

SERVICEMEMBER FAMILY PROTECTION ACT

MAY 18, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

R E P O R T

[To accompany H.R. 4201]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 4201) to amend the Servicemembers Civil Relief Act to provide for the protection of child custody arrangements for parents who are members of the Armed Forces, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4201 was introduced on March 16, 2012, by Representative Michael R. Turner of Ohio. H.R. 4201 amends the Servicemembers Civil Relief Act (SCRA) to provide for the protection of child cus-

tody arrangements for parents who are members of the Armed Forces.

BACKGROUND AND NEED FOR LEGISLATION

As our nation's servicemembers continue to endure deployments overseas, the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act continue to protect their interests at home. Both Acts endeavor to ensure veterans and servicemembers' employment rights and civilian obligations are not affected by their commitment to the security of the United States. At its core, SCRA ensures that servicemembers have certain protections in the event that military service impedes their ability to meet certain financial and legal obligations.

With respect to one such legal obligation, the Committee is aware of the often difficult decisions facing courts regarding child custody when one or both parents may be a servicemember deployed abroad. Although the current SCRA covers everything from mortgages to cell phone contracts, it fails to provide one uniform framework for protecting servicemembers' rights under child custody actions by state courts.

H.R. 4201 would protect these rights by amending the SCRA to require that if a court renders a temporary order for custodial responsibility for a child of a servicemember to another party because of a servicemembers' deployment, the custody order immediately preceding the temporary order shall be reinstated upon the return of the servicemember unless the court determines that such a move would not be in the best interest of a child. The bill would also prohibit courts from considering the absence or potential absence of a servicemember from being considered as part of the court's determination of the child's best interest. Finally, the bill ensures that if higher protections than that provided for in H.R. 4201 exist under any state law, then the higher standard shall be applied.

In previous Congresses, the Committee received anecdotal evidence of servicemembers having to make the difficult decision of choosing between their military career and the legal custody of their children because of rulings made by courts that took their military service into account when assigning custody of the child. The Committee believes that servicemembers should never have to make this choice.

In a February 15, 2011, letter to Representative Michael Turner of Ohio, then-Secretary of Defense Robert Gates provided support for legislation that is appropriately crafted, "[t]hat provides Servicemembers with a federal uniform standard of protection in cases where it is established that military service is the sole factor involved in a child custody decision involving a Service member." The Committee believes that H.R. 4201 is appropriately crafted to fulfill this requirement.

COMMITTEE CONSIDERATION

On April 27, 2012, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 4201 reported favorably to the House of Representatives by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 4201, reported to the House. A motion by Ms. Corrine Brown of Florida to order H.R. 4201, reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4201 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 4201, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 4201, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 10, 2012.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4201, the Servicemember Family Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is William Ma.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4201—Servicemember Family Protection Act

CBO estimates that implementing H.R. 4201 would have no effect on the federal budget. The bill would amend the Servicemembers Civil Relief Act to improve the protections offered to deploying servicemembers in matters related to court-ordered arrangements for child custody. For servicemembers who deploy for periods between 60 days and 18 months, H.R. 4201 would restrict courts from considering those absences when determining permanent child-custody arrangements. The bill also would require the reinstatement of custody orders in effect preceding any deployment or anticipated deployment of the servicemember (unless a court finds that reinstatement is not in the child’s best interest) and provide servicemembers with either the protections under this bill or applicable state law, whichever is most favorable.

Enacting H.R. 4201 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4201 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws, applicable to child custody protection, that provide less protection to servicemembers than the federal standard. While the preemption would limit the application of state law, CBO estimates that it would impose no duty on state, local, or tribal governments that would result in additional spending.

H.R. 4201 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are William Ma (for federal costs) and Lisa Ramirez-Branum (for the intergovernmental impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 4201, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 4201.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress’ power to “provide for the common Defense and general Welfare of the United States.”

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates H.R. 4201 as the “Servicemember Family Protection Act.”

Section 2. Protection of child custody arrangement for parents who are Members of the Armed Forces

This section amends Title II of the Servicemembers Civil Relief Act by adding a new section on child custody protection.

Subsection (a) provides for a new section 208 in the SCRA that provides that if a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a servicemember, then the court shall require that upon the return of the servicemember from deployment, the custody order that was in effect immediately preceding the temporary order shall be reinstated, unless the court finds that such a reinstatement is not in the best interest of the child.

Subsection (b) of new section 208 prohibits courts from considering the absence or potential absence of a servicemember from being considered as part of the court’s determination of the child’s best interest.

Subsection (c) of new section 208 states that nothing in this new section shall create a Federal right of action.

Subsection (d) of new section 208 states that if any applicable state law that gives a greater level of protection to the rights of the parents than the one provided by this section, the state law will apply.

Subsection (e) of new section 208 defines a deployment as movement or mobilization of a servicemember for a period no shorter than 60 days and not longer than 18 months where the servicemember is not authorized to bring their dependents.

Subsection (b) amends the table of contents in section 1(b) of the SCRA to include “208. Child custody protection.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

Servicemembers Civil Relief Act

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE II—GENERAL RELIEF

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208. Child custody protection.

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TITLE II—GENERAL RELIEF

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SEC. 208. CHILD CUSTODY PROTECTION.

(a) *RESTRICTION ON TEMPORARY CUSTODY ORDER.*—If a court renders a temporary order for custodial responsibility for a child based solely on a deployment or anticipated deployment of a parent who is a servicemember, then the court shall require that upon the return of the servicemember from deployment, the custody order that was in effect immediately preceding the temporary order shall be reinstated, unless the court finds that such a reinstatement is not in the best interest of the child, except that any such finding shall be subject to subsection (b).

(b) *EXCLUSION OF MILITARY SERVICE FROM DETERMINATION OF CHILD’S BEST INTEREST.*—If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, no court may consider the absence of the servicemember by reason of deployment, or the possibility of deployment, in determining the best interest of the child.

(c) *NO FEDERAL RIGHT OF ACTION.*—Nothing in this section shall create a Federal right of action.

(d) *PREEMPTION.*—In any case where State law applicable to a child custody proceeding involving a temporary order as contemplated in this section provides a higher standard of protection to the rights of the parent who is a deploying servicemember than the rights provided under this section with respect to such temporary order, the appropriate court shall apply the higher State standard.

(e) *DEPLOYMENT DEFINED.*—In this section, the term “deployment” means the movement or mobilization of a servicemember for a period of longer than 60 days and not longer than 18 months pursuant to temporary or permanent official orders—

- (1) that are designated as unaccompanied;
- (2) for which dependent travel is not authorized; or
- (3) that otherwise do not permit the movement of family members to that location.

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