the Department of Labor on section 3 of the draft bill, which would reinstate the requirement for a comprehensive annual report on the disposition of cases filed under USERRA.

The Department also defers to the Department of Labor on section 2 of H.R. 4477, the Patriotic Employer Act of 2004, which would require employers to post notice of USERRA rights, benefits, and obligations in the place of employment of individuals protected by that Act.

I would again like to thank the Committee and its staff for all of your efforts on behalf of our servicemembers. The Department of Defense appreciates this opportunity to discuss these important matters with you.