

112TH CONGRESS
2D SESSION

S. 2299

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 SENATE OF THE UNITED STATES

APRIL 18, 2012

Mrs. MURRAY (for herself, Mr. BEGICH, Mr. WHITEHOUSE, Mr. ROCKEFELLER, and Mr. AKAKA) introduced the following bill; which was read twice and 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
5 Servicemembers Civil Relief Act (50 U.S.C. App. 521(b))
6 is amended 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. RETROACTIVE APPLICATION OF PRIVATE RIGHT OF**
 5 **ACTION UNDER SERVICEMEMBERS CIVIL RE-**
 6 **LIEF ACT.**

7 Section 802(a) of the Servicemembers Civil Relief Act
 8 (50 U.S.C. App. 597a(a)) shall apply with respect to viola-
 9 tions of such Act occurring on or after December 19,
 10 2003.

11 **SEC. 4. ENFORCEMENT OF RIGHTS OF MEMBERS OF UNI-**
 12 **FORMED SERVICES WITH RESPECT TO**
 13 **STATES AND PRIVATE EMPLOYERS.**

14 (a) ACTION FOR RELIEF.—Subsection (a) of section
 15 4323 of title 38, United States Code, is amended—

16 (1) in paragraph (1)—

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

20 (B) by striking “for such person”;

21 (C) by striking the fourth sentence; and

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

23 “The person on whose behalf the complaint is
 24 referred may, upon timely application, intervene
 25 in such action, and may obtain such appro-

1 prieve relief as is provided in subsections (d)
2 and (e).”;

3 (2) by striking paragraph (2) and inserting the
4 following new paragraph (2):

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

9 “(i) if the Attorney General has made a deci-
10 sion to commence an action for relief under para-
11 graph (1) relating to the complaint of the person,
12 notice of the decision; and

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

16 “(B) If the Attorney General notifies a person that
17 the Attorney General expects to make a decision under
18 subparagraph (A)(ii), the Attorney General shall, not later
19 than 30 days after the date on which the Attorney General
20 makes such decision, notify, in writing, the person of such
21 decision.”;

22 (3) by redesignating paragraph (3) as para-
23 graph (4),

24 (4) by inserting after paragraph (2) the fol-
25 lowing new paragraph (3):

1 “(3) Whenever the Attorney General has reasonable
 2 cause to believe that a State (as an employer) or a private
 3 employer is engaged in a pattern or practice of resistance
 4 to the full enjoyment of any of the rights and benefits pro-
 5 vided for under this chapter, and that the pattern or prac-
 6 tice is of such a nature and is intended to deny the full
 7 exercise of such rights and benefits, the Attorney General
 8 may commence an action for relief under this chapter.”;
 9 and

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

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

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

19 “(f) STANDING.—An action under this chapter may
 20 be initiated only by the Attorney General or by a person
 21 claiming rights or benefits under this chapter under sub-
 22 section (a).”.

23 (c) CONFORMING AMENDMENT.—Subsection (h)(2)
 24 of such section is amended by striking “under subsection

1 (a)(2)” and inserting “under paragraph (1) or (4) of sub-
 2 section (a)”.

3 **SEC. 5. SUBPOENA POWER FOR SPECIAL COUNSEL IN EN-**
 4 **FORCEMENT OF EMPLOYMENT AND REEM-**
 5 **PLOYMENT RIGHTS OF MEMBERS OF UNI-**
 6 **FORMED SERVICES WITH RESPECT TO FED-**
 7 **ERAL EXECUTIVE AGENCIES.**

8 Section 4324 of title 38, United States Code, is
 9 amended by adding at the end the following new sub-
 10 section:

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

16 “(2) In the case of contumacy or failure to obey a
 17 subpoena issued under paragraph (1), upon application by
 18 the Special Counsel, the Merit Systems Protection Board
 19 may issue an order requiring a Federal employee or Fed-
 20 eral executive agency to comply with a subpoena of the
 21 Special Counsel.

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

1 **SEC. 6. ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE**
 2 **DEMANDS BY ATTORNEY GENERAL.**

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

7 “(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
 8 TIVE DEMANDS.—

9 “(1) IN GENERAL.—Whenever the Attorney
 10 General has reason to believe that any person may
 11 be in possession, custody, or control of any docu-
 12 mentary material relevant to an investigation under
 13 this Act, the Attorney General may, before com-
 14 mencing a civil action under subsection (a), issue in
 15 writing and serve upon such person, a civil investiga-
 16 tive demand requiring—

17 “(A) the production of such documentary
 18 material for inspection and copying;

19 “(B) that the custodian of such documen-
 20 tary material answer in writing written ques-
 21 tions with respect to such documentary mate-
 22 rial; or

23 “(C) the production of any combination of
 24 such documentary material or answers.

25 “(2) FALSE CLAIMS.—The provisions of section
 26 3733 of title 31, United States Code, governing the

1 authority to issue, use, and enforce civil investigative
 2 demands shall apply with respect to the authority to
 3 issue, use, and enforce civil investigative demands
 4 under this section, except that, for purposes of ap-
 5 plying such section 3733—

6 “(A) references to false claims law inves-
 7 tigators or investigations shall be considered
 8 references to investigators or investigations
 9 under this Act;

10 “(B) references to interrogatories shall be
 11 considered references to written questions, and
 12 answers to such need not be under oath;

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

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

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

20 (1) by redesignating subsection (i) as subsection
 21 (j); and

22 (2) by inserting after subsection (h) the fol-
 23 lowing new subsection (i):

24 “(i) ISSUANCE AND SERVICE OF CIVIL INVESTIGA-
 25 TIVE DEMANDS.—(1) Whenever the Attorney General has

1 reason to believe that any person may be in possession,
 2 custody, or control of any documentary material relevant
 3 to an investigation under this subchapter, the Attorney
 4 General may, before commencing a civil action under sub-
 5 section (a), issue in writing and serve upon such person,
 6 a civil investigative demand requiring—

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

9 “(B) that the custodian of such documentary
 10 material answer in writing written questions with re-
 11 spect to such documentary material; or

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

14 “(2) The provisions of section 3733 of title 31 gov-
 15 erning the authority to issue, use, and enforce civil inves-
 16 tigative demands shall apply with respect to the authority
 17 to issue, use, and enforce civil investigative demands under
 18 this section, except that, for purposes of applying such sec-
 19 tion 3733—

20 “(A) references to false claims law investigators
 21 or investigations shall be considered references to in-
 22 vestigators or investigations under this subchapter;

23 “(B) references to interrogatories shall be con-
 24 sidered references to written questions, and answers
 25 to such need not be under oath;

1 “(C) the definitions relating to ‘false claims
2 law’ shall not apply; and
3 “(D) provisions relating to qui tam relators
4 shall not apply.”.

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