

108TH CONGRESS
2D SESSION

H. R. 4658

AN ACT

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act, otherwise to improve legal protections provided to reserve component members called to active duty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Servicemembers and Veterans Legal Protections Act of
 6 2004”.

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

Sec. 1. Short title; table of contents.

TITLE I—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF
 ACT

- Sec. 101. Clarification of meaning of “judgment” as used in the Act.
- Sec. 102. Requirements relating to waiver of rights under the Act.
- Sec. 103. Right of servicemember plaintiffs to request stay of civil proceedings.
- Sec. 104. Termination of leases.
- Sec. 105. Prevention of double taxation of certain servicemembers.

TITLE II—EMPLOYMENT AND REEMPLOYMENT RIGHTS

Subtitle A—Extension of Health Care Coverage

- Sec. 201. Two-year period of continuation of employer-sponsored health care coverage.
- Sec. 202. Reinstatement of reporting requirements.

Subtitle B—Other Matters

- Sec. 211. Requirement for employers to provide notice of rights and duties under USERRA.
- Sec. 212. Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.

TITLE III—MATTERS RELATING TO FIDUCIARIES

- Sec. 301. Definition of fiduciary.
- Sec. 302. Inquiry, investigations, and qualification of fiduciaries.
- Sec. 303. Misuse of benefits by fiduciaries.
- Sec. 304. Additional protections for beneficiaries with fiduciaries.
- Sec. 305. Annual report.
- Sec. 306. Annual adjustment in benefits thresholds.
- Sec. 307. Effective dates.

TITLE IV—OTHER MATTERS

Sec. 401. Inventory of medical waste management activities at Department health-care facilities.

Sec. 402. Technical amendments to education program provisions.

1 **TITLE I—IMPROVEMENTS TO**
 2 **SERVICEMEMBERS CIVIL RE-**
 3 **LIEF ACT**

4 **SEC. 101. CLARIFICATION OF MEANING OF “JUDGMENT” AS**
 5 **USED IN THE ACT.**

6 Section 101 of the Servicemembers Civil Relief Act
 7 (50 U.S.C. App. 511) is amended by adding at the end
 8 the following new paragraph:

9 “(9) JUDGMENT.—The term ‘judgment’ means
 10 any judgment, decree, order, or ruling, final or tem-
 11 porary.”.

12 **SEC. 102. REQUIREMENTS RELATING TO WAIVER OF**
 13 **RIGHTS UNDER THE ACT.**

14 Section 107 of the Servicemembers Civil Relief Act
 15 (50 U.S.C. App. 517) is amended—

16 (1) In subsection (a), by inserting after the first
 17 sentence the following new sentence: “Any such
 18 waiver that applies to an action listed in subsection
 19 (b) of this section is effective only if it is in writing
 20 and is executed as an instrument separate from the
 21 obligation or liability to which it applies.”;

22 (2) by redesignating subsection (c) as sub-
 23 section (d); and

1 (3) by inserting after subsection (b) the fol-
 2 lowing new subsection (c):

3 “(c) **PROMINENT DISPLAY OF CERTAIN CONTRACT**
 4 **RIGHTS WAIVERS.**—Any waiver in writing of a right or
 5 protection provided by this Act that applies to a contract,
 6 lease, or similar legal instrument must be in at least 12
 7 point type.”.

8 **SEC. 103. RIGHT OF SERVICEMEMBER PLAINTIFFS TO RE-**
 9 **QUEST STAY OF CIVIL PROCEEDINGS.**

10 Section 202(a) of the Servicemembers Civil Relief Act
 11 (50 U.S.C. App. 522(a)) is amended by inserting “plain-
 12 tiff or” before “defendant”.

13 **SEC. 104. TERMINATION OF LEASES.**

14 (a) **JOINT LEASES.**—Subsection (a) of section 305 of
 15 the Servicemembers Civil Relief Act (50 U.S.C. App. 535)
 16 is amended to read as follows:

17 “(a) **TERMINATION BY LESSEE.**—

18 “(1) **IN GENERAL.**—The lessee on a lease de-
 19 scribed in subsection (b) may, at the lessee’s option,
 20 terminate the lease at any time after—

21 “(A) the lessee’s entry into military serv-
 22 ice; or

23 “(B) the date of the lessee’s military or-
 24 ders described in paragraph (1)(B) or (2)(B) of
 25 subsection (b), as the case may be.

1 “(2) JOINT LEASES.—A lessee’s termination of
2 a lease pursuant to this subsection shall terminate
3 any obligation a dependent of the lessee may have
4 under the lease.”.

5 (b) MOTOR VEHICLES LEASES.—

6 (1) APPLICABILITY TO PCS ORDERS FROM
7 STATES OUTSIDE CONUS.—Subparagraph (B) of
8 subsection (b)(2) of such section is amended by
9 striking “military orders for” and all that follows
10 through “or to deploy” and inserting “military
11 orders—

12 “(i) for a change of permanent
13 station—

14 “(I) from a location in the conti-
15 nental United States to a location out-
16 side the continental United States; or

17 “(II) from a location in a State
18 outside the continental United States
19 to any location outside that State; or

20 “(ii) to deploy”.

21 (2) DEFINITIONS.—Such section is further
22 amended by adding at the end the following new
23 subsection:

24 “(i) DEFINITIONS.—

1 “(1) **MILITARY ORDERS.**—The term ‘military
2 orders’, with respect to a servicemember, means offi-
3 cial military orders, or any notification, certification,
4 or verification from the servicemember’s com-
5 manding officer, with respect to the servicemember’s
6 current or future military duty status.

7 “(2) **CONUS.**—The term ‘continental United
8 States’ means the 48 contiguous States and the Dis-
9 trict of Columbia.”.

10 (c) **COVERAGE OF INDIVIDUAL DEPLOYMENTS.**—
11 Subsection (b) of such section is further amended in para-
12 graph (1)(B) and paragraph (2)(B)(ii) (as designated by
13 subsection (b) of this section) by inserting “, or as an indi-
14 vidual in support of a military operation,” after “deploy
15 with a military unit”.

16 **SEC. 105. PREVENTION OF DOUBLE TAXATION OF CERTAIN**
17 **SERVICEMEMBERS.**

18 Section 511(c) of the Servicemembers Civil Relief Act
19 (50 U.S.C. App. 571(c)) is amended by adding at the end
20 the following new paragraph:

21 “(5) **USE, EXCISE, OR SIMILAR TAXES.**—A tax
22 jurisdiction may not impose a use, excise, or similar
23 tax on the personal property of a nonresident
24 servicemember when the laws of the tax jurisdiction
25 fail to provide a credit against such taxes for sales,

1 use, excise, or similar taxes previously paid on the
 2 same property to another tax jurisdiction.”.

3 **TITLE II—EMPLOYMENT AND**
 4 **REEMPLOYMENT RIGHTS**
 5 **Subtitle A—Extension of Health**
 6 **Care Coverage**

7 **SEC. 201. TWO-YEAR PERIOD OF CONTINUATION OF EM-**
 8 **PLOYER-SPONSORED HEALTH CARE COV-**
 9 **ERAGE.**

10 (a) IMPROVEMENT IN PERIOD OF COVERAGE.—Sub-
 11 section (a)(1)(A) of section 4317 of title 38, United States
 12 Code, is amended by striking “18-month period” and in-
 13 serting “24-month period”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 subsection (a) shall apply to elections made under such
 16 section 4317 on or after the date of the enactment of this
 17 Act.

18 **SEC. 202. REINSTATEMENT OF REPORTING REQUIRE-**
 19 **MENTS.**

20 Section 4332 of title 38, United States Code, is
 21 amended in the matter preceding paragraph (1) by strik-
 22 ing “no later than February 1, 1996, and annually there-
 23 after through 2000” and inserting “no later than Feb-
 24 ruary 1, 2005, and annually thereafter”.

1 **Subtitle B—Other Matters**

2 **SEC. 211. REQUIREMENT FOR EMPLOYERS TO PROVIDE NO-** 3 **TICE OF RIGHTS AND DUTIES UNDER** 4 **USERRA.**

5 (a) NOTICE.—Chapter 43 of title 38, United States
 6 Code, is amended by adding at the end the following new
 7 section:

8 **“§ 4334. Notice of rights and duties**

9 “(a) REQUIREMENT TO PROVIDE NOTICE.—Each
 10 employer shall provide to persons entitled to rights and
 11 benefits under this chapter a notice of the rights, benefits,
 12 and obligations of such persons and such employers under
 13 this chapter. The requirement for the provision of notice
 14 under this section may be met by the posting of the notice
 15 where employers customarily place notices for employees.

16 “(b) CONTENT OF NOTICE.—The Secretary shall
 17 provide to employers the text of the notice to be provided
 18 under this section.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
 20 at the beginning of such chapter is amended by adding
 21 at the end the following new item:

“4334. Notice of rights and duties.”.

22 (c) IMPLEMENTATION.—(1) Not later than the date
 23 that is 90 days after the date of the enactment of this
 24 Act, the Secretary of Labor shall make available to em-

1 ployers the notice required under section 4334 of title 38,
2 United States Code, as added by subsection (a).

3 (2) The amendments made by this section shall apply
4 to employers under chapter 43 of such title on and after
5 the first date referred to in paragraph (1).

6 **SEC. 212. DEMONSTRATION PROJECT FOR REFERRAL OF**
7 **USERRA CLAIMS AGAINST FEDERAL AGEN-**
8 **CIES TO THE OFFICE OF SPECIAL COUNSEL.**

9 (a) ESTABLISHMENT OF PROJECT.—The Secretary
10 of Labor and the Office of Special Counsel shall carry out
11 a demonstration project under which certain claims
12 against Federal executive agencies under the Uniformed
13 Services Employment and Reemployment Rights Act
14 under chapter 43 of title 38, United States Code, are re-
15 ferred to, or otherwise received by, the Office of Special
16 Counsel for assistance, including investigation and resolu-
17 tion of the claim as well as enforcement of rights with
18 respect to the claim.

19 (b) REFERRAL OF ALL PROHIBITED PERSONNEL AC-
20 TION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—

21 (1) Under the demonstration project, the Office of Special
22 Counsel shall receive and investigate all claims under the
23 Uniformed Services Employment and Reemployment
24 Rights Act with respect to Federal executive agencies in
25 cases where the Office of Special Counsel has jurisdiction

1 over related claims pursuant to section 1212 of title 5,
2 United States Code.

3 (2) For purposes of paragraph (1), a related claim
4 is a claim involving the same Federal executive agency and
5 the same or similar factual allegations or legal issues as
6 those being pursued under a claim under the Uniformed
7 Services Employment and Reemployment Rights Act.

8 (c) REFERRAL OF OTHER CLAIMS AGAINST FED-
9 ERAL EXECUTIVE AGENCIES.—(1) Under the demonstra-
10 tion project, the Secretary—

11 (A) shall refer to the Office of Special Counsel
12 all claims described in paragraph (2) made during
13 the period of the demonstration project; and

14 (B) may refer any claim described in paragraph
15 (2) filed before the demonstration project that is
16 pending before the Secretary at the beginning of the
17 demonstration project.

18 (2) A claim referred to in paragraph (1) is a claim
19 under chapter 43 of title 38, United States Code, against
20 a Federal executive agency by a claimant with a social se-
21 curity account number with an odd number as its terminal
22 digit, or, in the case of a claim that does not contain a
23 social security account number, a case number assigned
24 to the claim with an odd number as its terminal digit.

1 (d) ADMINISTRATION OF DEMONSTRATION
2 PROJECT.—(1) The Office of Special Counsel shall admin-
3 ister the demonstration project. The Secretary shall co-
4 operate with the Office of Special Counsel in carrying out
5 the demonstration project.

6 (2) In the case of any claim referred, or otherwise
7 received by, to the Office of Special Counsel under the
8 demonstration project, any reference to the “Secretary”
9 in sections 4321, 4322, and 4326 of title 38, United
10 States Code, is deemed a reference to the “Office of Spe-
11 cial Counsel”.

12 (3) In the case of any claim referred to, or otherwise
13 received by, the Office of Special Counsel under the dem-
14 onstration project, the Office of Special Counsel shall re-
15 tain administrative jurisdiction over the claim.

16 (e) PERIOD OF PROJECT.—The demonstration
17 project shall be carried out during the period beginning
18 on the date that is 60 days after the date of the enactment
19 of this Act, and ending on September 30, 2007.

20 (f) EVALUATIONS AND REPORT.—(1) The Comp-
21 troller General of the United States shall conduct periodic
22 evaluations of the demonstration project under this sec-
23 tion.

24 (2) Not later than April 1, 2007, the Comptroller
25 General shall submit to Congress a report on the evalua-

1 tions conducted under paragraph (1). The report shall in-
2 clude the following information and recommendations:

3 (A) A description of the operation and results
4 of the demonstration program, including—

5 (i) the number of claims described in sub-
6 section (c) referred to, or otherwise received by,
7 the Office of Special Counsel and the number of
8 such claims referred to the Secretary of Labor,
9 and

10 (ii) for each Federal executive agency, the
11 number of claims resolved, the type of correc-
12 tive action obtained, the period of time for final
13 resolution of the claim, and the results ob-
14 tained.

15 (B) An assessment of whether referral to the
16 Office of Special Counsel of claims under the dem-
17 onstration project—

18 (i) improved services to servicemembers
19 and veterans; or

20 (ii) significantly reduced or eliminated du-
21 plication of effort and unintended delays in re-
22 solving meritorious claims of those
23 servicemembers and veterans.

24 (C) An assessment of the feasibility and advis-
25 ability of referring all claims under chapter 43 of

1 title 38, United States Code, against Federal execu-
 2 tive agencies to the Office of Special Counsel for in-
 3 vestigation and resolution.

4 (D) Such other recommendations for adminis-
 5 trative action or legislation as the Comptroller Gen-
 6 eral determines appropriate.

7 (g) DEFINITIONS.—In this section:

8 (1) The term “Office of Special Counsel”
 9 means the Office of Special Counsel established by
 10 section 1211 of title 5, United States Code.

11 (2) The term “Secretary” means the Secretary
 12 of Labor.

13 (3) The term “Federal executive agency” has
 14 the meaning given that term in section 4303(5) of
 15 title 38, United States Code.

16 **TITLE III—MATTERS RELATING** 17 **TO FIDUCIARIES**

18 **SEC. 301. DEFINITION OF FIDUCIARY.**

19 (a) IN GENERAL.—(1) Chapter 55 of title 38, United
 20 States Code, is amended by adding at the end the fol-
 21 lowing new section:

22 **“§ 5506. Definition of ‘fiduciary’**

23 “For purposes of this chapter and chapter 61 of this
 24 title, the term ‘fiduciary’ means—

1 “(1) a person who is a guardian, curator, con-
 2 servator, committee, or person legally vested with
 3 the responsibility or care of a claimant (or a claim-
 4 ant’s estate) or of a beneficiary (or a beneficiary’s
 5 estate); or

6 “(2) any other person having been appointed in
 7 a representative capacity to receive money paid
 8 under any of the laws administered by the Secretary
 9 for the use and benefit of a minor, incompetent, or
 10 other beneficiary.”.

11 (2) The table of sections at the beginning of such
 12 chapter is amended by adding at the end the following
 13 new item:

“5506. Definition of ‘fiduciary’.”.

14 (b) CONFORMING AMENDMENTS TO SECTION
 15 5502.—Section 5502 of such title is amended—

16 (1) in subsection (a)—

17 (A) in paragraph (1), by striking “other
 18 person” and inserting “other fiduciary”; and

19 (B) in the second sentence of paragraph
 20 (2), by inserting “for benefits under this title”
 21 after “in connection with rendering fiduciary
 22 services”;

23 (2) in subsection (b), by striking “guardian, cu-
 24 rator, conservator, or other person” each place it ap-
 25 pears and inserting “fiduciary”; and

1 (3) in subsection (d), by striking “guardian, cu-
2 rator, or conservator” and inserting “fiduciary”.

3 (c) CONFORMING AMENDMENT TO SECTION 6101.—
4 Section 6101(a) of such title is amended by striking
5 “guardian, curator,” and all that follows through “bene-
6 ficiary,” and inserting “fiduciary (as defined in section
7 5506 of this title) for the benefit of a minor, incompetent,
8 or other beneficiary under laws administered by the Sec-
9 retary,”.

10 **SEC. 302. INQUIRY, INVESTIGATIONS, AND QUALIFICATION**
11 **OF FIDUCIARIES.**

12 (a) IN GENERAL.—Chapter 55 of title 38, United
13 States Code, as amended by section 301(a)(1), is further
14 amended by adding at the end the following new section:

15 **“§ 5507. Inquiry, investigations, and qualification of**
16 **fiduciaries**

17 “(a) Any certification of a person for payment of ben-
18 efits of a beneficiary to that person as such beneficiary’s
19 fiduciary under section 5502 of this title shall be made
20 on the basis of—

21 “(1) an inquiry or investigation by the Sec-
22 retary of the fitness of that person to serve as fidu-
23 ciary for that beneficiary, such inquiry or
24 investigation—

1 “(A) to be conducted in advance of such
2 certification;

3 “(B) to the extent practicable, to include a
4 face-to-face interview with such person; and

5 “(C) to the extent practicable, to include a
6 copy of a credit report for such person issued
7 within one year of the date of the proposed ap-
8 pointment;

9 “(2) adequate evidence that certification of that
10 person as fiduciary for that beneficiary is in the in-
11 terest of such beneficiary (as determined by the Sec-
12 retary under regulations); and

13 “(3) the furnishing of any bond that may be re-
14 quired by the Secretary.

15 “(b) As part of any inquiry or investigation of any
16 person under subsection (a), the Secretary shall request
17 information concerning whether that person has been con-
18 victed of any offense under Federal or State law which
19 resulted in imprisonment for more than one year. If that
20 person has been convicted of such an offense, the Sec-
21 retary may certify the person as a fiduciary only if the
22 Secretary makes a specific finding that the person has
23 been rehabilitated and is an appropriate person to act as
24 fiduciary for the beneficiary concerned under the cir-
25 cumstances.

1 “(c)(1) In the case of a proposed fiduciary described
2 in paragraph (2), the Secretary, in conducting an inquiry
3 or investigation under subsection (a)(1), may carry out
4 such inquiry or investigation on an expedited basis that
5 may include waiver of any specific requirement relating
6 to such inquiry or investigation, including the otherwise
7 applicable provisions of subparagraphs (A), (B), and (C)
8 of such subsection. Any such inquiry or investigation car-
9 ried out on such an expedited basis shall be carried out
10 under regulations prescribed for purposes of this section.

11 “(2) Paragraph (1) applies with respect to a proposed
12 fiduciary who is—

13 “(A) the parent (natural, adopted, or step-
14 parent) of a beneficiary who is a minor;

15 “(B) the spouse or parent of an incompetent
16 beneficiary;

17 “(C) a person who has been appointed a fidu-
18 ciary of the beneficiary by a court of competent ju-
19 risdiction; or

20 “(D) being appointed to manage an estate
21 where the annual amount of veterans benefits to be
22 managed by the proposed fiduciary does not exceed
23 \$3600, as adjusted pursuant to section 5312 of this
24 title.

1 “(d) TEMPORARY FIDUCIARIES.—When in the opin-
 2 ion of the Secretary, a temporary fiduciary is needed in
 3 order to protect the assets of the beneficiary while a deter-
 4 mination of incompetency is being made or appealed or
 5 a fiduciary is appealing a determination of misuse, the
 6 Secretary may appoint one or more temporary fiduciaries
 7 for a period not to exceed 120 days. If a final decision
 8 has not been made within 120 days, the Secretary may
 9 not continue the appointment of the fiduciary without ob-
 10 taining a court order for appointment of a guardian, con-
 11 servator, or other fiduciary under the authority provided
 12 in section 5502(b) of this title.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 at the beginning of such chapter is amended by adding
 15 after the item added by section 301(a)(2) the following
 16 new item:

“5507. Inquiry, investigations, and qualification of fiduciaries.”.

17 **SEC. 303. MISUSE OF BENEFITS BY FIDUCIARIES.**

18 (a) PROTECTION OF VETERANS BENEFITS WHEN
 19 ADMINISTERED BY FIDUCIARIES.—(1) Chapter 61 of title
 20 38, United States Code, is amended by adding at the end
 21 the following new sections:

22 **“§ 6106. Misuse of benefits by fiduciaries**

23 “(a) FEE FORFEITURE IN CASE OF BENEFIT MIS-
 24 USE BY FIDUCIARIES.—A fiduciary may not collect a fee
 25 from a beneficiary for any month with respect to which

1 the Secretary or a court of competent jurisdiction has de-
2 termined that the fiduciary misused all or part of the indi-
3 vidual's benefit, and any amount so collected by the fidu-
4 ciary as a fee for such month shall be treated as a misused
5 part of the individual's benefit.

6 “(b) LIABILITY OF FIDUCIARIES FOR MISUSED BEN-
7 EFITS.—(1) If the Secretary or a court of competent juris-
8 diction determines that a fiduciary that is not a Federal,
9 State, or local government agency has misused all or part
10 of a beneficiary's benefit that was paid to such fiduciary,
11 the fiduciary shall be liable for the amount misused, and
12 such amount (to the extent not repaid by the fiduciary)
13 shall be treated as an erroneous payment of benefits under
14 this title to the fiduciary for purposes of laws pertaining
15 to the recovery of overpayments. The amount of such over-
16 payment shall constitute a liability of such fiduciary to the
17 United States and may be recovered in the same manner
18 as any other debt due the United States. Subject to para-
19 graph (2), upon recovering all or any part of such amount,
20 the Secretary shall pay an amount equal to the recovered
21 amount to such beneficiary or such beneficiary's successor
22 fiduciary.

23 “(2) The total of the amounts paid to a beneficiary
24 (or a beneficiary's successor fiduciary) under paragraph
25 (1) and under section 6107 of this title may not exceed

1 the total benefit amount misused by the fiduciary with re-
 2 spect to that beneficiary.

3 “(c) MISUSE OF BENEFITS DEFINED.—For purposes
 4 of this chapter, misuse of benefits by a fiduciary occurs
 5 in any case in which the fiduciary receives payment, under
 6 any of laws administered by the Secretary, for the use and
 7 benefit of a beneficiary and uses such payment, or any
 8 part thereof, for a use other than for the use and benefit
 9 of such beneficiary or that beneficiary’s dependents. Re-
 10 tention by a fiduciary of an amount of a benefit payment
 11 as a fiduciary fee or commission, or as attorney’s fees (in-
 12 cluding expenses) and court costs, if authorized by the
 13 Secretary or a court of competent jurisdiction, shall be
 14 considered to be for the use or benefit of such beneficiary.

15 “(d) REGULATIONS.—The Secretary may prescribe
 16 by regulation the meaning of the term ‘use and benefit’
 17 for purposes of this section.

18 “(e) FINALITY OF DETERMINATIONS.—A determina-
 19 tion by the Secretary that a fiduciary has misused benefits
 20 is a decision of the Secretary for purposes of section
 21 511(a) of this title.

22 **“§ 6107. Reissuance of benefits**

23 “(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In
 24 any case in which the negligent failure of the Secretary
 25 to investigate or monitor a fiduciary results in misuse of

1 benefits by the fiduciary, the Secretary shall pay to the
2 beneficiary or the beneficiary's successor fiduciary an
3 amount equal to the amount of benefits that were so mis-
4 used.

5 “(2) There shall be considered to have been a neg-
6 ligent failure by the Secretary to investigate and monitor
7 a fiduciary in the following cases:

8 “(A) A case in which the Secretary failed to
9 timely review a fiduciary's accounting.

10 “(B) A case in which the Secretary was notified
11 of allegations of misuse, but failed to act in a timely
12 manner to terminate the fiduciary.

13 “(C) In any other case in which actual neg-
14 ligence is shown.

15 “(b) REISSUANCE OF MISUSED BENEFITS IN OTHER
16 CASES.—(1) In any case in which a fiduciary described
17 in paragraph (2) misuses all or part of an individual's ben-
18 efit paid to such fiduciary, the Secretary shall pay to the
19 beneficiary or the beneficiary's successor fiduciary an
20 amount equal to the amount of such benefit so misused.

21 “(2) Paragraph (1) applies to a fiduciary that—

22 “(A) is not an individual; or

23 “(B) is an individual who, for any month dur-
24 ing a period when misuse occurs, serves 10 or more
25 individuals who are beneficiaries under this title.

1 “(c) RECOUPMENT OF AMOUNTS REISSUED.—In any
 2 case in which the Secretary reissues a benefit payment (in
 3 whole or in part) under subsection (a) or (b), the Sec-
 4 retary shall make a good faith effort to obtain recoupment
 5 from the fiduciary to whom the payment was originally
 6 made.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of such chapter is amended by adding
 9 at the end the following new items:

“6106. Misuse of benefits by fiduciaries.
 “6107. Reissuance of benefits.”.

10 **SEC. 304. ADDITIONAL PROTECTIONS FOR BENEFICIARIES**
 11 **WITH FIDUCIARIES.**

12 (a) ONSITE REVIEWS AND REQUIRED ACCOUNT-
 13 INGS.—(1) Chapter 55 of title 38, United States Code,
 14 as amended by section 302(a), is further amended by add-
 15 ing at the end the following new sections:

16 **“§ 5508. Periodic onsite reviews of institutional fidu-**
 17 **ciaries**

18 “In addition to such other reviews of fiduciaries as
 19 the Secretary may otherwise conduct, the Secretary shall
 20 provide for the periodic onsite review of any person or
 21 agency located in the United States that receives the bene-
 22 fits payable under laws administered by the Secretary to
 23 another individual pursuant to the appointment of such
 24 person or agency as a fiduciary under section 5502(a)(1)

1 of this title in any case in which the fiduciary is serving
 2 in that capacity with respect to more than 20 beneficiaries
 3 and the total annual amount of such benefits exceeds
 4 \$50,000, as adjusted pursuant to section 5312 of this
 5 title.

6 **“§ 5509. Authority to redirect delivery of benefit pay-**
 7 **ments when a fiduciary fails to provide**
 8 **required accounting**

9 “(a) REQUIRED REPORTS AND ACCOUNTINGS.—The
 10 Secretary may require a fiduciary to file a report or ac-
 11 counting pursuant to regulations prescribed by the Sec-
 12 retary.

13 “(b) ACTIONS UPON FAILURE TO FILE.—In any case
 14 in which a fiduciary fails to submit a report or accounting
 15 required by the Secretary under subsection (a), the Sec-
 16 retary may, after furnishing notice to such fiduciary and
 17 the beneficiary entitled to such payment of benefits, re-
 18 quire that such fiduciary appear in person at a regional
 19 office of the Department serving the area in which the
 20 beneficiary resides in order to receive such payments.”.

21 (2) The table of sections at the beginning of such
 22 chapter is amended by adding after the item added by sec-
 23 tion 302(b) the following new items:

“5508. Periodic onsite reviews of institutional fiduciaries.

“5509. Authority to redirect delivery of benefit payments when a fiduciary fails
 to provide required accounting.”.

1 (b) CIVIL MONETARY PENALTIES; JUDICIAL ORDERS
2 OF RESTITUTION.—(1) Chapter 61 of title 38, United
3 States Code, as amended by section 303(a), is further
4 amended by adding at the end the following new sections:

5 **“§ 6108. Civil monetary penalties**

6 “(a) PENALTY FOR CONVERSION.—Any person (in-
7 cluding an organization, agency, or other entity) who, hav-
8 ing received, while acting in the capacity of a fiduciary
9 pursuant to section 5502 of this title, a payment under
10 a law administered by the Secretary for the use and ben-
11 efit of another individual, converts such payment, or any
12 part thereof, to a use that such person knows or should
13 know is other than for the use and benefit of such other
14 individual shall be subject to, in addition to any other pen-
15 alty that may be prescribed by law, a civil monetary pen-
16 alty assessed by the Secretary of not more than \$5,000
17 for each such conversion.

18 “(b) PENALTY IN LIEU OF DAMAGES.—Any person
19 who makes a conversion of a payment described in sub-
20 section (a) and is subject to a civil monetary penalty under
21 that subsection by reason of such conversion shall also be
22 subject to an assessment by the Secretary, in lieu of dam-
23 ages sustained by the United States resulting from the
24 conversion, of not more than twice the amount of any pay-
25 ments so converted.

1 “(c) COSTS OF RECOVERY.—From amounts collected
2 under this section, the amount necessary to recoup the De-
3 partment’s costs of such collection shall be credited to ap-
4 propriations currently available for the same purpose as
5 the appropriation that incurred those costs, to remain
6 available until expended.

7 **“§ 6109. Authority for judicial orders of restitution**

8 “(a) Any Federal court, when sentencing a defendant
9 convicted of an offense arising from the misuse of benefits
10 under this title, may order, in addition to or in lieu of
11 any other penalty authorized by law, that the defendant
12 make restitution to the Department.

13 “(b) Sections 3612, 3663, and 3664 of title 18 shall
14 apply with respect to the issuance and enforcement of or-
15 ders of restitution under subsection (a). In so applying
16 those sections, the Department shall be considered the vic-
17 tim.

18 “(c) If the court does not order restitution, or orders
19 only partial restitution, under subsection (a), the court
20 shall state on the record the reasons therefor.

21 “(d)(1) Except as provided in paragraph (2),
22 amounts received or recovered by the Secretary pursuant
23 to an order of restitution under subsection (a), to the ex-
24 tent and in the amounts provided in advance in appropria-
25 tions Acts, shall be available to defray expenses incurred

1 by the Office of the Inspector General for the investigation
2 of fiduciaries under this title.

3 “(2) Paragraph (1) shall not apply with respect to
4 amounts received in connection with misuse by a fiduciary
5 of funds paid as benefits under laws administered by the
6 Secretary. Such amounts shall be paid to the individual
7 whose benefits were misused unless the Secretary has pre-
8 viously reissued the misused benefits, in which case the
9 amounts shall be treated in the same manner as overpay-
10 ments recouped by the Secretary and shall be deposited
11 to the credit of the applicable revolving fund, trust fund,
12 or appropriation.”.

13 (2) The table of sections at the beginning of such
14 chapter is amended by adding after the item added by sec-
15 tion 303(b) the following new items:

“6108. Civil monetary penalties.

“6109. Authority for judicial orders of restitution.”.

16 **SEC. 305. ANNUAL REPORT.**

17 (a) IN GENERAL.—Chapter 55 of title 38, United
18 States Code, as amended by section 304(a)(1), is further
19 amended by adding at the end the following new section:

20 **“§ 5510. Annual report**

21 “The Secretary shall include in the Annual Benefits
22 Report of the Veterans Benefits Administration or the
23 Secretary’s Annual Performance and Accountability Re-
24 port information concerning fiduciaries who have been ap-

1 pointed to receive payments for beneficiaries of the De-
2 partment. As part of such information, the Secretary shall
3 separately set forth the following:

4 “(1) The number of beneficiaries in each cat-
5 egory (veteran, surviving spouse, child, adult dis-
6 abled child, or parent).

7 “(2) The types of benefit being paid (compensa-
8 tion, pension, dependency and indemnity compensa-
9 tion, death pension or benefits payable to a disabled
10 child under chapter 18 of this title).

11 “(3) The total annual amounts and average an-
12 nual amounts of benefits paid to fiduciaries for each
13 category and type of benefit.

14 “(4) The number of fiduciaries who are the
15 (spouse, parent, legal custodian, court-appointed fi-
16 duciary, institutional fiduciary, custodian in fact,
17 and supervised direct payment).

18 “(5) The number of cases in which the fidu-
19 ciary was changed by the Secretary because of a
20 finding that benefits had been misused.

21 “(6) How such cases of misuse of benefits were
22 addressed by the Secretary.

23 “(7) The final disposition of such cases of mis-
24 use of benefits, including the number and dollar
25 amount of any civil or criminal penalties imposed.

1 “(8) Such other information as the Secretary
2 considers appropriate.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of such chapter is amended by adding
5 after the items added by the amendment made by section
6 304(a)(2) the following new item:

“5510. Annual report.”.

7 **SEC. 306. ANNUAL ADJUSTMENT IN BENEFITS THRESH-**
8 **OLDS.**

9 Section 5312(b)(1) of title 38, United States Code,
10 is amended by inserting “and the annual benefit amount
11 limitations under sections 5507(c)(2)(D) and 5508 of this
12 title,” after “(d)(3) of such section,”.

13 **SEC. 307. EFFECTIVE DATES.**

14 (a) IN GENERAL.—Except as otherwise provided, this
15 title and the amendments made by this title shall take ef-
16 fect on the first day of the seventh month beginning after
17 the date of the enactment of this Act.

18 (b) SPECIAL RULES.—(1) Section 5510 of title 38,
19 United States Code, as added by section 305(a), shall take
20 effect on the date of the enactment of this Act.

21 (2) Sections 6106 and 6107 of title 38, United States
22 Code, as added by section 303(a), shall apply with respect
23 to any determinations by the Secretary of Veterans Affairs
24 made after the date of the enactment of this Act of misuse
25 of funds by a fiduciary.

1 **TITLE IV—OTHER MATTERS**

2 **SEC. 401. INVENTORY OF MEDICAL WASTE MANAGEMENT**

3 **ACTIVITIES AT DEPARTMENT HEALTH-CARE**

4 **FACILITIES.**

5 (a) INVENTORY.—The Secretary of Veterans Affairs
6 shall establish and maintain a national inventory of med-
7 ical waste management activities in the health-care facili-
8 ties of the Department of Veterans Affairs. The inventory
9 shall include the following:

10 (1) A statement of the current national policy
11 of the Department on managing and disposing of
12 medical waste, including regulated medical waste in
13 all its forms.

14 (2) A description of the program of each geo-
15 graphic service area of the Department to manage
16 and dispose of medical waste, including general med-
17 ical waste and regulated medical waste, with a de-
18 scription of the primary methods used in those pro-
19 grams and the associated costs of those programs,
20 with cost information shown separately for in-house
21 costs (including full-time equivalent employees) and
22 contract costs.

23 (b) REPORT.—Not later than April 15, 2005, the
24 Secretary of Veterans Affairs shall submit to the Commit-
25 tees on Veterans' Affairs of the Senate and House of Rep-

1 representatives a report on medical waste management activi-
2 ties in the facilities of the Department of Veterans Affairs.
3 The report shall include the following:

4 (1) The inventory established under subsection
5 (a), including all the matters specified in that sub-
6 section.

7 (2) A listing of each violation of medical waste
8 management and disposal regulations reported at
9 any health-care facility of the Department over the
10 preceding five years by any State or Federal agency,
11 along with an explanation of any remedial or other
12 action taken by the Secretary in response to each
13 such reported violation.

14 (3) A description of any plans to modernize,
15 consolidate, or otherwise improve the management of
16 medical waste and disposal programs at health-care
17 facilities of the Department, including the projected
18 costs associated with such plans and any barriers to
19 achieving goals associated with such plans.

20 (4) An assessment or evaluation of the available
21 methods of disposing of medical waste and identi-
22 fication of which of those methods are more desir-
23 able from an environmental perspective in that they
24 would be least likely to result in contamination of air
25 or water or otherwise cause future cleanup problems.

1 **SEC. 402. TECHNICAL AMENDMENTS TO EDUCATION PRO-**
2 **GRAM PROVISIONS.**

3 (a) INAPPLICABILITY OF WAGE REQUIREMENTS FOR
4 ON-JOB TRAINING PROGRAMS LEADING TO SELF-EM-
5 PLOYMENT.—(1) Section 3677(b) is amended by adding
6 at the end the following new paragraph:

7 “(3) Notwithstanding paragraph (1)(A) and sub-
8 section (c)(8), no wages shall be required to be paid an
9 eligible person or veteran by a training establishment de-
10 scribed in section 3452(e)(2) of this title.”.

11 (2) Section 3452(e), as amended by section 301 of
12 the Veterans Benefits Act of 2003 (Public Law 108–183;
13 117 Stat. 2658), is amended by striking “An” in para-
14 graph (2) and inserting “For the period beginning on Oc-
15 tober 1, 2005, and ending on September 30, 2010, an”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect as if included in the enact-
18 ment of section 301 of the Veterans Benefits Act of 2003
19 (Public Law 108–183; 117 Stat. 2658).

Passed the House of Representatives October 7 (leg-
islative day, October 6), 2004.

Attest:

Clerk.

108TH CONGRESS
2D SESSION

H. R. 4658

AN ACT

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act, otherwise to improve legal protections provided to reserve component members called to active duty, and for other purposes.