

Union Calendar No. 497

110TH CONGRESS
2^D SESSION

H. R. 6225

[Report No. 110-778]

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2008

Ms. HERSETH SANDLIN introduced the following bill; which was referred to the Committee on Veterans' Affairs

JULY 28, 2008

Additional sponsor: Mr. BUYER

JULY 28, 2008

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

A BILL

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

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 “Injunctive Relief for
3 Veterans 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 **SECTION 1. SHORT TITLE.**

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

12 **SEC. 2. EQUITY POWERS.**

13 *Section 4323(e) of title 38, United States Code, is*
14 *amended by striking “may use” and inserting “shall use,*
15 *in any case in which the court determines it is appro-*
16 *priate.”.*

17 **SEC. 3. RELIEF FOR STUDENTS WHO ARE MEMBERS OF**
18 **ARMED FORCES DURING PERIOD OF MILI-**
19 **TARY SERVICE.**

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

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

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

9 “(1) provide a credit or refund to the
10 servicemember the tuition and fees paid by the
11 servicemember (other than from the proceeds of a
12 grant or scholarship) for the portion of the program
13 of education for which the servicemember did not re-
14 ceive academic credit after such withdrawal or leave;
15 and

16 “(2) provide the servicemember an opportunity
17 to reenroll with the same educational and academic
18 status in such program of education that the
19 servicemember had when activated for military serv-
20 ice.

21 “(b) *INSTITUTION OF HIGHER EDUCATION DE-*
22 *FINED.*—In this section, the term ‘institution of higher edu-
23 cation’ means a 2-year or 4-year institution of higher edu-
24 cation as defined in section 102 of the Higher Education
25 Act of 1965 (20 U.S.C. 1002).”

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

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

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

14 **(d) EFFECTIVE DATE.**—*The amendments made by this*
 15 *section shall take effect for periods of military service begin-*
 16 *ning after the date of the enactment of this section.*

17 **SEC. 4. TERMINATION OR SUSPENSION BY**
 18 **SERVICEMEMBERS OF CERTAIN SERVICE**
 19 **CONTRACTS ENTERED INTO BEFORE PERMA-**
 20 **NENT CHANGE OF STATION OR DEPLOYMENT**
 21 **ORDERS.**

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

1 *length of the person's deployment pursuant to the person's*
2 *military orders.*

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

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

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

19 “(2) *for a change of permanent station to a loca-*
20 *tion that does not support the contract.*

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

22 “(1) *IN GENERAL.—Termination or suspension*
23 *of a contract under subsection (a) is made by delivery*
24 *by the person in military service of written notice of*
25 *such termination or suspension and a copy of the*

1 *servicemember’s military orders to the other party to*
2 *the contract (or to that party’s grantee or agent).*

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

5 “(A) *by hand delivery;*

6 “(B) *by private business carrier;*

7 “(C) *by facsimile; or*

8 “(D) *by placing the written notice and a*
9 *copy of the servicemember’s military orders in*
10 *an envelope with sufficient postage and with re-*
11 *turn receipt requested, and addressed as des-*
12 *ignated by the party to be notified (or that par-*
13 *ty’s grantee or agent), and depositing the enve-*
14 *lope in the United States mails.*

15 “(e) *DATE OF CONTRACT TERMINATION OR SUSPEN-*
16 *SION.—Termination or suspension of a service contract*
17 *under subsection (a) is effective as of the date on which the*
18 *notice under subsection (d) is delivered.*

19 “(f) *OTHER OBLIGATIONS AND LIABILITIES.—The*
20 *service provider under the contract may not impose an*
21 *early termination or suspension charge, but any tax or any*
22 *other obligation or liability of the person in military service*
23 *that, in accordance with the terms of the contract, is due*
24 *and unpaid or unperformed at the time of termination or*

1 *suspension of the contract shall be paid or performed by*
2 *the person in military service.*

3 “(g) *FEEES PAID IN ADVANCE.*—*A fee or amount paid*
4 *in advance for a period after the effective date of the termi-*
5 *nation of the contract shall be refunded to the person in*
6 *military service by the other party (or that party’s grantee*
7 *or agent) within 60 days of the effective date of the termi-*
8 *nation of the contract.*

9 “(h) *RELIEF TO OTHER PARTY.*—*Upon application by*
10 *the other party to the contract to a court before the termi-*
11 *nation date provided in the written notice, relief granted*
12 *by this section to a person in military service may be modi-*
13 *fied as justice and equity require.*

14 “(i) *PENALTIES.*—

15 “(1) *MISDEMEANOR.*—*Whoever knowingly vio-*
16 *lates or attempts to violate this section shall be fined*
17 *not more than \$5,000 in the case of an individual or*
18 *\$10,000 in the case of an organization.*

19 “(2) *PRESERVATION.*—*The remedy and rights*
20 *provided under this section are in addition to and do*
21 *not preclude any remedy for wrongful conversion oth-*
22 *erwise available under law to the person claiming re-*
23 *lief under this section, including any award for con-*
24 *sequential or punitive damages.*

25 “(j) *EQUITABLE RELIEF.*—

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

6 “(A) *bring an action to enjoin the violation*
7 *in any appropriate United States district court*
8 *or in any other court of competent jurisdiction;*
9 *or*

10 “(B) *bring an action in any appropriate*
11 *United States district court or in any other*
12 *court of competent jurisdiction to recover dam-*
13 *ages equal to three times the amount for which*
14 *the other party is liable to the person in military*
15 *service under this section.*

16 “(2) *ATTORNEY FEES.*—*If a person in military*
17 *service is awarded damages under an action described*
18 *under paragraph (1), the person shall be awarded, in*
19 *addition, the costs of the action and reasonable attor-*
20 *ney fees, as determined by the court.*

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

23 “(1) *MULTICHANNEL VIDEO PROGRAMMING SERV-*
24 *ICE.*—*The term ‘multichannel video programming*
25 *service’ means video programming service provided by*

1 *a multichannel video programming distributor, as*
2 *such term is defined in section 602(13) of the Com-*
3 *munications Act of 1934 (47 U.S.C. 522(13)).*

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

8 “(3) *CELLULAR TELEPHONE SERVICE.—The*
9 *term ‘cellular telephone service’ means commercial*
10 *mobile service, as that term is defined in section*
11 *332(d) of the Communications Act of 1934 (47 U.S.C.*
12 *332(d)).*

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

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

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

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

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

4 *Section 207 of the Servicemembers Civil Relief Act (50*
5 *U.S.C. App. 527) is amended by adding at the end the fol-*
6 *lowing new subsections:*

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

10 “(f) *RIGHTS OF SERVICEMEMBERS.—*

11 “(1) *EQUITABLE RELIEF.—*

12 “(A) *IN GENERAL.—In addition to any*
13 *other remedies as are provided under Federal or*
14 *State law, if a servicemember has reason to be-*
15 *lieve that a creditor has violated or is violating*
16 *this section, the servicemember may—*

17 “(i) *bring an action to enjoin such vio-*
18 *lation in any appropriate United States*
19 *district court or in any other court of com-*
20 *petent jurisdiction; and*

21 “(ii) *bring an action to recover dam-*
22 *ages equal to three times the amount of the*
23 *interest charged in violation of this section*
24 *(plus interest) for which the creditor is lia-*
25 *ble to the servicemember under this section*
26 *as a result of the violation.*

1 “(B) *DETERMINATION OF NUMBER OF VIO-*
2 *LATIONS.—In determining the number of viola-*
3 *tions by a creditor for which a penalty is im-*
4 *posed under subsection (e) or subparagraph (A),*
5 *the court shall count as a single violation each*
6 *obligation or liability of a servicemember with*
7 *respect to which—*

8 “(i) *the servicemember properly pro-*
9 *vided to the creditor written notice and a*
10 *copy of the military orders calling the*
11 *servicemember to military service and any*
12 *orders further extending military service*
13 *under subsection (b); and*

14 “(ii) *the creditor failed to treat in ac-*
15 *cordance with subsection (a).*

16 “(2) *ATTORNEY FEES.—If a servicemember is*
17 *awarded damages under an action described under*
18 *paragraph (1), the servicemember shall be awarded,*
19 *in addition, the costs of the action and reasonable at-*
20 *torney fees, as determined by the court.*

21 “(g) *PRESERVATION OF OTHER REMEDIES.—The*
22 *rights and remedies provided under subsections (e) and (f)*
23 *are in addition to and do not preclude any other remedy*
24 *available under law to a person claiming relief under this*

1 *section, including any award for consequential or punitive*
2 *damages.”.*

3 **SEC. 6. GUARANTEE OF RESIDENCY FOR SPOUSES OF MILI-**
4 **TARY PERSONNEL.**

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

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

10 *(2) by adding at the end the following new sub-*
11 *section:*

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

19 *“(1) be deemed to have lost a residence or domi-*
20 *cile in that State, without regard to whether or not*
21 *the person intends to return to that State;*

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

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

1 (b) *CLERICAL AMENDMENTS.*—

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

4 **“SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PER-**
 5 **SONNEL AND SPOUSES OF MILITARY PER-**
 6 **SONNEL.”**

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

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

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

11 *Section 511(a) of the Servicemembers Civil Relief Act*
 12 *(50 U.S.C. App. 571(a)) is amended—*

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

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

16 (2) *by adding at the end the following:*

17 *“(2) SPOUSE OF SERVICEMEMBER.—A spouse of*
 18 *a servicemember shall neither lose nor acquire a resi-*
 19 *dence or domicile for purposes of taxation with re-*
 20 *spect to the person, personal property, or income of*
 21 *the spouse by reason of being absent or present in any*
 22 *tax jurisdiction of the United States solely to be with*
 23 *the servicemember in compliance with the*
 24 *servicemember’s military orders if the residence or*

1 *domicile, as the case may be, is the same for the*
2 *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.”.

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