

Department of Justice
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I. Amendments to the Uniformed Services Employment and Reemployment Rights Act (USERRA).....	1
II. Amendments to the Servicemembers Civil Relief Act (SCRA).....	9
III. Amendments to the Military Lending Act (MLA).....	24
IV. Amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).....	28

**Amendments to the Uniformed Services Employment and Reemployment Rights Act
(USERRA)**

1 **SEC. ____.** **ENFORCEMENT OF RIGHTS UNDER CHAPTER 43 OF TITLE 38,**
2 **UNITED STATES CODE, WITH RESPECT TO A STATE OR PRIVATE**
3 **EMPLOYER.**

4 (a) ACTION FOR RELIEF.—

5 (1) INITIATION OF ACTIONS.—Paragraph (1) of subsection (a) of section 4323 of
6 title 38, United States Code, is amended by striking the third sentence and inserting the
7 following new sentences: “If the Attorney General is reasonably satisfied that the person
8 on whose behalf the complaint is referred is entitled to the rights or benefits sought, the
9 Attorney General may commence an action for relief under this chapter. The person on
10 whose behalf the complaint is referred may, upon timely application, intervene in such
11 action and may obtain such appropriate relief as provided in subsections (d) and (e).”.

12 (2) ATTORNEY GENERAL NOTICE TO SERVICEMEMBER OF DECISION.—Paragraph
13 (2) of such subsection is amended to read as follows:

14 “(2)(A) Not later than 60 days after the date the Attorney General receives a referral
15 under paragraph (1), the Attorney General shall transmit, in writing, to the person on whose
16 behalf the complaint is submitted—

17 “(i) if the Attorney General has made a decision about whether the United States
18 will commence an action for relief under paragraph (1) relating to the complaint of the
19 person, notice of the decision; and

20 “(ii) if the Attorney General has not made such a decision, notice of when the
21 Attorney General expects to make such a decision.

1 “(B) If the Attorney General notifies a person of when the Attorney General expects to
2 make a decision under subparagraph (A)(ii), the Attorney General shall, not later than 30 days
3 after the date on which the Attorney General makes such decision, notify, in writing, the person
4 of such decision.”.

5 (3) PATTERN OR PRACTICE CASES.—Such subsection is further amended—

6 (A) by redesignating paragraph (3) as paragraph (4); and

7 (B) by inserting after paragraph (2) (as amended by paragraph (2) of this
8 subsection) the following new paragraph (3):

9 “(3) Whenever the Attorney General has reasonable cause to believe that a State (as an
10 employer) or a private employer is engaged in a pattern or practice of resistance to the full
11 enjoyment of any of the rights or benefits secured by this chapter, the Attorney General may
12 commence a action under this chapter.”.

13 (4) ACTIONS BY PRIVATE PERSONS.—Subparagraph (C) of paragraph (4) of such
14 subsection, as redesignated by paragraph (3)(A), is amended by striking “refused” and all
15 that follows and inserting “notified by the Department of Justice that the Attorney
16 General does not intend to bring a civil action.”.

17 (b) SOVEREIGN IMMUNITY. —Paragraph (2) of subsection (b) of section 4323 of such title
18 is amended to read as follows:

19 “(2)(A) In the case of an action against a State (as an employer), any instrumentality of a
20 State, or any officer or employee of a State or instrumentality of a State acting in that officer or
21 employee’s official capacity, by any person, the action may be brought in the appropriate district
22 court of the United States or in a State court of competent jurisdiction, and the State,
23 instrumentality of the State, or officer or employee of the State or instrumentality acting in that

1 officer or employee’s official capacity shall not be immune under the Eleventh Amendment of
2 the Constitution, or under any other doctrine of sovereign immunity, from such action.

3 “(B)(i) No State, instrumentality of such State, or officer or employee of such State or
4 instrumentality of such State, acting in that officer or employee’s official capacity, that receives
5 or uses Federal financial assistance for a program or activity shall be immune, under the
6 Eleventh Amendment of the Constitution or under any other doctrine of sovereign immunity,
7 from suit in Federal or State court by any person for any violation under this chapter related to
8 such program or activity.

9 “(ii) In an action against a State brought pursuant to subsection (a), a court may award the
10 remedies (including remedies both at law and in equity) that are available under subsections (d)
11 and (e).”.

12 (c) VENUE FOR CASES AGAINST PRIVATE EMPLOYERS.—Subsection (c)(2) of such section
13 is amended by striking “United States district court for any district in which the private employer
14 of the person maintains a place of business.” and inserting “United States district court for—

15 “(A) any district in which the employer maintains a place of business;

16 “(B) any district in which a substantial part of the events or omissions giving rise
17 to the claim occurred; or

18 “(C) if there is no district in which an action may otherwise be brought as
19 provided in subparagraph(A) or (B), any district in which the employer is subject to the
20 court’s personal jurisdiction with respect to such action.”.

21 (d) COMPENSATORY AND PUNITIVE DAMAGES.—Subsection (d)(1) and d(2) of such
22 section is amended by striking subparagraph (d)(1)(C) and d(2) and inserting the following new
23 subparagraphs:

1 “(C) The court may require the employer to pay the person compensatory damages
2 suffered by reason of such employer’s failure to comply with the provisions of this chapter.

3 “(D) The court may require the employer (other than a government, government agency,
4 or political subdivision) to pay the person punitive damages if the court determines that the
5 employer failed to comply with the provisions of this chapter with reckless indifference to the
6 federally protected rights of the person.

7 “(E) The sum of the amount of compensatory damages awarded under subparagraph C of
8 this section and the amount of punitive damages awarded under subparagraph D of this section,
9 may not exceed, for each person the following:

10 “(i) In the case of an employer who has more than 14 and fewer than 101
11 employees in each of 20 or more calendar weeks in the current or preceding calendar
12 year, \$50,000.

13 “(ii) In the case of an employer who has more than 100 and fewer than 201
14 employees in each of 20 or more calendar weeks in the current or preceding calendar
15 year, \$100,000.

16 “(iii) In the case of an employer who has more than 200 and fewer than 501
17 employees in each of 20 or more calendar weeks in the current or preceding calendar
18 year, \$200,000.

19 “(iv) In the case of an employer who has more than 500 employees in each of 20
20 or more calendar weeks in the current or preceding calendar year, \$300,000.”.

21 (d)(1) CONFORMING AMENDMENTS.—Subsection (2) of such section is amended to read
22 as follows:

1 “(2)(A) Any compensation awarded under subparagraph (B) or (C) or (D) of
2 paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and
3 benefits provided for under this chapter.

4 “(B) In the case of an action commenced in the name of the United States for
5 which the relief includes compensation awarded under subparagraph (B) or (C) or (D) of
6 paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on
7 order of the Attorney General, directly to the person. If the compensation is not paid to the
8 person because of inability to do so within a period of 3 years, the compensation shall be covered
9 into the Treasury of the United States as miscellaneous receipts.”

10 (e) STANDING. —Subsection (f) of such section is amended—

11 (1) by inserting “by the United States or” after “may be initiated only”; and

12 (2) by striking “or by the United States under subsection (a)(1)”.

13 (f) ATTORNEY FEES AND OTHER LITIGATION EXPENSES.—Subsection (h)(2) of such
14 section is amended striking “subsection (a)(2)” and inserting “subsection (a)(1) or subsection
15 (a)(4)”.

16 (g) PENSION CONTRIBUTION CALCULATIONS.—Subsection (b) of section 4318 of such title
17 is amended—

18 (1) in paragraph (3)(B), by striking “on the basis of” and all the follows and
19 inserting “on the basis specified in paragraph (4).”; and

20 (2) by adding at the end the following new paragraph:

21 “(4) The basis for a computation under paragraph (3) to which subparagraph (B) of that
22 paragraph applies is as follows:

1 “(A) If the period of service described in subsection (a)(2)(B) is one year or less,
2 the computation shall be made on the basis of the employee’s average rate of
3 compensation during the 12-month period immediately preceding such period or, if
4 shorter, the period of employment immediately preceding such period.

5 “(B) If the period of such service is more than one year, the computation shall be
6 made on the basis of the average rate of compensation during such period of service of
7 employees of that employer who are similarly situated to the servicemember in terms of
8 having similar seniority, status, and pay.”.

9 (h) DISABILITY DISCOVERED AFTER EMPLOYEE RESUMES EMPLOYMENT.—Subsection
10 (a)(3) of section 4313 of such title is amended by inserting “including a disability that is brought
11 to the employer’s attention within five years after the person resumes employment,” after
12 “during, such service,”.

13 (i) BURDEN OF IDENTIFYING PROPER REEMPLOYMENT POSITIONS.—Section 4313 of such
14 title is amended by adding at the end the following new subsection:

15 “(c) For purposes of this section, the employer shall have the burden of identifying the
16 appropriate reemployment positions.”.

17 (j) CIVIL INVESTIGATIVE DEMANDS.—Section 4323 of such is amended by adding at the
18 end the following new subsection:

19 “(j) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS BY ATTORNEY
20 GENERAL.—(1) Whenever the Attorney General has reason to believe that any person may be in
21 possession, custody, or control of any documentary material relevant to an investigation under
22 this chapter, the Attorney General may, before commencing a civil action under subsection (a),

1 issue in writing and cause to be served upon such person, a civil investigative demand
2 requiring—

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

4 “(B) that the custodian of such documentary material answer in writing written
5 questions with respect to such documentary material; or

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

7 “(2) The provisions governing the authority to issue, use, and enforce civil investigative
8 demands under section 3733 of title 31 (known as the ‘False Claims Act’) shall govern the
9 authority to issue, use, and enforce civil investigative demands under paragraph (1), except that
10 for purposes of that paragraph—

11 “(A) a reference in that section to false claims law investigators or investigations
12 shall be applied as referring to investigators or investigations under this chapter;

13 “(B) a reference to interrogatories shall be applied as referring to written
14 questions, and answers to such need not be under oath;

15 “(C) the statutory definitions for purposes of that section relating to ‘false claims
16 law’ shall not apply; and

17 “(D) provisions of that section relating to qui tam relators shall not apply.”.

Section-by-Section Analysis

This proposal would amend chapter 43 of title 38, United States Code, to improve the enforcement of reemployment rights under that chapter with respect to a State or private employer. That chapter is popularly known as the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Subsection (a) strengthens enforcement of USERRA rights by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General, as opposed to only suits filed against State employers. The amendment preserves the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit. This section also strengthens enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern or practice language is modeled after Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6(a)).

Subsection (b) explicitly abrogates sovereign immunity so that servicemembers can bring an action against a State employer in State court or Federal district court.

Subsection (c) amends USERRA's venue provision to allow servicemembers to file actions against private employers in district courts with jurisdictional requirements that are similar to the general venue statute, 28 U.S.C. 1391(b).

Subsection (d) adds compensatory and punitive damages provisions that are similar to the damages provisions in title VII of the Civil Rights Act of 1964.

Subsection (e) authorizes either the United States or the aggrieved individual to serve as a plaintiff in all USERRA suits.

Subsection (f) makes conforming amendments to the amendments made by subsection (a).

Subsection (g) would revise the pension contribution calculations for servicemembers in service over one year so that the servicemember's pension contribution is comparable to a similarly situated employee.

Subsection (h) modifies USERRA to include disabilities discovered within five years after a servicemember resumes work for purposes of reemployment determinations.

Subsection (i) clarifies that the employer has the burden of identifying proper reemployment positions.

Subsection (j) grants authority to the Attorney General to issue civil investigative demands in its USERRA investigations. The authority is similar to that provided under the False Claims Act (31 U.S.C. 3733), except that it does not include the authority to compel oral testimony or sworn answers to interrogatories.

Amendments to the Servicemembers Civil Relief Act (SCRA)

1 **SEC. 100. STATUTORY REFERENCES.**

2 Any reference in this title to the “SCRA” shall be treated as a reference to the
3 Servicemembers Civil Relief Act (50 U.S.C. App. 501 et seq.).

4 **SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.**

5 Paragraph (1) of section 201(b) of the SCRA (50 U.S.C. App. 521(b)) is amended to read
6 as follows:

7 “(1) PLAINTIFF TO FILE AFFIDAVIT.—

8 “(A) In any action or proceeding covered by this section, the plaintiff,
9 before seeking a default judgment, shall file with the court an affidavit—

10 “(i) stating whether or not the defendant is in military service and
11 showing necessary facts to support the affidavit; or

12 “(ii) if the plaintiff is unable to determine whether or not the
13 defendant is in military service, stating that the plaintiff is unable to
14 determine whether or not the defendant is in military service.

15 “(B) Before filing an affidavit under subparagraph (A), the plaintiff shall
16 conduct a diligent and reasonable investigation to determine whether or not the
17 defendant is in military service, including a search of available Department of
18 Defense records and any other information available to the plaintiff. The affidavit
19 shall set forth all steps taken to determine the defendant’s military status and shall
20 have attached the records on which the plaintiff relied in preparing the affidavit.
21 Attached records shall include at least a copy of the certificate produced by the
22 Department of Defense Manpower Data Center.”.

1 **SEC. 101a. OBLIGATIONS OF ATTORNEY APPOINTED TO REPRESENT**
2 **DEFENDANT IN MILITARY SERVICE.**

3 Paragraph (2) of Section 201(b) of the SCRA (50 U.S.C. App. 521(b)) is amended to read
4 as follows:

5 “(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY
6 SERVICE.—

7 “(A) If in an action covered by this section it appears that the defendant is
8 in military service, the court shall not enter a judgment until after the court
9 appoints an attorney to represent the defendant.

10 “(B) The court appointed attorney shall act only in the best interests of the
11 defendant. The court appointed attorney, when appropriate to represent the best
12 interests of the defendant, shall request a stay of proceedings under this Act.

13 “(C) The court appointed attorney shall use due diligence to locate and
14 contact the defendant. The plaintiff must provide to the court appointed attorney
15 all contact information it has for the defendant. A court appointed attorney unable
16 to make contact with the defendant shall report to the court on all of the attorney’s
17 efforts to make contact.

18 “(D) Upon making contact with the defendant, the court appointed
19 attorney shall advise the defendant of the nature of the lawsuit and the defendant’s
20 rights provided by the Act, including rights to obtain a stay and to request the
21 court to adjust an obligation. Regardless of whether contact is made, the court
22 appointed attorney shall assert such rights on behalf of defendant, provided that

1 there is an adequate basis in law and fact, unless the defendant provides informed
2 consent to not assert such rights.

3 “(E) The court shall require the court appointed attorney to perform duties
4 faithfully and, upon failure to do so, shall discharge the attorney and appoint
5 another.

6 “(F) If an attorney appointed under this section to represent a defendant in
7 military service cannot locate the defendant, actions by the attorney in the case
8 shall not waive any defense of the servicemember or otherwise bind the
9 servicemember.”

10 Paragraph (1) of Section 201(g) of the SCRA (50 U.S.C. App. 521(g)) is amended to read
11 as follows:

12 “(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—

13 “(1) Authority for court to vacate or set aside judgment

14 If a default judgment is entered in an action covered by this section against a
15 servicemember during the servicemember's period of military service (or within 60 days
16 after termination of or release from such military service), the court entering the
17 judgment shall, upon application by or on behalf of the servicemember, reopen the
18 judgment for the purpose of allowing the servicemember to defend the action if it appears
19 that—

20 “(A) (i) the servicemember was materially affected by reason of that military
21 service in making a defense to the action; and

22 (ii) the servicemember has a meritorious or legal defense to the action or
23 some part of it; or

1 “(B) an attorney appointed to represent the servicemember failed to adequately
2 represent the best interests of the defendant.

3 **SEC. 102. RESIDENCY OF DEPENDENTS OF MILITARY PERSONNEL.**

4 (a) EXTENSION OF SPOUSE COVERAGE TO ALL DEPENDENTS.—Subsection (b) of section
5 705 of the SCRA (50 U.S.C. App. 595) is amended—

6 (1) by striking “SPOUSES” in the subsection heading and inserting “DEPENDENTS”;

7 and

8 (2) by striking “spouse” and inserting “dependent”.

9 (b) TECHNICAL AMENDMENTS FOR STATUTORY CONSISTENCY.—Such section is further
10 amended by striking “or naval” in subsections (a) and (b).

11 (c) CLERICAL AMENDMENTS.—

12 (1) SECTION HEADING.—The heading of such section is amended to read as
13 follows:

14 **“SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND
15 DEPENDENTS OF MILITARY PERSONNEL.”**

16 (2) TABLE OF CONTENTS.—The item relating to that section in the table of contents
17 in section 1(b) of the SCRA is amended to read as follows:

18 “705. Guarantee of residency for military personnel and dependents of military personnel.”.

19 **SEC. 103. INCREASE IN CIVIL PENALTIES.**

20 Subsection (b)(3) of section 801 of the SCRA (50 U.S.C. App. 597) is amended—

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

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

23

1 **SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.**

2 Section 801 of the SCRA (50 U.S.C. App. 597) is amended by adding at the end the
3 following new subsections:

4 “(d) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS.—Whenever the
5 Attorney General, or a designee, has reason to believe that any person may be in possession,
6 custody, or control of any documentary material relevant to an investigation under this Act, the
7 Attorney General, or a designee, may, before commencing a civil action under subsection (a),
8 issue in writing and cause to be served upon such person, a civil investigative demand
9 requiring—

10 “(1) the production of such documentary material for inspection and copying;

11 “(2) that the custodian of such documentary material answer in writing written
12 questions with respect to such documentary material; or

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

14 “(e) RELATION TO FALSE CLAIMS ACT.—The statutory provisions governing the authority
15 to issue, use, and enforce civil investigative demands under section 3733 of title 31, United
16 States Code (popularly known as the ‘False Claims Act’), shall govern the authority to issue, use,
17 and enforce civil investigative demands under this section, except that for purposes of this
18 section —

19 “(1) references in that section to false claims law investigators or investigations
20 shall be read as references to investigators or investigations;

21 “(2) references in that section to interrogatories shall be read as references to
22 written questions, and answers to such need not be under oath;

23 “(3) the statutory definitions relating to ‘false claims law’ shall not apply; and

1 “(4) provisions relating to qui tam relators shall not apply.

2 “(f) APPLICATION.—This section applies to any violation of this Act occurring on, before,
3 or after October 13, 2010.”

4 **SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.**

5 Section 802 of the SCRA (50 U.S.C. App. 597a) is amended by adding at the end the
6 following new subsection:

7 “(c) APPLICATION.—This section applies to any violation of this Act occurring on, before,
8 or after October 13, 2010.”

9 **SEC. 106. DEFINITION OF MILITARY ORDERS AND CONTINENTAL UNITED**
10 **STATES.**

11 (a) DEFINITIONS FOR ENTIRE ACT.—Section 101 of the SCRA (50 U.S.C. App. 511) is
12 amended by adding at the end the following new paragraphs:

13 “(10) MILITARY ORDERS.—The term ‘military orders’, with respect to a
14 servicemember, means official military orders, or any notification, certification, or
15 verification from the Secretary or the servicemember’s commanding officer, with respect
16 to the servicemember’s current or future military duty status.

17 “(11) CONUS.—The term ‘continental United States’ means the 48 contiguous
18 States and the District of Columbia.”

19 (b) CONFORMING AMENDMENTS.—Such Act is further amended—

20 (1) in section 305 (50 U.S.C. App. 535), by striking subsection (i); and

21 (2) in section 207 (50 U.S.C. App. 527(b)(2)) by striking “calling a
22 servicemember to military service”.

23

1 **SEC. 107. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST RATE CAP.**

2 Paragraphs (1) and (2) of section 207(b) of the SCRA (50 U.S.C. App. 527(b)) are
3 amended to read as follows:

4 “(1) NOTICE TO CREDITOR.—In order for an obligation or liability of a
5 servicemember to be subject to the interest rate limitation in subsection (a), the
6 servicemember shall provide to the creditor oral or written notice of military service and
7 any further extension of military service, not later than 180 days after the date of the
8 servicemember's termination or release from military service. The creditor shall retain a
9 record of the servicemember’s oral or written notification.

10 “(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon
11 receipt of oral or written notice of military service, the creditor shall conduct a search of
12 Department of Defense records available through the Department of Defense Manpower
13 Data Center, and if military service is confirmed by such search shall treat the debt in
14 accordance with subsection (a), effective as of the date on which the servicemember is
15 called to military service. If the search of Department of Defense records does not
16 confirm military service, the creditor shall notify the servicemember and may require the
17 servicemember to provide a copy of the servicemember’s military orders prior to treating
18 the debt in accordance with subsection (a), effective as of the date on which the
19 servicemember is called to military service.”.

20 **SEC. 108. NON-DISCRIMINATION PROVISION.**

21 (a) PROHIBITION ON DISCRIMINATION AGAINST SERVICEMEMBERS.—Section 108 of the
22 SCRA (50 U.S.C. App. 518) is amended—

1 (1) by striking “Application by a servicemember for, or receipt by a
2 servicemember of, a stay, postponement, or suspension” and inserting “(a) APPLICATION
3 OR RECEIPT.—Application by a servicemember for rights or protections”; and

4 (2) by adding at the end the following new subsection:

5 “(b) ELIGIBILITY.—

6 “(1) IN GENERAL.—In addition to the rights and protections under subsection (a),
7 an individual who is eligible, or may become eligible by virtue of current membership in
8 the reserves or a commitment to perform future military service, for rights or protections
9 under any provision of this Act may not be denied services, including access to housing,
10 or refused credit or be subject to any other action described under paragraphs (1) through
11 (6) of subsection (a) by reason of such eligibility.

12 “(2) CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit a
13 lender or service provider from considering all relevant factors, other than the potential
14 eligibility of an individual for rights or protections under a provision of this Act, in
15 making a determination as to whether it is appropriate to provide services or extend
16 credit.”.

17 (b) CLERICAL AMENDMENTS.—

18 (1) SECTION HEADING.—The heading of such section is amended to read as
19 follows:

20 “SEC. 108. PROHIBITION ON DISCRIMINATION AGAINST SERVICEMEMBERS.”

21 (2) TABLE OF CONTENTS.—The item relating to that section in the table of contents
22 in section 1(b) of the SCRA is amended to read as follows:

23 “108. Prohibition on discrimination against servicemembers.”.

1 **SEC. 109. EXTENSION OF PROTECTION AGAINST REPOSSESSION FOR**
2 **INSTALLMENT SALES CONTRACTS.**

3 Subsection (a)(1) of section 302 of the SCRA (50 U.S.C. App. 532) is amended by
4 striking “during that person’s military service” and inserting “during and for one year after that
5 person’s military service”.

6 **SEC. 110. HARMONIZATION OF SECTIONS.**

7 Section 303 of the SCRA (50 U.S.C. App. 533) is amended—

8 (1) in subsection (b), by striking “filed” and inserting “pending”; and

9 (2) in subsection (c)(1), by striking “with a return made and approved by the
10 court”.

11 **SEC. 111. EXPANSION OF PROTECTION FOR TERMINATION OF RESIDENTIAL**
12 **AND MOTOR VEHICLE LEASES.**

13 (a) **TERMINATION OF LEASES.**—Subsection (a) of section 305 of the SCRA (50 U.S.C.
14 App. 535) is amended—

15 (1) in paragraph (1)—

16 (A) in subparagraph (A), by striking “or” at the end;

17 (B) in subparagraph (B), by striking the period at the end and inserting “;
18 or”; and

19 (C) by adding at the end the following new subparagraph:

20 “(C) in the case of a lease described in subsection (b)(1) and subparagraph
21 (C) of such subsection, the date the lessee is assigned to or otherwise relocates to
22 quarters or a housing facility as described in such subparagraph.”; and

1 (2) in paragraph (2), by striking “a dependent of the lessee” and inserting “a co-
2 lessee”.

3 (b) COVERED LEASES.—Subsection (b)(1) of such section is amended—

4 (1) in subparagraph (A), by striking “or” at the end;

5 (2) in subparagraph (B)—

6 (A) by inserting “(as defined in the Joint Federal Travel Regulations,
7 Chapter 5, paragraph U5000B)” after “permanent change of station”; and

8 (B) by striking the period at the end and inserting “; or”; and

9 (3) by adding at the end the following new subparagraph:

10 “(C) the lease is executed by or on behalf of a person who thereafter and
11 during the term of the lease is assigned to or otherwise relocates to quarters of the
12 United States or a housing facility under the jurisdiction of a uniformed service
13 (as defined in section 101 of title 37, United States Code), including housing
14 provided under the Military Housing Privatization Initiative.”.

15 (c) MANNER OF TERMINATION.—Subsection (c)(1) of such section is amended—

16 (1) in subparagraph (A)—

17 (A) by inserting “in the case of a lease described in subsection (b)(1) and
18 subparagraph (A) or (B) of such subsection,” before “by delivery”; and

19 (B) by striking “and” at the end;

20 (2) by redesignating subparagraph (B) as subparagraph (C); and

21 (3) by inserting after subparagraph (A) the following new subparagraph (B):

22 “(B) in the case of a lease described in subsection (b)(1) and subparagraph (C) of
23 such subsection, by delivery by the lessee of written notice of such termination, and a

1 letter from the servicemember’s commanding officer indicating that the servicemember
2 has been assigned to or is otherwise relocating to quarters of the United States or a
3 housing facility under the jurisdiction of a uniformed service (as defined in section 101 of
4 title 37, United States Code), to the lessor (or the lessor’s grantee), or to the lessor’s agent
5 (or the agent’s grantee); and”.

6 (d) WAIVER IMPERMISSIBLE—Such section is amended by inserting the following new
7 subsection—

8 “(i) Waiver not permitted. The provisions of this section may not be waived or
9 modified by the agreement of the parties under any circumstances.”

10 **SEC. 112. MILITARY FAMILY PROFESSIONAL LICENSE PORTABILITY.**

11 (a) PORTABILITY.—The SCRA (50 U.S.C. App. 501 et seq.) is amended by inserting after
12 section 595 the following new section:

13 "SEC. 595A. PORTABILITY OF PROFESSIONAL LICENSES AND CERTIFICATIONS
14 FOR SERVICEMEMBERS AND THEIR SPOUSES.”

15 “Any professional license or commercial license provided to a servicemember or the
16 spouse of a servicemember shall be fully recognized and honored in any jurisdiction of the
17 United States in which that servicemember or spouse of a servicemember resides due to the
18 military orders of the servicemember for the duration of the orders, if the servicemember or the
19 servicemember’s spouse—

20 “(1) provides a copy of the military orders calling the servicemember to duty in
21 that jurisdiction to the licensing entity in that jurisdiction;

22 “(2) remains in good standing with the licensing entity of the original jurisdiction;
23 and

1 “(3) agrees to be subject to the authority of the licensing entity in the new
2 jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any
3 continuing education requirements.”.

4 (b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the SCRA is amended
5 by inserting after the item relating to section 595 the following new item:

6 “595A. Portability of professional licenses and certifications for servicemembers and their
7 spouses.”.

8 **SEC. 113. FEDERAL CLAIMS UNDER SCRA EXEMPT FROM FEDERAL**
9 **ARBITRATION ACT.**

10 Section 102 of the SCRA (50 U.S.C. App. 512) is amended by adding at the end the
11 following new subsection:

12 “(d) ELECTION OF ARBITRATION.—

13 “(1) CONSENT REQUIRED.—Notwithstanding any other provision of law, whenever
14 a contract with a servicemember provides for the use of arbitration to resolve a
15 controversy pursuant to this Act and arising out of or relating to such contract, arbitration
16 may be used to settle such controversy only if, after such controversy arises, all parties to
17 such controversy consent in writing to use arbitration to settle such controversy.

18 “(2) EXPLANATION REQUIRED.—Notwithstanding any other provision of law,
19 whenever arbitration is elected to settle a dispute pursuant to paragraph (1), the arbitrator
20 shall provide the parties to such contract with a written explanation of the factual and
21 legal basis for the award.

22 “(3) APPLICABILITY.—This subsection shall apply to any controversy pursuant to
23 this Act occurring on, before, or after the date of the enactment of this subsection.”.

Section-by-Section Analysis

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

This section clarifies that the plaintiff in a default judgment action has an affirmative obligation to determine the defendant's military status and that the plaintiff must take steps accordingly, including but not limited to reviewing and attaching available Department of Defense records.

SEC. 101a. OBLIGATIONS OF ATTORNEY APPOINTED TO REPRESENT DEFENDANT IN MILITARY SERVICE.

This section clarifies basic obligations for attorneys appointed by a court to represent defendants in military service. It imposes an affirmative obligation on each such attorney to use due diligence to locate and contact the defendant, and to act in that defendant's best interests. It also provides a remedy for defendants in military service who have been harmed by a court appointed attorney's failure to meet these affirmative obligations.

SEC. 102. RESIDENCY OF DEPENDENTS OF MILITARY PERSONNEL.

This section clarifies that a dependent family member of a servicemember does not have to accompany that servicemember who is absent from a State in compliance with military or naval orders in order for the dependent family member to retain a residence or domicile in that State. Often if a servicemember is called to Iraq or Afghanistan or deploys on ship for 6-12 months a dependent family member will return to a parent or other extended family's home during that time for the support network, particularly when there are small children, rather than remaining in a place with no family support. This clarification will allow the dependent family member the same residency rights as a servicemember even if the dependent family member is unable to accompany the servicemember to the duty station and due to the change in duty station needs to also move to a different place during that deployment.

SEC. 103. INCREASE IN CIVIL PENALTIES.

This section doubles the amount of civil penalties currently authorized.

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

This section grants authority to the Attorney General to issue civil investigative demands in investigations under the SCRA. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories. This section also clarifies that the Attorney General's authority to enforce the Act applies to violations of the Act that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

This section clarifies that a private right of action may be filed by any person aggrieved by a violation of the SCRA that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such right explicit.

SEC. 106. DEFINITION OF MILITARY ORDERS AND CONTINENTAL UNITED STATES.

This section would add definitions for "military orders" and "continental United States." The amended definition of "military orders" will allow for use of a commanding officer letter in place of orders, similar to the language proposed in S. 3322 in the 112th Congress, so that this provision would apply to the whole SCRA, and not just to lease terminations.

SEC. 107. ORAL NOTICE SUFFICIENT TO INVOKE INTEREST RATE CAP.

This section allows servicemembers to give oral or written notice when they wish to invoke the interest rate cap, instead of just written notice, and requires the creditor to retain a record of the servicemember's oral or written notification. It also allows them to invoke the interest rate cap without sending in a copy of their military orders. Upon receipt of notice, the creditor must conduct a search of Department of Defense records available through the Defense Manpower Data Center (DMDC). If those records confirm military service, the creditor shall grant the interest rate benefit, effective as of the date on which the servicemember was called to military service. If the records do not confirm military service, the creditor may require the servicemember to provide a copy of his or her military orders.

SEC. 108. NON-DISCRIMINATION PROVISION.

This section provides for a nondiscrimination provision that is modeled after a similar provision in S. 3322 in the 112th Congress.

SEC. 109. EXTENSION OF PROTECTION AGAINST REPOSSESSION FOR INSTALLMENT SALES CONTRACTS.

This section provides harmonization of the tail coverage periods for installment sales contracts in section 532 to match mortgages in section 533.

SEC. 110. HARMONIZATION OF SECTIONS.

This section changes "filed" to "pending" in section 533(b), so that servicemembers get stays of proceedings or adjustments of the obligation even if the action was filed before they entered service, or during a break in service. This section also removes "with a return made and approved by the court" to harmonize it with other provisions.

SEC. 111. EXPANSION OF PROTECTION FOR TERMINATION OF RESIDENTIAL AND MOTOR VEHICLE LEASES.

This section extends lease termination protection to individuals ordered to move onto a military base. The language is similar to section 103 of the mark up for S. 3322 in the 112th Congress. In addition, this section provides that the rights with respect to termination of

residential and motor vehicle leases conferred in section 535 may not be waived under any circumstances.

SEC. 112. MILITARY FAMILY PROFESSIONAL LICENSE PORTABILITY.

This section creates a requirement that states in which a military spouse resides due to the servicemembers' orders recognize the spouse's professional licenses that have been awarded by other states. The Administration has called upon all 50 states to pass this type of legislation by 2014 (approximately 25 states currently have laws on this).

SEC. 113. FEDERAL CLAIMS UNDER SCRA EXEMPT FROM FEDERAL ARBITRATION ACT.

This section makes arbitration clauses unenforceable unless all parties consent to arbitration after a dispute arises. The language is similar to another statutory exception to the Federal Arbitration Act (15 U.S.C. 1226(a)(2)).

Amendments to the Military Lending Act (MLA)

1 **SEC. ____.** **ENHANCED ROLE FOR DEPARTMENT OF JUSTICE UNDER**
2 **MILITARY LENDING ACT.**

3 (a) ENFORCEMENT BY THE ATTORNEY GENERAL.—Subsection (f) of section 987 of
4 title 10, United States Code, is amended by adding at the end the following new
5 paragraph:

6 “(7) ENFORCEMENT BY THE ATTORNEY GENERAL.—

7 “(A) IN GENERAL.—The Attorney General may commence a civil
8 action in any appropriate district court of the United States against any
9 person who—

10 “(i) engages in a pattern or practice of violating this
11 section; or

12 “(ii) engages in a violation of this section that raises an
13 issue of general public importance.

14 “(B) RELIEF.—In a civil action commenced under subparagraph
15 (A), the court—

16 “(i) may grant any appropriate equitable or declaratory
17 relief with respect to the violation of this section;

18 “(ii) may award all other appropriate relief, including
19 monetary damages, to any person aggrieved by the violation; and

20 “(iii) may, to vindicate the public interest, assess a civil
21 penalty—

1 “(I) in an amount not exceeding \$110,000 for a first
2 violation; and

3 “(II) in an amount not exceeding \$220,000 for any
4 subsequent violation.

5 “(C) INTERVENTION.—Upon timely application, a person aggrieved
6 by a violation of this section with respect to which the civil action is
7 commenced may intervene in such action, and may obtain such
8 appropriate relief as the person could obtain in a civil action under
9 paragraph (5) with respect to that violation, along with costs and a
10 reasonable attorney fee.

11 “(D) ISSUANCE AND SERVICE OF CIVIL INVESTIGATIVE DEMANDS.—
12 Whenever the Attorney General, or a designee, has reason to believe that
13 any person may be in possession, custody, or control of any documentary
14 material relevant to an investigation under this section, the Attorney
15 General, or a designee, may, before commencing a civil action under
16 subparagraph (A), issue in writing and cause to be served upon such
17 person, a civil investigative demand requiring—

18 “(i) the production of such documentary material for
19 inspection and copying;

20 “(ii) that the custodian of such documentary material
21 answer in writing written questions with respect to such
22 documentary material; or

1 “(iii) the production of any combination of such
2 documentary material or answers.

3 “(E) RELATIONSHIP TO FALSE CLAIMS ACT.—The statutory
4 provisions governing the authority to issue, use, and enforce civil
5 investigative demands under section 3733 of title 31 (known as the ‘False
6 Claims Act’) shall govern the authority to issue, use, and enforce civil
7 investigative demands under subparagraph (D), except that—

8 “(i) any reference in that section to false claims law
9 investigators or investigations shall be applied for purposes of
10 subparagraph (D) as referring to investigators or investigations
11 under this section;

12 “(ii) any reference in that section to interrogatories shall be
13 applied for purposes of subparagraph (D) as referring to written
14 questions and answers to such need not be under oath;

15 “(iii) the statutory definitions for purposes of that section
16 relating to ‘false claims law’ shall not apply; and

17 “(iv) provisions of that section relating to qui tam relators
18 shall not apply.”.

19 (b) CONSULTATION WITH DEPARTMENT OF JUSTICE.—Subsection (h)(3) of such
20 section is amended by adding at the end the following new subparagraph:

21 “(H) The Department of Justice.”

Section-by-Section Analysis

Subsection (a)—ENFORCEMENT BY THE ATTORNEY GENERAL

Subsection (a) of this proposal would amend subsection (f) of 10 U.S.C. 987, the so-called Military Lending Act (MLA) to include Attorney General enforcement authority for the MLA, with civil penalties and civil investigative demand authority.

Subsection (b)—CONSULTATION WITH THE DEPARTMENT OF JUSTICE ON MILITARY LENDING ACT PROVISIONS.

Subsection (b) of the proposal would add the Department of Justice to the list of agencies (the banking regulators, FTC, and Treasury) with which the Defense Department must consult on a regular basis about the MLA's regulations.

Amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)

1 SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON

2 AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

3 (a) IN GENERAL.—Subsection (c) of section 102 of the Uniformed and Overseas
4 Citizens Absentee Voting Act (52 U.S.C. 20302) is amended—

5 (1) by designating the text of that subsection as paragraph (3) and
6 indenting that paragraph, as so designated, two ems from the left margin; and

7 (2) by inserting before paragraph (3), as so designated, the following new
8 paragraphs:

9 “(1) PRE-ELECTION REPORT ON ABSENTEE BALLOT AVAILABILITY.—Not
10 later than 55 days before any election for Federal office held in a State, such State
11 shall submit a report to the Attorney General and the Presidential Designee, and
12 make that report publicly available that same day, certifying that absentee ballots
13 are available for transmission to absentee voters, or that it is aware of no
14 circumstances that will prevent absentee ballots from being available for
15 transmission by 46 days before the election. The report shall be in a form
16 prescribed by the Attorney General and shall require the State to certify specific
17 information about ballot availability from each unit of local government which
18 will administer the election.

19 “(2) PRE-ELECTION REPORT ON ABSENTEE BALLOTS TRANSMITTED.—Not
20 later than 43 days before any election for Federal office held in a State, such State
21 shall submit a report to the Attorney General and the Presidential Designee, and
22 make that report publicly available that same day, certifying whether all absentee

1 ballots validly requested by absent uniformed services voters and overseas voters
2 whose requests were received by the 46th day before the election have been
3 transmitted to such voters by such date. The report shall be in a form prescribed
4 by the Attorney General and shall require the State to certify specific information
5 about ballot transmission, including the total numbers of ballot requests received
6 and ballots transmitted, from each unit of local government which will administer
7 the election.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) SUBSECTION HEADING.—The heading for such subsection is amended
10 to read as follows: “REPORTS ON ABSENTEE BALLOTS.—”.

11 (2) PARAGRAPH HEADING.—Paragraph (3) of such subsection, as
12 designated by subsection (a)(1), is amended by inserting “POST-ELECTION REPORT
13 ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—“ before “Not
14 later than 90 days”.

15 **SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER**
16 **PROVISION.**

17 (a) IN GENERAL.—Subsection (a)(8) of section 102 of the Uniformed and
18 Overseas Citizens Absentee Voting Act (52 U.S.C. 20302) is amended by striking
19 “voter—” and all that follows in that subsection and inserting “voter by the date and in
20 the manner determined under subsection (g);”.

21 (b) BALLOT TRANSMISSION REQUIREMENTS AND REPEAL OF WAIVER
22 PROVISION.—Subsection (g) of such section is amended to read as follows:

23 “(g) BALLOT TRANSMISSION REQUIREMENTS.—

1 “(1) REQUESTS RECEIVED AT LEAST 46 DAYS BEFORE AN ELECTION FOR
2 FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid
3 request for an absentee ballot is received at least 46 days before an election for
4 Federal office, the following rules shall apply:

5 “(A) TIME FOR TRANSMITTAL OF ABSENTEE BALLOT.—The State
6 shall transmit the absentee ballot not later than 46 days before the election.

7 “(B) SPECIAL RULES IN CASE OF FAILURE TO TRANSMIT ON TIME.—

8 “(i) GENERAL RULE.—If the State fails to transmit any
9 absentee ballot by the 46th day before the election as required by
10 subparagraph (A) and the absent uniformed services voter or
11 overseas voter did not request electronic ballot transmission
12 pursuant to subsection (f), the State shall transmit such ballot by
13 express delivery.

14 “(ii) EXTENDED FAILURE.—If the State fails to transmit any
15 absentee ballot by the 41st day before the election, in addition to
16 transmitting the ballot as provided in clause (i), the State shall—

17 “(I) in the case of absentee ballots requested by
18 absent uniformed services voters with respect to regularly
19 scheduled general elections, notify such voters of the
20 procedures established under section 103A for the
21 collection and delivery of marked absentee ballots; and

22 “(II) in any other case, provide, at the State's
23 expense, for the return of such ballot by express delivery.

1 “(iii) ENFORCEMENT.—A State's compliance with this
2 subparagraph does not bar the Attorney General from seeking
3 additional remedies necessary to effectuate the purposes of this
4 Act.

5 “(2) REQUESTS RECEIVED AFTER 46TH DAY BEFORE AN ELECTION FOR
6 FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid
7 request for an absentee ballot is received less than 46 days before an election for
8 Federal office, the State shall transmit the absentee ballot within one business day
9 of receipt of the request.”.

10 **SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL**
11 **PENALTIES, AND PRIVATE RIGHT OF ACTION.**

12 (a) ENFORCEMENT.—Section 105 of the Uniformed and Overseas Citizens
13 Absentee Voting Act (52 U.S.C. 20307) is amended to read as follows:

14 **“SEC. 105. ENFORCEMENT.**

15 “(a) IN GENERAL.—The Attorney General may bring a civil action in an
16 appropriate district court for such declaratory or injunctive relief as may be necessary to
17 carry out this title. In any such action, the only necessary party defendant is the State. It
18 shall not be a defense to such action that local election officials are not also named as
19 defendants.

20 “(b) CIVIL PENALTY.—In a civil action brought under subsection (a), if the court
21 finds that the State violated any provision of this title, it may, to vindicate the public
22 interest, assess a civil penalty against the State—

23 “(1) in an amount not exceeding \$110,000, for a first violation.

1 “(2) in an amount not exceeding \$220,000, for any subsequent violation.

2 “(c) ANNUAL REPORT TO CONGRESS.—Not later than December 31 of each year,
3 the Attorney General shall submit to Congress a report on any civil action brought under
4 subsection (a) during that year.

5 “(d) PRIVATE RIGHT OF ACTION.—A person who is aggrieved by a State’s
6 violation of this Act may bring a civil action in an appropriate district court for such
7 declaratory or injunctive relief as may be necessary to carry out this Act.

8 “(e) ATTORNEY’S FEES.—In a civil action under this section, the court may allow
9 the prevailing party (other than the United States) reasonable attorney’s fees, including
10 litigation expenses, and costs.”.

11 (b) REPEAL OF CLARIFICATION REGARDING DELEGATION OF STATE
12 RESPONSIBILITY.—Section 576 of the Military and Overseas Voter Empowerment Act
13 (52 U.S.C. 20302 note) is repealed.

14 **SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE**
15 **ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN**
16 **ABSENTEE BALLOT.**

17 (a) STATE RESPONSIBILITIES.—Section 102(a)(3) of the Uniformed and Overseas
18 Citizens Absentee Voting Act (52 U.S.C. 20302(a)(3)) is amended by striking “general”.

19 (b) WRITE-IN ABSENTEE BALLOTS.—Section 103 of such Act (52 U.S.C. 20303) is
20 amended—

21 (1) by striking “GENERAL” in the title of the section; and

22 (2) by striking “general” in subsection (b)(2)(B).

23

1 **SEC. 1405. TREATMENT OF BALLOT REQUESTS.**

2 (a) IN GENERAL.—Section 104 of the Uniformed and Overseas Citizens Absentee
3 Voting Act (52 U.S.C. 20306) is amended—

4 (1) by striking “A State may not” and inserting

5 “(a) PROHIBITION OF REFUSAL OF APPLICATIONS ON GROUNDS OF EARLY
6 SUBMISSION—A State may not”;

7 (2) by inserting “or overseas voter” after “an absent uniformed services
8 voter”;

9 (3) by striking “members of the” before “uniformed services”;

10 (4) by inserting “voters or overseas voters” before the period; and

11 (5) by adding at the end the following new subsection:

12 “(b) APPLICATION TREATED AS VALID FOR SUBSEQUENT ELECTIONS.—

13 “(1) IN GENERAL.— If a State accepts and processes a request for an
14 absentee ballot by an absent uniformed services voter or overseas voter and the
15 voter requests that the application be considered an application for an absentee
16 ballot for each subsequent election for Federal office held in the State through the
17 next regularly scheduled general election for Federal office (including any runoff
18 elections which may occur as a result of the outcome of such general election),
19 and any special elections for Federal office held in the State through the calendar
20 year following such general election, the State shall provide an absentee ballot to
21 the voter for each such subsequent election.

22 “(2) EXCEPTION FOR VOTERS CHANGING REGISTRATION.— Paragraph (1)
23 shall not apply with respect to a voter registered to vote in a State for any election

1 held after the voter notifies the State that the voter no longer wishes to be
2 registered to vote in the State or after the State determines that the voter has
3 registered to vote in another State.”.

4 (b) CONFORMING AMENDMENT.— The heading of such section is amended to
5 read as follows:

6 “SEC. 104. “TREATMENT OF BALLOT REQUESTS.”.

7 **SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE**
8 **DEFINITION OF “STATE” FOR PURPOSES OF THE UNIFORMED**
9 **AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.**

10 Paragraphs (6) and (8) of section 107 of the Uniformed and Overseas Citizens
11 Absentee Voting Act (52 U.S.C. 20310) are each amended by striking “and American
12 Samoa” and inserting “American Samoa, and the Commonwealth of the Northern
13 Mariana Islands”.

14 **SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE**
15 **THE FEDERAL POST CARD APPLICATION TO ALLOW VOTERS TO**
16 **DESIGNATE BALLOT REQUESTS.**

17 (a) REQUIREMENT.—The Presidential designee shall ensure that the official post
18 card form (prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens
19 Absentee Voting Act (52 U.S.C. 20301(b)(2))) enables a voter using the form to—

20 (1) request an absentee ballot for each election for Federal office held in a
21 State through the next regularly scheduled general election for Federal office
22 (including any runoff elections which may occur as a result of the outcome of

1 such general election) and any special elections for Federal office held in the State
2 through the calendar year following such general election; or

3 (2) request an absentee ballot for a specific election or elections for
4 Federal office held in a State during the period described in paragraph (1).

5 (b) DEFINITION.—In this section, the term “Presidential designee” means the
6 individual designated under section 101(a) of the Uniformed and Overseas Citizens
7 Absentee Voting Act (52 U.S.C. 20301(a)).

8 **SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS**
9 **AND GUAM FEDERAL ELECTIONS.**

10 Section 2(a) of the Act entitled “An Act to provide that the unincorporated
11 territories of Guam and the Virgin Islands shall each be represented in Congress by a
12 Delegate to the House of Representatives” approved April 10, 1972 (48 U.S.C. 1712(a)),
13 is amended—

14 (1) by striking “majority” in the second and third sentences and inserting
15 “plurality”; and

16 (2) by striking the fourth sentence.

17 **SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL**
18 **REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF**
19 **ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.**

20 (a) ELIMINATION OF REPORTS FOR NON-ELECTION YEARS.—Section 105A(b) of
21 the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 1973ff-4a(b)) is
22 amended—

1 (1) by striking “March 31 of each year” and inserting “September 30 of
2 each odd-numbered year”; and

3 (2) by striking “the following information” and inserting “the following
4 information with respect to the Federal elections held during the preceding
5 calendar year”.

6 (b) CONFORMING AMENDMENTS.—Such section is further amended—

7 (1) by striking “ANNUAL REPORT” in the subsection heading and inserting
8 “BIENNIAL REPORT”; and

9 (2) by striking “In the case of” in paragraph (3) and all that follows through “a
10 description” and inserting “A description”.

11 **SEC. 1410. TREATMENT OF POST CARD FORM REGISTRATIONS.**

12 Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (52
13 U.S.C. 20302) is amended by adding at the end the following new subsection:

14 “(j) Treatment of Post Card Registrations.—A State shall not remove any absent
15 uniformed services voter or overseas voter who has registered to vote using the official
16 post card form (prescribed under section 101) from the official list of registered voters,
17 except in accordance with subparagraph (A), (B), or (C) of section 8(a)(3) of the National
18 Voter Registration Act of 1993 (42 U.S.C. 1973gg–6(a)).”

Section-by-Section Analysis

SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense, and amends Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 46th day before the election. It requires that States submit the second report 43 days before the election and certify whether each of its jurisdictions transmitted its ballots by the 46th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER PROVISION.

Except as noted below, the substance of this section is substantially the same as section 202 of the Department of Justice 2011 proposal as coordinated with the Department of Defense. In addition, it includes Section 204 of the 2011 proposal, repeal of the waiver provision.

This provision, which changes the 45-day deadline under the MOVE Act to a 46-day deadline, addresses the substance of Section 205 of the Department of Justice's 2011 proposal. The 2011 proposal offered a "Saturday Mailing Date Rule," while maintaining the 45-day deadline. Initially, Senate staff proposed the 46-day rule as a cleaner way of accomplishing the same goal of clarifying the general ballot deadline. We propose incorporating the 46-day deadline in our proposals. Conforming changes to the 46 day deadline are made throughout this proposal.

This section amends Section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 46-day deadline to voters who request ballots by the 46th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 41st day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 46-day rule. The 2011 proposal triggered the requirement to provide for the express return of ballots at the State's expense after the 40th day, *i.e.*, when a ballot was sent late by 5 days or more. The 41st day reference here (in Section 102(g)(1)(B)(ii)) conforms to the new 46 day transmission standard, and provides the same 5 day trigger we envisioned in our 2011 proposal.

This section also repeals UOCAVA's hardship waiver provision, Section 102(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating

ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 46-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

Section 102(g)(2) is amended because the MOVE Act language (currently in Section 102(a)(8)(b) of UOCAVA) affords no specific requirement to ensure ballots requested between 45 and 30 days of the election (or a later date where states accepted ballot requests closer to the election) are promptly transmitted to voters. Some states have a law or practice of sending ballots promptly; others do not. There remains confusion as to what this provision mandates, if anything. This amendment would ensure that that ballot requests are promptly transmitted by directing that ballots be sent within one business day of receipt.

SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense. This section amends Section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also repeals 52 U.S.C. 20302 note, which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN ABSENTEE BALLOT

Section 581 of the MOVE Act extended UOCAVA voters' eligibility to use a Federal Write-In Absentee Ballot (FWAB) to all elections for Federal office, effective December 31, 2010. Prior to that time, FWABs could only be cast in federal general elections. Section 581 effects a number of conforming amendments, but fails to revise these two other FWAB references in the Act.

SEC. 1405. TREATMENT OF BALLOT REQUESTS.

This section amends Section 104 of UOCAVA and is based in part on Section 206 of the Department of Justice's 2011 proposal as coordinated with the Department of Defense. As in the 2011 proposal, this section amends Section 104 of UOCAVA to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act.

This proposal also restores, in part, language the 2009 MOVE Act deleted related to treating a ballot application as valid for subsequent elections. Rather than allowing a voter to use the application to request ballots through two general election cycles as the pre-MOVE Act law did, this proposal would provide that applications are valid for one general election cycle, which includes any runoff elections that are held after that general election, a provision contained in Senator Brown's bill (S. 3322). We propose one addition to extend the period to cover any special Federal elections that occur between the general election and the end of the following year. It also provides that all absent uniformed services voters and overseas voters have the option of applying for ballots for all Federal elections held during the period prescribed by this section.

SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

This section is substantially the same as Section 207 of the Department of Justice 2011 proposal coordinated with the Department of Defense. This section amends UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE THE FEDERAL POST CARD APPLICATION (FPCA) TO ALLOW VOTERS TO DESIGNATE BALLOT REQUESTS.

The provision for FVAP to revise the FPCA was included in the Department of Justice 2011 proposal as coordinated with the Department of Defense. We revised the language to conform to the change referenced in Section 1705, and contained in Senator Brown's bill (S. 3322), which would allow voters to request ballots through the next general election and included the additional option we propose to extend it to special Federal elections that may be held after the general election through the following calendar year.

SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS AND GUAM FEDERAL ELECTIONS.

The MOVE Act required that absentee ballots be transmitted 45 days in advance of an election for Federal office. The Department of Justice has interpreted this requirement to apply to all Federal elections, including runoff elections, and the United States Court of Appeals for the

Eleventh Circuit recently affirmed that interpretation. See *U.S. v. State of Alabama*, No. 14-11298 (11th Cir. Feb. 12, 2015), *reh'g denied* April 21, 2015.

In response to the MOVE Act's 45-day deadline, some States changed their State laws to allow sufficient time in their election calendars to transmit runoff ballots if a primary election triggers a runoff. The Virgin Islands and Guam are not able to make a similar change to their runoff election calendars because 48 U.S.C. 1712 requires that runoff elections be held within 14 days after a Federal general election, if no candidate receives a majority of the votes cast at the general election. This proposal provides that the Delegates for the Virgin Islands and Guam be elected by plurality vote. It is consistent with the general rule for the election of Delegates to the other territories and the District of Columbia.

SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.

Section 1409 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to September 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year – the year in which the regularly scheduled elections for Federal office occurred. Therefore, the Department of Defense seeks these changes to ensure that the report provides the best quality information about FVAP's program, voter registration and participation in the election and enhance the validity of post-election survey results.

The Department of Defense strongly believes that developing and publishing this report for odd-numbered calendar years in which few Federal elections occur does not provide sufficient information to warrant the time, effort and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. In 2009 there were a total of only four elections for Federal office. Again in 2011, only four elections occurred. In 2013 there were eight elections for federal office; there were three in 2015.

Evaluation and analysis of FVAP activities for special primary or general elections requires the Department of Defense to obtain the election data from the local jurisdiction involved and, in many cases, the specific data required to make accurate analysis is not available or is not available in a timely manner. The Department of Defense has concluded that analysis of odd-numbered year elections could lead to poor policy decisions based upon incomplete data and/or conclusions which may not be valid in even-numbered election years, which have greater public participation and FVAP activity.

In addition, the Department of Defense has determined that the post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed and reported by the current March 31 deadline. General elections for Federal office are held in November (potentially with some States conducting run-off elections for Federal office in December). The FVAP's survey instruments will be fielded in January and the Department believes they need to be open for at least three months to garner sufficient participation to make

them statistically valid. Further, for the Department to compare the voting behavior rates of active duty military members with those of the citizen voting age population, it must compare data released by other federal agencies. However, the data are historically not available until the summer months following a general election. Thus, the March 31 deadline provides little time after the elections to collect, synthesize and thoughtfully analyze post-election survey data to base program evaluations and policy decisions. Accordingly, the Department of Defense recommends that the reporting deadline be extended from March 31 to September 30, and that the report only be submitted in odd-numbered years.

SEC. 1410. TREATMENT OF POST CARD FORM REGISTRATIONS.

This provision addresses the concern that some jurisdictions may be treating voters who register to vote by the federal post card application prescribed by UOCAVA as “temporary” registrants whose voter registration expires when the voters’ absentee ballot request expires (under current law that request expires after just one year). This new provision would clarify that UOCAVA registrants will not have their voter registrations cancelled except as allowed under the National Voter Registration Act of 1993 (i.e., at the request of the registrant; as provided by State law, by reason of criminal conviction or mental incapacity; or in accordance with the procedures and notice requirements of a general removal program governed by the NVRA). This is a new section to address an issue that arose during the Department’s technical assistance process in connection with the SENTRI Act. Section 104 of the SENTRI Act (S. 1728) would add a provision with nearly identical language.