

112TH CONGRESS
2D SESSION

S. 3236

To amend title 38, United States Code, to improve the protection and enforcement of employment and reemployment rights of members of the uniformed services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2012

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

A BILL

To amend title 38, United States Code, to improve the protection and enforcement of employment and reemployment rights of members of the uniformed services, 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 “Servicemember Em-
5 ployment Protection Act of 2012”.

1 **SEC. 2. UNENFORCEABILITY OF AGREEMENTS TO ARBI-**
 2 **TRATE DISPUTES ARISING UNDER USERRA.**

3 (a) IN GENERAL.—Subchapter III of chapter 43 of
 4 title 38, United States Code, is amended by adding at the
 5 end the following new section:

6 **“§ 4328. Unenforceability of agreements to arbitrate**
 7 **disputes**

8 “(a) PROTECTION OF EMPLOYEE RIGHTS.—Notwith-
 9 standing any other provision of law, any clause of any
 10 agreement between an employer and an employee that re-
 11 quires arbitration of a dispute arising under this chapter
 12 shall not be enforceable.

13 “(b) EXCEPTIONS.—(1) Subsection (a) shall not
 14 apply with respect to any dispute if, after such dispute
 15 arises, the parties involved knowingly and voluntarily
 16 agree to submit such dispute to arbitration.

17 “(2) Subsection (a) shall not preclude the enforce-
 18 ment of any of the rights or terms of a valid collective
 19 bargaining agreement.

20 “(c) VALIDITY AND ENFORCEMENT.—Any issue as to
 21 whether this section applies to an arbitration clause shall
 22 be determined by Federal law. Except as otherwise pro-
 23 vided in chapter 1 of title 9, the validity or enforceability
 24 of an agreement to arbitrate referred to in subsection (a)
 25 or (b)(1) shall be determined by a court, rather than the
 26 arbitrator, regardless of whether the party resisting arbi-

1 tration challenges the agreement to arbitrate specifically
2 or in conjunction with other terms of the agreement.

3 “(d) APPLICATION.—This section shall apply with re-
4 spect to all contracts and agreements between an employer
5 and an employee in force before, on, or after the date of
6 the enactment of this section.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of such chapter is amended by inserting
9 after the item relating to section 4327 the following new
10 item:

“4328. Unenforceability of agreements to arbitrate disputes.”.

11 (c) APPLICATION.—The provisions of section 4328 of
12 title 38, United States Code, as added by subsection (a),
13 shall apply to—

14 (1) any failure to comply with a provision of or
15 any violation of chapter 43 of title 38, United States
16 Code, that occurs before, on, or after the date of the
17 enactment of this Act; and

18 (2) to all actions or complaints filed under such
19 chapter 43 that are pending on or after the date of
20 the enactment of this Act.

1 **SEC. 3. EXPANSION OF EMPLOYMENT AND REEMPLOY-**
 2 **MENT RIGHTS OF MEMBERS OF UNIFORMED**
 3 **SERVICES TO INCLUDE PROTECTION FOR AB-**
 4 **SENCES FROM EMPLOYMENT FOR MEDICAL**
 5 **TREATMENT RELATING TO SERVICE-CON-**
 6 **NECTED INJURIES AND ILLNESSES.**

7 (a) IN GENERAL.—Section 4303(13) of title 38,
 8 United States Code, is amended by inserting “a period for
 9 which a person is absent from a position of employment
 10 for the purpose of medical or dental treatment for an in-
 11 jury or illness incurred or aggravated in line of duty dur-
 12 ing a period of service in the uniformed services,” after
 13 “for any such duty,”.

14 (b) FMLA.—

15 (1) RULE OF CONSTRUCTION.—For purposes of
 16 that section 4303(13) and each covered provision—

17 (A) the reference in that section 4303(13)
 18 to a period for which a person is absent from
 19 a position of employment for the purpose of
 20 medical or dental treatment shall not be consid-
 21 ered to be a reference to a period of leave under
 22 a covered provision; and

23 (B) the person’s employer shall not des-
 24 ignate the period of absence as such a period of
 25 leave,

1 unless the person requests and obtains the leave
 2 under the corresponding covered provision.

3 (2) DEFINITION.—In this subsection, the term
 4 “covered provision” means—

5 (A) title I of the Family and Medical
 6 Leave Act of 1993 (29 U.S.C. 2601 et seq.), in-
 7 cluding the application of that title under the
 8 Congressional Accountability Act of 1995 (2
 9 U.S.C. 1301 et seq.) and chapter 5 of title 3,
 10 United States Code; and

11 (B) subchapter V of chapter 63 of title 5,
 12 United States Code.

13 **SEC. 4. SUSPENSION, TERMINATION, OR DEBARMENT OF**
 14 **CONTRACTORS FOR REPEATED VIOLATIONS**
 15 **OF EMPLOYMENT OR REEMPLOYMENT**
 16 **RIGHTS OF MEMBERS OF UNIFORMED SERV-**
 17 **ICES.**

18 (a) IN GENERAL.—Subchapter III of chapter 43 of
 19 title 38, United States Code, as amended by section 2,
 20 is further amended by adding at the end the following new
 21 section:

22 **“§ 4329. Suspension, termination, or debarment of**
 23 **contractors**

24 “(a) GROUNDS FOR SUSPENSION, TERMINATION, OR
 25 DEBARMENT.—Payment under a contract awarded by a

1 Federal executive agency may be suspended and the con-
 2 tract may be terminated, and the contractor who made
 3 the contract with the agency may be suspended or
 4 debarred in accordance with the requirements of this sec-
 5 tion, if the head of the agency determines that the con-
 6 tractor as an employer has repeatedly failed or refused to
 7 comply with a provision of this chapter.

8 “(b) CONDUCT OF SUSPENSION, TERMINATION, AND
 9 DEBARMENT PROCEEDINGS.—A contracting officer who
 10 determines in writing that cause for suspension of pay-
 11 ments, termination, or suspension or debarment exists
 12 shall initiate an appropriate action, to be conducted by the
 13 agency concerned in accordance with applicable law, in-
 14 cluding Executive Order 12549 or any superseding execu-
 15 tive order, the Federal Acquisition Regulation, and any
 16 other regulations prescribed to implement the law or exec-
 17 utive order.

18 “(c) EFFECT OF DEBARMENT.—A contractor
 19 debarred by a final decision under this section is ineligible
 20 for award of a contract by a Federal executive agency,
 21 and for participation in a future procurement by a Federal
 22 executive agency, for a period specified in the decision, not
 23 to exceed 5 years.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
 25 at the beginning of chapter 43 of such title, as amended

1 by section 2, is further amended by inserting after the
2 item relating to section 4328, as added by such section,
3 the following new item:

“4329. Suspension, termination, or debarment of contractor.”.

4 (c) REGULATIONS.—Not later than 180 days after
5 the date of the enactment of this Act, the Federal Acquisi-
6 tion Regulatory Council shall amend the Federal Acquisi-
7 tion Regulation to carry out section 4329 of title 38,
8 United States Code, as added by subsection (a).

9 (d) EFFECTIVE DATE.—Section 4329 of title 38,
10 United States Code, as added by subsection (a), shall
11 apply with respect to failures and refusals to comply with
12 provisions of chapter 43 of such title occurring on or after
13 the date of the enactment of this Act.

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