

109TH CONGRESS
1ST SESSION

S. 1814

To amend the Servicemembers Civil Relief Act and the Housing and Urban Development Act of 1968 to enhance protections for servicemembers and their dependents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2005

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

A BILL

To amend the Servicemembers Civil Relief Act and the Housing and Urban Development Act of 1968 to enhance protections for servicemembers and their dependents, 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.**

4 This Act may be cited as the “Servicemembers Home
5 Protection Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Servicemembers and their families face
2 overwhelming challenges in their daily lives when
3 servicemembers are called to active duty, including
4 financial hardship that can push servicemember fam-
5 ilies to the brink of foreclosure or eviction.

6 (2) Congress long ago recognized the special
7 burden that servicemembers encounter when their
8 deployment impedes their ability to meet previously
9 incurred financial obligations and, in enacting the
10 Servicemembers Civil Relief Act in 2003, restated
11 and improved protections for servicemembers in the
12 predecessor to that Act, the Soldier' and Sailors'
13 Civil Relief Act of 1940.

14 (3) The protections of the Servicemembers Civil
15 Relief Act are not uniformly applied because some
16 lenders, debt collectors, landlords, lawyers, and
17 judges are either unfamiliar with the Act or ignore
18 it.

19 (4) The Department of Defense does not ade-
20 quately educate servicemembers or their families re-
21 garding their rights under the Servicemembers Civil
22 Relief Act.

23 (5) A lack of adequate information about the
24 Servicemembers Civil Relief Act means that
25 servicemembers serving abroad are distracted from

1 their duties out of concern for the foreclosure of
 2 their family homes, the eviction of their families
 3 from their dwellings, or the repossession of their
 4 families vehicles.

5 **SEC. 3. CIVIL LIABILITY FOR NONCOMPLIANCE AND EN-**
 6 **FORCEMENT OF SERVICEMEMBERS CIVIL RE-**
 7 **LIEF ACT.**

8 (a) GENERAL CIVIL LIABILITY AND ENFORCE-
 9 MENT.—

10 (1) IN GENERAL.—The Servicemembers Civil
 11 Relief Act (50 U.S.C. App. 501 et seq.) is amended
 12 by adding at the end the following new title:

13 **“TITLE VIII—CIVIL LIABILITY**
 14 **FOR NONCOMPLIANCE AND**
 15 **ENFORCEMENT**

16 **“SEC. 801. CIVIL LIABILITY FOR NONCOMPLIANCE.**

17 “(a) IN GENERAL.—Any person or entity (other than
 18 a servicemember or dependent) who fails to comply with
 19 any requirement imposed by this Act with respect to a
 20 servicemember or dependent is liable to such
 21 servicemember or dependent in an amount equal to the
 22 sum of—

23 “(1) any actual damages sustained by such
 24 servicemember or dependent as a result of the fail-
 25 ure;

1 “(2) such amount of punitive damages as the
2 court may allow;

3 “(3) such amount of consequential damages as
4 the court may allow;

5 “(4) such additional damages as the court may
6 allow, in an amount not less than \$100 or more
7 than \$5,000 (as determined appropriate by the
8 court), for each violation; and

9 “(5) in the case of any successful action to en-
10 force liability under this section, the cost of the ac-
11 tion together with reasonable attorneys fees as de-
12 termined by the court.

13 “(b) ATTORNEY FEES.—On a finding by the court
14 that an unsuccessful pleading, motion, or other paper filed
15 in connection with an action under this section was filed
16 in bad faith or for the purposes of harassment, the court
17 shall award to the prevailing party attorney fees in
18 amount that is reasonable in relation to the work expended
19 in responding to such pleading, motion, or other paper.

20 **“SEC. 802. ADMINISTRATIVE ENFORCEMENT.**

21 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
22 SION.—(1) Except as provided in subsections (b), (c), and
23 (d), compliance with the provisions of this Act shall be
24 enforced by the Federal Trade Commission in accordance
25 with the Federal Trade Commission Act with respect to

1 entities and persons subject to the Federal Trade Commis-
2 sion Act.

3 “(2) For the purpose of the exercise by the Commis-
4 sion under this subsection of its functions and powers
5 under the Federal Trade Commission Act, a violation of
6 any requirement or prohibition imposed by this Act shall
7 constitute an unfair or deceptive act or practice in com-
8 merce in violation of section 5(a) of the Federal Trade
9 Commission Act, and shall be subject to enforcement by
10 the Commission with respect to any entity or person sub-
11 ject to enforcement by the Commission pursuant to this
12 subsection, irrespective of whether such person or entity
13 is engaged in commerce or meets any other jurisdictional
14 tests under the Federal Trade Commission Act.

15 “(3) The Commission shall have such procedural, in-
16 vestigative, and enforcement powers, including the power
17 to issue procedural rules in enforcing compliance with the
18 requirements imposed by this Act and to require the filing
19 of reports, the production of documents, and the appear-
20 ance of witnesses, as though the applicable terms and con-
21 ditions of the Federal Trade Commission Act were part
22 of this Act.

23 “(4) Any person or entity violating any provision of
24 this Act shall be subject to the penalties, and entitled to
25 the privileges and immunities, provided in the Federal

1 Trade Commission Act as though the applicable terms and
2 provisions of the Federal Trade Commission Act were part
3 of this Act.

4 “(5)(A) The Commission may commence a civil ac-
5 tion to recover a civil penalty in a district court of the
6 United States against any person or entity that has en-
7 gaged in such violation. In such action, such person or
8 entity shall be liable, in addition to any amounts otherwise
9 recoverable, for a civil penalty in the amount of \$5,000
10 to \$50,000, as determined appropriate by the court for
11 each violation.

12 “(B) In determining the amount of a civil penalty
13 under subparagraph (A), the court shall take into account
14 the degree of culpability, any history of prior such con-
15 duct, ability to pay, effect on ability to continue to do busi-
16 ness, and such other matters as justice may require.

17 “(b) ENFORCEMENT BY OTHER REGULATORY AGEN-
18 CIES.—Compliance with the requirements imposed by this
19 Act with respect to financial institutions shall be enforced
20 under—

21 “(1) section 8 of the Federal Deposit Insurance
22 Act, in the case of—

23 “(A) national banks, and Federal branches
24 and Federal agencies of foreign banks, and any
25 subsidiaries of such (except brokers, dealers,

1 persons providing insurance, investment compa-
2 nies, and investment advisers) by the Office of
3 the Comptroller of the Currency;

4 “(B) member banks of the Federal Reserve
5 System (other than national banks), branches
6 and agencies of foreign banks (other than Fed-
7 eral branches, Federal agencies, and insured
8 State branches of foreign banks), commercial
9 lending companies owned or controlled by for-
10 eign banks, and organization operating under
11 section 25 or 25A of the Federal Reserve Act,
12 and bank holding companies and their nonbank
13 subsidiaries or affiliates (except brokers, deal-
14 ers, persons providing insurance, investment
15 companies, and investment advisers) by the
16 Board of Governors of the Federal Reserve Sys-
17 tem; and

18 “(C) banks insured by the Federal Deposit
19 Insurance Corporation (other than members of
20 the Federal Reserve System) and insured State
21 branches of foreign banks, and any subsidiaries
22 of such entities (except brokers, dealers, per-
23 sons providing insurance, investment compa-
24 nies, and investment advisers) by the Board of

1 Directors of the Federal Deposit Insurance Cor-
2 poration;

3 “(2) section 8 of the Federal Deposit Insurance
4 Act, by the Director of the Office of Thrift Super-
5 vision, in the case of a savings association the depos-
6 its of which are insured by the Federal Deposit In-
7 surance Corporation and any subsidiaries of such
8 saving associations (except brokers, dealers, persons
9 providing insurance, investment companies, and in-
10 vestment advisers);

11 “(3) the Federal Credit Union Act, by the Ad-
12 ministrator of the National Credit Union Adminis-
13 tration with respect to any federally insured credit
14 union, and any subsidiaries of such an entity;

15 “(4) State insurance law, by the applicable
16 State insurance authority of the State in which a
17 person is domiciled, in the case of a person providing
18 insurance; and

19 “(5) the Federal Trade Commission Act, by the
20 Federal Trade Commission for any other financial
21 institution or other person that is not subject to the
22 jurisdiction of any agency or authority under para-
23 graphs (1) through (4).

24 “(c) PRIVATE CAUSE OF ACTION.—A servicemember,
25 dependent, or other person protected by a provision of this

1 Act may commence an action in a district court of the
 2 United States, or in a State court of competent jurisdic-
 3 tion, to seek enforcement of the protection afforded by
 4 such provision and the imposition of civil liability as speci-
 5 fied such provision or section 801.

6 “(d) CONSTRUCTION OF ENFORCEMENT.—

7 “(1) ENFORCEMENT BY FTC.—The enforcement
 8 of the provisions of this Act by the Federal Trade
 9 Commission pursuant to subsection (a) shall be in
 10 addition to any other enforcement of such provisions
 11 by the Department of Justice, private cause of ac-
 12 tion, or other mechanism afforded by State law.

13 “(2) CONSTRUCTION OF REMEDIES.—The rem-
 14 edies for violations of the provisions of this Act pro-
 15 vided for under subsections (a), (b), and (c) are in
 16 addition to any other remedies for violations of such
 17 provisions under Federal or State law.”.

18 (2) CLERICAL AMENDMENT.—The table of con-
 19 tents in the first section of that Act is amended by
 20 adding at the end the following new items:

“TITLE VIII—CIVIL LIABILITY FOR NONCOMPLIANCE AND
 ENFORCEMENT

“Sec. 801. Civil liability for noncompliance.

“Sec. 802. Administrative enforcement.”.

21 (b) LIABILITY FOR NONCOMPLIANCE.—

22 (1) Section 301(c) of the Servicemembers Civil
 23 Relief Act (50 U.S.C. App. 531(c)) is amended by

1 striking paragraph (2) and inserting the following
2 new paragraphs:

3 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—

4 Any person or entity (other than a servicemember or
5 dependent) who fails to comply with any require-
6 ment imposed by this section with respect to a
7 servicemember or dependent is liable to such
8 servicemember or dependent in an amount equal to
9 the sum of—

10 “(A) any actual damages sustained by
11 such servicemember or dependent as a result of
12 the failure;

13 “(B) such amount of punitive damages as
14 the court may allow;

15 “(C) such amount of consequential dam-
16 ages as the court may allow;

17 “(D) such additional damages as the court
18 may allow, in an amount not less than \$100 or
19 more than \$5,000 (as determined appropriate
20 by the court), for each violation; and

21 “(E) in the case of any successful action to
22 enforce liability under this section, the cost of
23 the action together with reasonable attorneys
24 fees as determined by the court.

1 “(3) ATTORNEY FEES.—On a finding by the
2 court that an unsuccessful pleading, motion, or other
3 paper filed in connection with an action under this
4 section was filed in bad faith or for the purposes of
5 harassment, the court shall award to the prevailing
6 party attorney fees in amount that is reasonable in
7 relation to the work expended in responding to such
8 pleading, motion, or other paper.”.

9 (2) Section 302(b) of that Act (50 U.S.C. App.
10 532(b)) is amended by striking paragraph (2) and
11 inserting the following new paragraphs:

12 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—
13 Any person or entity (other than a servicemember or
14 dependent) who fails to comply with any require-
15 ment imposed by this section with respect to a
16 servicemember or dependent is liable to such
17 servicemember or dependent in an amount equal to
18 the sum of—

19 “(A) any actual damages sustained by
20 such servicemember or dependent as a result of
21 the failure;

22 “(B) such amount of punitive damages as
23 the court may allow;

24 “(C) such amount of consequential dam-
25 ages as the court may allow;

1 “(D) such additional damages as the court
2 may allow, in an amount not less than \$100 or
3 more than \$5,000 (as determined appropriate
4 by the court), for each violation; and

5 “(E) in the case of any successful action to
6 enforce liability under this section, the cost of
7 the action together with reasonable attorneys
8 fees as determined by the court.

9 “(3) ATTORNEY FEES.—On a finding by the
10 court that an unsuccessful pleading, motion, or other
11 paper filed in connection with an action under this
12 section was filed in bad faith or for the purposes of
13 harassment, the court shall award to the prevailing
14 party attorney fees in amount that is reasonable in
15 relation to the work expended in responding to such
16 pleading, motion, or other paper.”.

17 (3) Section 303(d) of that Act (50 U.S.C. App.
18 533(d)) is amended by striking paragraph (2) and
19 inserting the following new paragraphs:

20 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—
21 Any person or entity (other than a servicemember or
22 dependent) who fails to comply with any require-
23 ment imposed by this section with respect to a
24 servicemember or dependent is liable to such

1 servicemember or dependent in an amount equal to
2 the sum of—

3 “(A) any actual damages sustained by
4 such servicemember or dependent as a result of
5 the failure;

6 “(B) such amount of punitive damages as
7 the court may allow;

8 “(C) such amount of consequential dam-
9 ages as the court may allow;

10 “(D) such additional damages as the court
11 may allow, in an amount not less than \$100 or
12 more than \$5,000 (as determined appropriate
13 by the court), for each violation; and

14 “(E) in the case of any successful action to
15 enforce liability under this section, the cost of
16 the action together with reasonable attorneys
17 fees as determined by the court.

18 “(3) ATTORNEY FEES.—On a finding by the
19 court that an unsuccessful pleading, motion, or other
20 paper filed in connection with an action under this
21 section was filed in bad faith or for the purposes of
22 harassment, the court shall award to the prevailing
23 party attorney fees in amount that is reasonable in
24 relation to the work expended in responding to such
25 pleading, motion, or other paper.”.

1 (4) Section 305(h) of that Act (50 U.S.C. App.
2 535(h)) is amended by striking paragraph (2) and
3 inserting the following new paragraphs:

4 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—
5 Any person or entity (other than a servicemember or
6 dependent) who fails to comply with any require-
7 ment imposed by this section with respect to a
8 servicemember or dependent is liable to such
9 servicemember or dependent in an amount equal to
10 the sum of—

11 “(A) any actual damages sustained by
12 such servicemember or dependent as a result of
13 the failure;

14 “(B) such amount of punitive damages as
15 the court may allow;

16 “(C) such amount of consequential dam-
17 ages as the court may allow;

18 “(D) such additional damages as the court
19 may allow, in an amount not less than \$100 or
20 more than \$5,000 (as determined appropriate
21 by the court), for each violation; and

22 “(E) in the case of any successful action to
23 enforce liability under this section, the cost of
24 the action together with reasonable attorneys
25 fees as determined by the court.

1 “(3) ATTORNEY FEES.—On a finding by the
2 court that an unsuccessful pleading, motion, or other
3 paper filed in connection with an action under this
4 section was filed in bad faith or for the purposes of
5 harassment, the court shall award to the prevailing
6 party attorney fees in amount that is reasonable in
7 relation to the work expended in responding to such
8 pleading, motion, or other paper.”.

9 (5) Section 306(e) of that Act (50 U.S.C. App.
10 536(e)) is amended by striking paragraph (2) and
11 inserting the following new paragraphs:

12 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—
13 Any person or entity (other than a servicemember or
14 dependent) who fails to comply with any require-
15 ment imposed by this section with respect to a
16 servicemember or dependent is liable to such
17 servicemember or dependent in an amount equal to
18 the sum of—

19 “(A) any actual damages sustained by
20 such servicemember or dependent as a result of
21 the failure;

22 “(B) such amount of punitive damages as
23 the court may allow;

24 “(C) such amount of consequential dam-
25 ages as the court may allow;

1 “(D) such additional damages as the court
 2 may allow, in an amount not less than \$100 or
 3 more than \$5,000 (as determined appropriate
 4 by the court), for each violation; and

5 “(E) in the case of any successful action to
 6 enforce liability under this section, the cost of
 7 the action together with reasonable attorneys
 8 fees as determined by the court.

9 “(3) ATTORNEY FEES.—On a finding by the
 10 court that an unsuccessful pleading, motion, or other
 11 paper filed in connection with an action under this
 12 section was filed in bad faith or for the purposes of
 13 harassment, the court shall award to the prevailing
 14 party attorney fees in amount that is reasonable in
 15 relation to the work expended in responding to such
 16 pleading, motion, or other paper.”.

17 (6) Section 307(c) of that Act (50 U.S.C. App.
 18 537(c)) is amended by striking paragraph (2) and
 19 inserting the following new paragraphs:

20 “(2) CIVIL LIABILITY FOR NONCOMPLIANCE.—
 21 Any person or entity (other than a servicemember or
 22 dependent) who fails to comply with any require-
 23 ment imposed by this section with respect to a
 24 servicemember or dependent is liable to such

1 servicemember or dependent in an amount equal to
2 the sum of—

3 “(A) any actual damages sustained by
4 such servicemember or dependent as a result of
5 the failure;

6 “(B) such amount of punitive damages as
7 the court may allow;

8 “(C) such amount of consequential dam-
9 ages as the court may allow;

10 “(D) such additional damages as the court
11 may allow, in an amount not less than \$100 or
12 more than \$5,000 (as determined appropriate
13 by the court), for each violation; and

14 “(E) in the case of any successful action to
15 enforce liability under this section, the cost of
16 the action together with reasonable attorneys
17 fees as determined by the court.

18 “(3) ATTORNEY FEES.—On a finding by the
19 court that an unsuccessful pleading, motion, or other
20 paper filed in connection with an action under this
21 section was filed in bad faith or for the purposes of
22 harassment, the court shall award to the prevailing
23 party attorney fees in amount that is reasonable in
24 relation to the work expended in responding to such
25 pleading, motion, or other paper.”.

1 **SEC. 4. OUTREACH TO MEMBERS OF THE ARMED FORCES**
2 **AND THEIR DEPENDENTS ON THE**
3 **SERVICEMEMBERS CIVIL RELIEF ACT.**

4 (a) OUTREACH TO MEMBERS OF THE ARMED
5 FORCES.—

6 (1) IN GENERAL.—The Secretary concerned
7 shall provide to each member of the Armed Forces
8 under the jurisdiction of the Secretary pertinent in-
9 formation on the rights and protections available to
10 servicemembers and their dependents under the
11 Servicemembers Civil Relief Act (50 U.S.C. App.
12 501 et seq.).

13 (2) TIME OF PROVISION.—Information shall be
14 provided to a member of the Armed Forces under
15 paragraph (1) at times as follows:

16 (A) During initial entry training.

17 (B) In the case of a member of a reserve
18 component of the Armed Forces, during initial
19 entry training and when the member is mobi-
20 lized or otherwise individually called or ordered
21 to active duty for a period of more than one
22 year.

23 (C) At such other times as the Secretary
24 concerned considers appropriate.

25 (b) OUTREACH TO DEPENDENTS.—The Secretary
26 concerned may provide to the adult dependents of mem-

bers of the Armed Forces under the jurisdiction of the Secretary pertinent information on the rights and protections available to servicemembers and their dependents under the Servicemembers Civil Relief Act.

(c) DEFINITIONS.—In this section, the terms “dependent” and “Secretary concerned” have the meanings given such terms in section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511).

SEC. 5. SERVICEMEMBERS RIGHTS UNDER THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

(a) IN GENERAL.—Section 106(c)(5)(A)(ii) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)) is amended—

(1) in subclause (II), by striking “; and” and inserting a semicolon;

(2) in subclause (III), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(IV) notify the homeowner by a statement or notice, written in plain English by the Secretary of Housing and Urban Development, in consultation with the Secretary of Defense and the Secretary of the Treasury, explaining the mortgage and foreclosure

1 rights of servicemembers, and the de-
2 pendents of such servicemembers,
3 under the Servicemembers Civil Relief
4 Act (50 U.S.C. App. 501 et seq.), in-
5 cluding the toll-free military one
6 source number to call if
7 servicemembers, or the dependents of
8 such servicemembers, require further
9 assistance.”.

10 (b) NO EFFECT ON OTHER LAWS.—Nothing in this
11 section shall relieve any person of any obligation imposed
12 by any other Federal, State, or local law.

13 (c) DISCLOSURE FORM.—Not later than 150 days
14 after the date of enactment of this Act, the Secretary of
15 Housing and Urban Development shall issue a final dislo-
16 sure form to fulfill the requirement of section
17 106(c)(5)(A)(ii)(IV) of the Housing and Urban Develop-
18 ment Act of 1968 (12 U.S.C. 1701x(c)(5)(A)(ii)).

19 (d) EFFECTIVE DATE.—The amendments made
20 under subsection (a) shall take effect 150 days after the
21 date of enactment of this Act.

○