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112TH CONGRESS
2D SESSION

S. 3236

To amend title 38, United States Code, to improve the protection and enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2012

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to improve the protection and enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Servicemember Employment Protection Act of 2012''.

SEC. 2. UNENFORCEABILITY OF AGREEMENTS TO ARBITRATE DISPUTES ARISING UNDER USERRA.

(a) IN GENERAL.—Subchapter III of chapter 43 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 4328. Unenforceability of agreements to arbitrate disputes

''(a) PROTECTION OF EMPLOYEE RIGHTS.—Notwithstanding any other provision of law, any clause of any agreement between an employer and an employee that requires arbitration of a dispute arising under this chapter shall not be enforceable.

''(b) EXCEPTIONS.—(1) Subsection (a) shall not apply with respect to any dispute if, after such dispute arises, the parties involved knowingly and voluntarily agree to submit such dispute to arbitration.

''(2) Subsection (a) shall not preclude the enforcement of any of the rights or terms of a valid collective bargaining agreement.

''(c) VALIDITY AND ENFORCEMENT.—Any issue as to whether this section applies to an arbitration clause shall be determined by Federal law. Except as otherwise provided in chapter 1 of title 9, the validity or enforceability of an agreement to arbitrate referred to in subsection (a) or (b)(1) shall be determined by a court, rather than the arbitrator, regardless of whether the party resisting arbi-

tration challenges the agreement to arbitrate specifically or in conjunction with other terms of the agreement.

"(d) APPLICATION.—This section shall apply with respect to all contracts and agreements between an employer and an employee in force before, on, or after the date of the enactment of this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4327 the following new item:

"4328. Unenforceability of agreements to arbitrate disputes.".

(c) APPLICATION.—The provisions of section 4328 of title 38, United States Code, as added by subsection (a), shall apply to—

(1) any failure to comply with a provision of or any violation of chapter 43 of title 38, United States Code, that occurs before, on, or after the date of the enactment of this Act; and

(2) to all actions or complaints filed under such chapter 43 that are pending on or after the date of the enactment of this Act.

SEC. 3. EXPANSION OF EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF UNIFORMED SERVICES TO INCLUDE PROTECTION FOR ABSENCES FROM EMPLOYMENT FOR MEDICAL TREATMENT RELATING TO SERVICE-CONNECTED INJURIES AND ILLNESSES.

(a) IN GENERAL.—Section 4303(13) of title 38, United States Code, is amended by inserting ''a period for which a person is absent from a position of employment for the purpose of medical or dental treatment for an injury or illness incurred or aggravated in line of duty during a period of service in the uniformed services,'' after ''for any such duty,''.

(b) FMLA.—

(1) RULE OF CONSTRUCTION.—For purposes of that section 4303(13) and each covered provision—

(A) the reference in that section 4303(13) to a period for which a person is absent from a position of employment for the purpose of medical or dental treatment shall not be considered to be a reference to a period of leave under a covered provision; and

(B) the person's employer shall not designate the period of absence as such a period of leave,

unless the person requests and obtains the leave under the corresponding covered provision.

(2) DEFINITION.—In this subsection, the term ''covered provision'' means—

(A) title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), including the application of that title under the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) and chapter 5 of title 3, United States Code; and

(B) subchapter V of chapter 63 of title 5, United States Code.

SEC. 4. SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTORS FOR REPEATED VIOLATIONS OF EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF UNIFORMED SERVICES.

(a) IN GENERAL.—Subchapter III of chapter 43 of title 38, United States Code, as amended by section 2, is further amended by adding at the end the following new section:

''§ 4329. Suspension, termination, or debarment of contractors

''(a) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a contract awarded by a

Federal executive agency may be suspended and the contract may be terminated, and the contractor who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that the contractor as an employer has repeatedly failed or refused to comply with a provision of this chapter.

''(b) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with applicable law, including Executive Order 12549 or any superseding executive order, the Federal Acquisition Regulation, and any other regulations prescribed to implement the law or executive order.

''(c) EFFECT OF DEBARMENT.—A contractor debarred by a final decision under this section is ineligible for award of a contract by a Federal executive agency, and for participation in a future procurement by a Federal executive agency, for a period specified in the decision, not to exceed 5 years.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 43 of such title, as amended

by section 2, is further amended by inserting after the item relating to section 4328, as added by such section, the following new item:

"4329. Suspension, termination, or debarment of contractor.".

(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation to carry out section 4329 of title 38, United States Code, as added by subsection (a).

(d) EFFECTIVE DATE.—Section 4329 of title 38, United States Code, as added by subsection (a), shall apply with respect to failures and refusals to comply with provisions of chapter 43 of such title occurring on or after the date of the enactment of this Act.

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