

MILITARY RESIDENCY CHOICE ACT

NOVEMBER 14, 2016.—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. 5428]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 5428) to amend the Servicemembers Civil Relief Act to authorize spouses of servicemembers to elect to use the same residences as the servicemembers, 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. 5428, the “Military Residency Choice Act,” was introduced by Representative Randy Forbes of Virginia on June 9, 2016. H.R. 5428 would amend the Servicemember Civil Relief Act (SCRA) to allow a servicemember’s spouse to claim the same state of residency as the servicemember for voting and tax purposes even if the spouse has not lived in that state.

BACKGROUND AND NEED FOR LEGISLATION

Section 1. Short title

Section 1 cites the short title of H.R. 5428, to be the “Military Residency Choice Act.”

Section 2. Residence of spouses of servicemembers for tax purposes

Since the codification of the SCRA in 1942, Congress has recognized that active duty servicemembers should be afforded certain legal protections during their years of military service. Among other provisions, the SCRA allows servicemembers to maintain their place of residency in a State for certain purposes, such as voting and State and local income taxes, regardless of whether the servicemember is currently residing in that State or is absent from that State due to active duty military service. These protections are in place due to the transient nature of serving in the military, and they allow servicemembers to avoid the burdens of reestablishing a place of residence for tax purposes after each permanent change of duty station.

Public Law (P.L.) 111–97 amended SCRA to extend these same protections to certain spouses of servicemembers. While the Committee believes that this extension of protections is commonsense for military spouses, unfortunately, the law only benefits the spouses of servicemembers who actually lived in the same State in which the servicemember established residency prior to a permanent change of duty station. Therefore, under current law, spouses who marry a servicemember, after the servicemember has already been transferred from the State where they established their residency, cannot claim that same State as their place of residency. This leaves that spouse having to legally change his/her State of residency for State and local income tax purposes after each move, whereas the servicemember does not have to.

The Committee believes that this discrepancy was not the intention of P.L. 111–97 and can put an unfair burden on some military spouses despite the fact that these military families are facing the same transient lifestyle and undergoing the same stress as other military families. At a June 23, 2016 full Committee legislative hearing, Mr. Raymond C. Kelley, Director of the National Legislative Service of the Veterans of Foreign Wars of the United States agreed, stating, “Protecting spouses of our military from losing residency in their home-of-record, while also allowing them to elect to have the same residency as their partner will greatly ease some of the stressors military families face.”

Section 2 of H.R. 5428 would amend section 511(a)(2) of the SCRA to allow the spouse of a servicemember to elect to use the same State of residence as the servicemember for State or local tax purposes regardless of when or where the two individuals were

married. These changes would apply with respect to any return of State or local income tax filed for any taxable year beginning with the taxable year that includes enactment. While this provision would not require the spouse to claim the same residence as the servicemember, the Committee believes that this change in the law would better fulfill the intent of the SCRA and the protections that are extended to our servicemembers and their families while they are serving on active duty.

Section 3. Residence of spouses of servicemembers for voting

The SCRA also protects servicemembers by allowing them to maintain a certain State of residency or domicile, despite absence from that State due to military orders, for voting purposes in Federal, State, or local elections. Allowing them to continue voting in the State that they consider home regardless of where the military moves them, benefits the servicemember similarly as allowing them to maintain the same State of residence for tax purposes, and alleviates arduous voter registration requirements on our military men and woman after each move.

P.L. 111–97 also extended these voting protections to military spouses after concern that “[spouses] are disenfranchised from voting; often times not arriving to a new state in time to vote in primaries and do not have ample opportunity to get to know the Federal, state or local candidates or adequate time to learn their policies and legislative agendas. It is confusing when one state allows a military spouse to vote via absentee ballot, yet the state where the spouse is physically located does not.”¹ Unfortunately, as was the case with maintaining a certain residence for tax purposes, this law did not extend these same voting protections to spouses who marry the servicemember after the active duty member has already moved from the State in which they are claiming residence. The Committee believes that comparable to updating tax forms after each move, updating voter registration paperwork after each permanent change in duty station puts an unfair and complicated burden on some military spouses that is not required for other spouses just due to when they married the servicemember. The Committee also believes that spouses and servicemembers should be able to vote in the same area for which they pay taxes.

Section 3 of H.R. 5428 would amend Section 705(b) of SCRA by allowing the spouse of a servicemember to elect to use the same residence as the servicemember for State and local voting purposes, even if they are absent from that State due to military orders and regardless of when or where they got married. The Committee believes that this will fulfill the intent of SCRA and P.L. 111–97 and lessen the confusion and burdens of being a military spouse.

HEARINGS

On June 23, 2016, the full Committee conducted a legislative hearing on various draft bills and bills introduced during the 114th Congress, including H.R. 5428. The following witnesses testified:

The Honorable Doug Lamborn, U.S. House of Representatives, 5th District of Colorado; The Honorable Dina Titus, U.S. House of Representatives, 1st District of Nevada; The Honor-

¹ Senate Report 111–046—Military Spouses Residency Relief Act.

able Raul Ruiz, U.S. House of Representatives, 36th District of California; The Honorable Beto O'Rourke, U.S. House of Representatives, 16th District of Texas; The Honorable Ron DeSantis, U.S. House of Representatives, 6th District of Florida; The Honorable Ted Yoho, U.S. House of Representatives, 3rd District of Florida; The Honorable Jody Hice, U.S. House of Representatives, 10th District of Georgia; The Honorable Dan Newhouse, U.S. House of Representatives, 4th District of Washington; The Honorable David Young, U.S. House of Representatives, 3rd District of Iowa; The Honorable Sloan Gibson, Deputy Secretary, U.S. Department of Veterans Affairs who was accompanied by Ms. Laura Eskenazi, Executive in Charge and Vice Chairman, Board of Veterans Appeals, U.S. Department of Veterans Affairs, Mr. David McLenachen, Deputy Under Secretary for Disability Assistance, Veterans Benefits Administration, U.S. Department of Veterans Affairs, and Dr. Maureen McCarthy, Assistant Deputy Under Secretary for Health Patient Care Services, Veterans Health Administration, U.S. Department of Veterans Affairs; Mr. Raymond Kelley, Director of the National Legislative Service, Veterans of Foreign Wars of the United States; Mr. Paul Varela, Assistant National Legislative Director, Disabled American Veterans; Mr. Carl Blake, Associate Executive Director of Government Relations, Paralyzed Veterans of America; Mr. Louis J. Celli, Jr., Director of the National Veterans Affairs and Rehabilitation Division, The American Legion; and Mr. Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America.

A Statement for the Record was submitted by the following:

American Battle Monuments Commission; AMVETS; U.S. Court of Appeals for Veterans Claims; Iraq and Afghanistan Veterans of America; Military Officers Association of America; Military Veterans Advocacy, Inc.; National Organization of Veterans Advocates; National Veterans Legal Services Program; P.A.W.S. Foundation; Stetson University College of Law's Veterans Law Institute; and the U.S. Department of Labor.

SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 5428.

COMMITTEE CONSIDERATION

On September 21, 2016, the full Committee met in open markup session, a quorum being present, and ordered H.R. 5428, favorably reported to the House of Representatives by voice vote.

A motion by Representative Mark Takano of California to report H.R. 5428 favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no recorded votes were taken on amendments or in connection with ordering H.R. 5428 reported to the House.

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 to ensure that spouses of servicemembers are able to claim the same state of residence as the servicemember even if the spouse has not lived in that state to ensure that, for tax purposes and voting purposes, the spouse is not negatively impacted by the mobility of active duty service.

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. 5428 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. 5428, 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. 5428, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 25, 2016.

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. 5428, the Military Residency Choice Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5428—Military Residency Choice Act

Military personnel can retain their residences or domiciles for purposes of state and local taxation and voter registration when they leave a state if that move, and any subsequent moves, are made in compliance with military orders. Under the Military Spouses Residency Relief Act, spouses of service members can retain their states of residency if they move and reside with the service member; they cannot use the service members' states of residency for taxation or voting purposes unless they can independently establish entitlement according to state laws. H.R. 5428 would allow spouses of service members to claim the same state of residence as the service member for those purposes, regardless of whether the spouse had ever resided in that state.

CBO estimates that enacting H.R. 5428 would have no effect on the federal budget. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5428 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5428 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO considers the residency benefit conferred on military spouses under the Military Spouses Residency Relief Act to be a preemption of taxing authority of state and local governments. H.R. 5428 would marginally expand this preemption by allowing the spouses of service members to elect the residency of a service member that is not the residence in which the couple was married. CBO expects that some military spouses would elect new states of residency if income tax rates in those states are lower. Although the effect on revenue collections by individual state and local governments would vary, depending on the number and income of these individuals and where they reside or are legal residents, CBO estimates the net effect to be below the annual threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation).

CBO has determined that section 3 of H.R. 5428, which would allow spouses of military personnel to register to vote in the same state as the service member, is excluded from review for mandates under UMRA because it would enforce the constitutional rights of individuals. Therefore, as specified in UMRA, CBO has not reviewed the provisions of section 3 for intergovernmental or private-sector mandates. Other provisions of the bill contain no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Newman (for federal costs) and Jon Sperl (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 5428, 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. 5428.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 5428 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 H.R. 5428 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.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee finds that no provision of H.R. 5428 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee estimates that H.R. 5428 contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 cites the short title of H.R. 5428 to be the "Military Residency Choice Act."

Section 2. Residence of spouses of servicemembers for tax purposes

Section 2(a) would amend Section 511(a)(2) of the Servicemembers Civil Relief Act (50 U.S.C. 4001(a)(2)) by adding at the end of the section a new sentence to allow the spouse of a servicemember to elect to use the same residence as the servicemember for tax purposes, regardless of the date of when or where the spouse and the servicemember got married.

Section 2(b) would make the changes made in Section 2(a) applicable for any return of State or local income tax filed for any taxable year beginning with the taxable year that includes the date of enactment.

Section. 3. Residence of spouses of servicemembers for voting

Section 3(a) would amend Section 705(b) of the Servicemembers Civil Relief Act by striking “State or local office” and all that follows through the period and inserting a new paragraph which would allow a person who is absent from a State because the person is accompanying their spouse who is also absent from that same State due to military or naval orders shall not, solely by reason of that absence be deemed to have lost residence or domicile in that state regardless of whether that person intends to return to that state or gained residency in any other State. Section 3(a) would also allow for the spouse of a servicemember to elect to use the same State of residence as the servicemember regardless of the day on which they got married.

Section 3(b) would make the changes made in Section 3(a) effective 90 days following enactment.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SERVICEMEMBERS CIVIL RELIEF ACT

* * * * *

TITLE V—TAXES AND PUBLIC LANDS

* * * * *

SEC. 511. RESIDENCE FOR TAX PURPOSES.

(a) RESIDENCE OR DOMICILE.—

(1) IN GENERAL.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) SPOUSES.—A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember’s military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse. *The spouse of a servicemember may elect to use the same residence for purposes of taxation as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.*

(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary

of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) **INCOME OF A MILITARY SPOUSE.**—Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) **PERSONAL PROPERTY.**—

(1) **RELIEF FROM PERSONAL PROPERTY TAXES.**—The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) **EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.**—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) **EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.**—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) **RELATIONSHIP TO LAW OF STATE OF DOMICILE.**—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) **INCREASE OF TAX LIABILITY.**—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) **FEDERAL INDIAN RESERVATIONS.**—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) **DEFINITIONS.**—For purposes of this section:

(1) **PERSONAL PROPERTY.**—The term “personal property” means intangible and tangible property (including motor vehicles).

(2) **TAXATION.**—The term “taxation” includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

(3) **TAX JURISDICTION.**—The term “tax jurisdiction” means a State or a political subdivision of a State.

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TITLE VII—FURTHER RELIEF

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SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL AND SPOUSES OF MILITARY PERSONNEL.

(a) **IN GENERAL.**—For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act

of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

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

(3) be deemed to have become a resident in or a resident of any other State.

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

[(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

[(2) be deemed to have acquired a residence or domicile in any other State; or

[(3) be deemed to have become a resident in or a resident of any other State.]

(1) a person who is absent from a State because the person is accompanying the person’s spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

(A) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

(B) be deemed to have acquired a residence or domicile in any other State; or

(C) be deemed to have become a resident in or a resident of any other State; and

(2) the spouse of a servicemember may elect to use the same residence as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.

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