

## Union Calendar No. 422

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4658

[Report No. 108-683]

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2004

Mr. SMITH of New Jersey (for himself and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

SEPTEMBER 13, 2004

Additional sponsors: Mr. MICHAUD, Mrs. DAVIS of California, Mr. BRADY of Pennsylvania, Mr. STRICKLAND, Mr. HOLDEN, Mr. VITTER, Mr. FILNER, Mr. GUTIERREZ, Ms. CORRINE BROWN of Florida, Mr. RYAN of Ohio, Ms. HERSETH, and Ms. BORDALLO

SEPTEMBER 13, 2004

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 23, 2004]

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## A BILL

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act.

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

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

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

5 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 6 *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. Care for newborn children of veterans receiving maternity care.*

*Sec. 403. 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 (50*  
7 *U.S.C. App. 511) is amended by adding at the end the fol-*  
8 *lowing 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 RIGHTS**  
13 **UNDER THE ACT.**

14 *Section 107 of the Servicemembers Civil Relief Act (50*  
15 *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 waiver*  
18 *that applies to an action listed in subsection (b) of*  
19 *this section is effective only if it is in writing and is*  
20 *executed as an instrument separate from the obliga-*  
21 *tion or liability to which it applies.”;*

22 (2) *by redesignating subsection (c) as subsection*  
23 *(d); and*

24 (3) *by inserting after subsection (b) the following*  
25 *new subsection (c):*

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

6 **SEC. 103. RIGHT OF SERVICEMEMBER PLAINTIFFS TO RE-**  
7 **QUEST STAY OF CIVIL PROCEEDINGS.**

8       *Section 202(a) of the Servicemembers Civil Relief Act*  
9 *(50 U.S.C. App. 522(a)) is amended by inserting “plaintiff*  
10 *or” before “defendant”.*

11 **SEC. 104. TERMINATION OF LEASES.**

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

15       “(a) *TERMINATION BY LESSEE.*—

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

19                       “(A) *the lessee’s entry into military service;*

20                       *or*

21                       “(B) *the date of the lessee’s military orders*  
22 *described in paragraph (1)(B) or (2)(B) of sub-*  
23 *section (b), as the case may be.*

24               “(2) *JOINT LEASES.*—*A lessee’s termination of a*  
25 *lease pursuant to this subsection shall terminate any*

1 *obligation a dependent of the lessee may have under*  
2 *the lease.”.*

3 *(b) MOTOR VEHICLES LEASES.—*

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

9 *“(i) for a change of permanent sta-*  
10 *tion—*

11 *“(I) from a location in the conti-*  
12 *nenal United States to a location out-*  
13 *side the continental United States; or*

14 *“(II) from a location in a State*  
15 *outside the continental United States*  
16 *to any location outside that State; or*

17 *“(ii) to deploy”.*

18 *(2) DEFINITIONS.—Such section is further*  
19 *amended by adding at the end the following new sub-*  
20 *section:*

21 *“(i) DEFINITIONS.—*

22 *“(1) MILITARY ORDERS.—The term ‘military or-*  
23 *ders’, with respect to a servicemember, means official*  
24 *military orders, or any notification, certification, or*  
25 *verification from the servicemember’s commanding of-*

1        *ficer, with respect to the servicemember's current or*  
2        *future military duty status.*

3                “(2) CONUS.—The term ‘continental United  
4        States’ means the 48 contiguous States and the Dis-  
5        trict of Columbia.”

6        (c) *COVERAGE OF INDIVIDUAL DEPLOYMENTS.*—Sub-  
7        section (b) of such section is further amended in paragraph  
8        (1)(B) and paragraph (2)(B)(i) (as designated by sub-  
9        section (b) of this section) by inserting “, or as an indi-  
10        vidual in support of a military operation,” after “deploy  
11        with a military unit”.

12        **SEC. 105. PREVENTION OF DOUBLE TAXATION OF CERTAIN**  
13                **SERVICEMEMBERS.**

14        Section 511(c) of the Servicemembers Civil Relief Act  
15        (50 U.S.C. App. 571(c)) is amended by adding at the end  
16        the following new paragraph:

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

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

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

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

12          (b) *EFFECTIVE DATE.*—The amendment made by sub-  
13       section (a) shall apply to elections made under such section  
14       4317 on or after the date of the enactment of this Act.

15       **SEC. 202. REINSTATEMENT OF REPORTING REQUIREMENTS.**

16           Section 4332 of title 38, United States Code, is amend-  
17       ed in the matter preceding paragraph (1) by striking “no  
18       later than February 1, 1996, and annually thereafter  
19       through 2000” and inserting “no later than February 1,  
20       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 em-  
10 ployer shall provide to persons entitled to rights and bene-  
11 fits under this chapter a notice of the rights, benefits, and  
12 obligations of such persons and such employers under this  
13 chapter. The requirement for the provision of notice under  
14 this section may be met by the posting of the notice where  
15 employers customarily place notices for employees.

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

19           (b) *CLERICAL AMENDMENT.*—The table of sections at  
20 the beginning of such chapter is amended by adding at the  
21 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 Act,  
24 the Secretary of Labor shall make available to employers

1 *the notice required under section 4334 of title 38, United*  
2 *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 of*  
10 *Labor and the Office of Special Counsel shall carry out a*  
11 *demonstration project under which certain claims against*  
12 *Federal executive agencies under the Uniformed Services*  
13 *Employment and Reemployment Rights Act under chapter*  
14 *43 of title 38, United States Code, are referred to, or other-*  
15 *wise received by, the Office of Special Counsel for assist-*  
16 *ance, including investigation and resolution of the claim*  
17 *as well as enforcement of rights with respect to the claim.*

18 *(b) REFERRAL OF ALL PROHIBITED PERSONNEL AC-*  
19 *TION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—(1)*  
20 *Under the demonstration project, the Office of Special*  
21 *Counsel shall receive and investigate all claims under the*  
22 *Uniformed Services Employment and Reemployment*  
23 *Rights Act with respect to Federal executive agencies in*  
24 *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 is*  
4 *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 FEDERAL*  
9 *EXECUTIVE AGENCIES.—(1) Under the demonstration*  
10 *project, the Secretary—*

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

14 *(B) may refer any claim described in paragraph*  
15 *(2) filed before the demonstration project that is pend-*  
16 *ing before the Secretary at the beginning of the dem-*  
17 *onstration 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 to*  
24 *the claim with an odd number as its terminal digit.*

1           (d) *ADMINISTRATION OF DEMONSTRATION PROJECT.*—

2       (1) *The Office of Special Counsel shall administer the dem-*  
3 *onstration project. The Secretary shall cooperate with the*  
4 *Office of Special Counsel in carrying out the demonstration*  
5 *project.*

6           (2) *In the case of any claim referred, or otherwise re-*  
7 *ceived by, to the Office of Special Counsel under the dem-*  
8 *onstration project, any reference to the “Secretary” in sec-*  
9 *tions 4321, 4322, and 4326 of title 38, United States Code,*  
10 *is deemed a reference to the “Office of Special Counsel”.*

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

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

19           (f) *EVALUATIONS AND REPORT.*—(1) *The Comptroller*  
20 *General of the United States shall conduct periodic evalua-*  
21 *tions of the demonstration project under this section.*

22           (2) *Not later than April 1, 2007, the Comptroller Gen-*  
23 *eral shall submit to Congress a report on the evaluations*  
24 *conducted under paragraph (1). The report shall include*  
25 *the following information and recommendations:*

1           (A) *A description of the operation and results of*  
2 *the demonstration program, including—*

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

8                 (ii) *for each Federal executive agency, the*  
9 *number of claims resolved, the type of corrective*  
10 *action obtained, the period of time for final reso-*  
11 *lution of the claim, and the results obtained.*

12           (B) *An assessment of whether referral to the Of-*  
13 *fice of Special Counsel of claims under the demonstra-*  
14 *tion project—*

15                 (i) *improved services to servicemembers and*  
16 *veterans; or*

17                 (ii) *significantly reduced or eliminated du-*  
18 *plication of effort and unintended delays in re-*  
19 *solving meritorious claims of those*  
20 *servicemembers and veterans.*

21           (C) *An assessment of the feasibility and advis-*  
22 *ability of referring all claims under chapter 43 of*  
23 *title 38, United States Code, against Federal executive*  
24 *agencies to the Office of Special Counsel for investiga-*  
25 *tion and resolution.*

1           (D) *Such other recommendations for administra-*  
 2           *tive action or legislation as the Comptroller General*  
 3           *determines appropriate.*

4           (g) *DEFINITIONS.—In this section:*

5           (1) *The term “Office of Special Counsel” means*  
 6           *the Office of Special Counsel established by section*  
 7           *1211 of title 5, United States Code.*

8           (2) *The term “Secretary” means the Secretary of*  
 9           *Labor.*

10          (3) *The term “Federal executive agency” has the*  
 11          *meaning given that term in section 4303(5) of title*  
 12          *38, United States Code.*

13           ***TITLE III—MATTERS RELATING***  
 14           ***TO FIDUCIARIES***

15           ***SEC. 301. DEFINITION OF FIDUCIARY.***

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

19           ***“§ 5506. Definition of ‘fiduciary’***

20           *“For purposes of this chapter and chapter 61 of this*  
 21           *title, the term ‘fiduciary’ means—*

22           *“(1) a person who is a guardian, curator, con-*  
 23           *servator, committee, or person legally vested with the*  
 24           *responsibility or care of a claimant (or a claimant’s*

1        *estate) or of a beneficiary (or a beneficiary's estate);*  
2        *or*

3                *“(2) any other person having been appointed in*  
4        *a representative capacity to receive money paid under*  
5        *any of the laws administered by the Secretary for the*  
6        *use and benefit of a minor, incompetent, or other ben-*  
7        *eficiary.”.*

8        *(2) The table of sections at the beginning of such chap-*  
9        *ter is amended by adding at the end the following new item:*  
      *“5506. Definition of ‘fiduciary’.”.*

10        *(b) CONFORMING AMENDMENTS TO SECTION 5502.—*  
11        *Section 5502 of such title is amended—*

12                *(1) in subsection (a)—*

13                        *(A) in paragraph (1), by striking “other*  
14                        *person” and inserting “other fiduciary”; and*

15                        *(B) in the second sentence of paragraph (2),*  
16                        *by inserting “for benefits under this title” after*  
17                        *“in connection with rendering fiduciary serv-*  
18                        *ices”;*

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

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

24        *(c) CONFORMING AMENDMENT TO SECTION 6101.—*  
25        *Section 6101(a) of such title is amended by striking “guard-*

1 *ian, curator,” and all that follows through “beneficiary,”*  
 2 *and inserting “fiduciary (as defined in section 5506 of this*  
 3 *title) for the benefit of a minor, incompetent, or other bene-*  
 4 *ficiary under laws administered by the Secretary.”.*

5 **SEC. 302. INQUIRY, INVESTIGATIONS, AND QUALIFICATION**  
 6 **OF FIDUCIARIES.**

7 *(a) IN GENERAL.—Chapter 55 of title 38, United*  
 8 *States Code, as amended by section 301(a)(1), is further*  
 9 *amended by adding at the end the following new section:*  
 10 **“§5507. Inquiry, investigations, and qualification of**  
 11 ***fiduciaries***

12 *“(a) Any certification of a person for payment of bene-*  
 13 *fits of a beneficiary to that person as such beneficiary’s fi-*  
 14 *duciary under section 5502 of this title shall be made on*  
 15 *the basis of—*

16 *“(1) an inquiry or investigation by the Secretary*  
 17 *of the fitness of that person to serve as fiduciary for*  
 18 *that beneficiary, such inquiry or investigation—*

19 *“(A) to be conducted in advance of such cer-*  
 20 *tification;*

21 *“(B) to the extent practicable, to include a*  
 22 *face-to-face interview with such person; and*

23 *“(C) to the extent practicable, to include a*  
 24 *copy of a credit report for such person issued*

1           *within one year of the date of the proposed ap-*  
2           *pointment;*

3           “(2) *adequate evidence that certification of that*  
4           *person as fiduciary for that beneficiary is in the in-*  
5           *terest of such beneficiary (as determined by the Sec-*  
6           *retary under regulations); and*

7           “(3) *the furnishing of any bond that may be re-*  
8           *quired by the Secretary.*

9           “(b) *As part of any inquiry or investigation of any*  
10          *person under subsection (a), the Secretary shall request in-*  
11          *formation concerning whether that person has been con-*  
12          *victed of any offense under Federal or State law which re-*  
13          *sulted in imprisonment for more than one year. If that per-*  
14          *son has been convicted of such an offense, the Secretary may*  
15          *certify the person as a fiduciary only if the Secretary makes*  
16          *a specific finding that the person has been rehabilitated and*  
17          *is an appropriate person to act as fiduciary for the bene-*  
18          *ficiary concerned under the circumstances.*

19          “(c)(1) *In the case of a proposed fiduciary described*  
20          *in paragraph (2), the Secretary, in conducting an inquiry*  
21          *or investigation under subsection (a)(1), may carry out*  
22          *such inquiry or investigation on an expedited basis that*  
23          *may include waiver of any specific requirement relating to*  
24          *such inquiry or investigation, including the otherwise ap-*  
25          *plicable provisions of subparagraphs (A), (B), and (C) of*

1 *such subsection. Any such inquiry or investigation carried*  
2 *out on such an expedited basis shall be carried out under*  
3 *regulations prescribed for purposes of this section.*

4       “(2) Paragraph (1) applies with respect to a proposed  
5 *fiduciary who is—*

6               “(A) *the parent (natural, adopted, or stepparent)*  
7 *of a beneficiary who is a minor;*

8               “(B) *the spouse or parent of an incompetent ben-*  
9 *eficiary;*

10              “(C) *a person who has been appointed a fidu-*  
11 *ciary of the beneficiary by a court of competent juris-*  
12 *isdiction; or*

13              “(D) *being appointed to manage an estate where*  
14 *the annual amount of veterans benefits to be managed*  
15 *by the proposed fiduciary does not exceed \$3600, as*  
16 *adjusted pursuant to section 5312 of this title.*

17       “(d) *TEMPORARY FIDUCIARIES.—When in the opinion*  
18 *of the Secretary, a temporary fiduciary is needed in order*  
19 *to protect the assets of the beneficiary while a determination*  
20 *of incompetency is being made or appealed or a fiduciary*  
21 *is appealing a determination of misuse, the Secretary may*  
22 *appoint one or more temporary fiduciaries for a period not*  
23 *to exceed 120 days. If a final decision has not been made*  
24 *within 120 days, the Secretary may not continue the ap-*  
25 *pointment of the fiduciary without obtaining a court order*

1 *for appointment of a guardian, conservator, or other fidu-*  
 2 *ciary under the authority provided in section 5502(b) of*  
 3 *this title.”.*

4 (b) *CLERICAL AMENDMENT.—The table of sections at*  
 5 *the beginning of such chapter is amended by adding after*  
 6 *the item added by section 301(a)(2) the following new item:*  
 “5507. *Inquiry, investigations, and qualification of fiduciaries.”.*

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

8 (a) *PROTECTION OF VETERANS BENEFITS WHEN AD-*  
 9 *MINISTERED BY FIDUCIARIES.—(1) Chapter 61 of title 38,*  
 10 *United States Code, is amended by adding at the end the*  
 11 *following new sections:*

12 **“§ 6106. Misuse of benefits by fiduciaries**

13 “(a) *FEE FORFEITURE IN CASE OF BENEFIT MISUSE*  
 14 *BY FIDUCIARIES.—A fiduciary may not collect a fee from*  
 15 *a beneficiary for any month with respect to which the Sec-*  
 16 *retary or a court of competent jurisdiction has determined*  
 17 *that the fiduciary misused all or part of the individual’s*  
 18 *benefit, and any amount so collected by the fiduciary as*  
 19 *a fee for such month shall be treated as a misused part of*  
 20 *the individual’s benefit.*

21 “(b) *LIABILITY OF FIDUCIARIES FOR MISUSED BENE-*  
 22 *FITS.—(1) If the Secretary or a court of competent jurisdic-*  
 23 *tion determines that a fiduciary that is not a Federal,*  
 24 *State, or local government agency has misused all or part*  
 25 *of a beneficiary’s benefit that was paid to such fiduciary,*

1 *the fiduciary shall be liable for the amount misused, and*  
2 *such amount (to the extent not repaid by the fiduciary)*  
3 *shall be treated as an erroneous payment of benefits under*  
4 *this title to the fiduciary for purposes of laws pertaining*  
5 *to the recovery of overpayments. The amount of such over-*  
6 *payment shall constitute a liability of such fiduciary to the*  
7 *United States and may be recovered in the same manner*  
8 *as any other debt due the United States. Subject to para-*  
9 *graph (2), upon recovering all or any part of such amount,*  
10 *the Secretary shall pay an amount equal to the recovered*  
11 *amount to such beneficiary or such beneficiary's successor*  
12 *fiduciary.*

13       “(2) *The total of the amounts paid to a beneficiary*  
14 *(or a beneficiary's successor fiduciary) under paragraph (1)*  
15 *and under section 6107 of this title may not exceed the total*  
16 *benefit amount misused by the fiduciary with respect to*  
17 *that beneficiary.*

18       “(c) *MISUSE OF BENEFITS DEFINED.—For purposes*  
19 *of this chapter, misuse of benefits by a fiduciary occurs in*  
20 *any case in which the fiduciary receives payment, under*  
21 *any of laws administered by the Secretary, for the use and*  
22 *benefit of a beneficiary and uses such payment, or any part*  
23 *thereof, for a use other than for the use and benefit of such*  
24 *beneficiary or that beneficiary's dependents. Retention by*  
25 *a fiduciary of an amount of a benefit payment as a fidu-*

1 *ciary fee or commission, or as attorney's fees (including ex-*  
2 *penses) and court costs, if authorized by the Secretary or*  
3 *a court of competent jurisdiction, shall be considered to be*  
4 *for the use or benefit of such beneficiary.*

5       “(d) *REGULATIONS.—The Secretary may prescribe by*  
6 *regulation the meaning of the term ‘use and benefit’ for pur-*  
7 *poses of this section.*

8       “(e) *FINALITY OF DETERMINATIONS.—A determina-*  
9 *tion by the Secretary that a fiduciary has misused benefits*  
10 *is a decision of the Secretary for purposes of section 511(a)*  
11 *of this title.*

12 **“§ 6107. Reissuance of benefits**

13       “(a) *NEGLIGENT FAILURE BY SECRETARY.—(1) In*  
14 *any case in which the negligent failure of the Secretary to*  
15 *investigate or monitor a fiduciary results in misuse of bene-*  
16 *fits by the fiduciary, the Secretary shall pay to the bene-*  
17 *ficiary or the beneficiary's successor fiduciary an amount*  
18 *equal to the amount of benefits that were so misused.*

19       “(2) *There shall be considered to have been a negligent*  
20 *failure by the Secretary to investigate and monitor a fidu-*  
21 *ciary in the following cases:*

22               “(A) *A case in which the Secretary failed to*  
23 *timely review a fiduciary's accounting.*

1           “(B) *A case in which the Secretary was notified*  
2           *of allegations of misuse, but failed to act in a timely*  
3           *manner to terminate the fiduciary.*

4           “(C) *In any other case in which actual neg-*  
5           *ligence is shown.*

6           “(b) *REISSUANCE OF MISUSED BENEFITS IN OTHER*  
7           *CASES.—(1) In any case in which a fiduciary described*  
8           *in paragraph (2) misuses all or part of an individual’s ben-*  
9           *efit paid to such fiduciary, the Secretary shall pay to the*  
10           *beneficiary or the beneficiary’s successor fiduciary an*  
11           *amount equal to the amount of such benefit so misused.*

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

13           “(A) *is not an individual; or*

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

17           “(c) *RECOUPMENT OF AMOUNTS REISSUED.—In any*  
18           *case in which the Secretary reissues a benefit payment (in*  
19           *whole or in part) under subsection (a) or (b), the Secretary*  
20           *shall make a good faith effort to obtain recoupment from*  
21           *the fiduciary to whom the payment was originally made.”.*

22           “(b) *CLERICAL AMENDMENT.—The table of sections at*  
23           *the beginning of such chapter is amended by adding at the*  
24           *end the following new items:*

“6106. *Misuse of benefits by fiduciaries.*

“6107. *Reissuance of benefits.”.*

1 **SEC. 304. ADDITIONAL PROTECTIONS FOR BENEFICIARIES**  
2 **WITH FIDUCIARIES.**

3 (a) *ONSITE REVIEWS AND REQUIRED ACCOUNT-*  
4 *INGS.—(1) Chapter 55 of title 38, United States Code, as*  
5 *amended by section 302(a), is further amended by adding*  
6 *at the end the following new sections:*

7 **“§ 5508. Periodic onsite reviews of institutional fidu-**  
8 **ciaries**

9 *“In addition to such other reviews of fiduciaries as the*  
10 *Secretary may otherwise conduct, the Secretary shall pro-*  
11 *vide for the periodic onsite review of any person or agency*  
12 *located in the United States that receives the benefits pay-*  
13 *able under laws administered by the Secretary to another*  
14 *individual pursuant to the appointment of such person or*  
15 *agency as a fiduciary under section 5502(a)(1) of this title*  
16 *in any case in which the fiduciary is serving in that capac-*  
17 *ity with respect to more than 20 beneficiaries and the total*  
18 *annual amount of such benefits exceeds \$50,000, as adjusted*  
19 *pursuant to section 5312 of this title.*

20 **“§ 5509. Authority to redirect delivery of benefit pay-**  
21 **ments when a fiduciary fails to provide**  
22 **required accounting**

23 *“(a) REQUIRED REPORTS AND ACCOUNTINGS.—The*  
24 *Secretary may require a fiduciary to file a report or ac-*  
25 *counting pursuant to regulations prescribed by the Sec-*  
26 *retary.*

1       “(b) *ACTIONS UPON FAILURE TO FILE.*—*In any case*  
 2 *in which a fiduciary fails to submit a report or accounting*  
 3 *required by the Secretary under subsection (a), the Sec-*  
 4 *retary may, after furnishing notice to such fiduciary and*  
 5 *the beneficiary entitled to such payment of benefits, require*  
 6 *that such fiduciary appear in person at a regional office*  
 7 *of the Department serving the area in which the beneficiary*  
 8 *resides in order to receive such payments.”.*

9       (2) *The table of sections at the beginning of such chap-*  
 10 *ter is amended by adding after the item added by section*  
 11 *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.”.*

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

16 **“§ 6108. Civil monetary penalties**

17       “(a) *PENALTY FOR CONVERSION.*—*Any person (in-*  
 18 *cluding an organization, agency, or other entity) who, hav-*  
 19 *ing received, while acting in the capacity of a fiduciary*  
 20 *pursuant to section 5502 of this title, a payment under a*  
 21 *law administered by the Secretary for the use and benefit*  
 22 *of another individual, converts such payment, or any part*  
 23 *thereof, to a use that such person knows or should know*  
 24 *is other than for the use and benefit of such other individual*

1 *shall be subject to, in addition to any other penalty that*  
2 *may be prescribed by law, a civil monetary penalty assessed*  
3 *by the Secretary of not more than \$5,000 for each such con-*  
4 *version.*

5       “(b) *PENALTY IN LIEU OF DAMAGES.*—*Any person*  
6 *who makes a conversion of a payment described in sub-*  
7 *section (a) and is subject to a civil monetary penalty under*  
8 *that subsection by reason of such conversion shall also be*  
9 *subject to an assessment by the Secretary, in lieu of dam-*  
10 *ages sustained by the United States resulting from the con-*  
11 *version, of not more than twice the amount of any payments*  
12 *so converted.*

13       “(c) *COSTS OF RECOVERY.*—*From amounts collected*  
14 *under this section, the amount necessary to recoup the De-*  
15 *partment’s costs of such collection shall be credited to appro-*  
16 *priations currently available for the same purpose as the*  
17 *appropriation that incurred those costs, to remain available*  
18 *until expended.*

19 **“§ 6109. Authority for judicial orders of restitution**

20       “(a) *Any Federal court, when sentencing a defendant*  
21 *convicted of an offense arising from the misuse of benefits*  
22 *under this title, may order, in addition to or in lieu of*  
23 *any other penalty authorized by law, that the defendant*  
24 *make restitution to the Department.*

1       “(b) Sections 3612, 3663, and 3664 of title 18 shall  
2 apply with respect to the issuance and enforcement of orders  
3 of restitution under subsection (a). In so applying those sec-  
4 tions, the Department shall be considered the victim.

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

8       “(d)(1) Except as provided in paragraph (2), amounts  
9 received or recovered by the Secretary pursuant to an order  
10 of restitution under subsection (a), to the extent and in the  
11 amounts provided in advance in appropriations Acts, shall  
12 be available to defray expenses incurred by the Office of the  
13 Inspector General for the investigation of fiduciaries under  
14 this title.

15       “(2) Paragraph (1) shall not apply with respect to  
16 amounts received in connection with misuse by a fiduciary  
17 of funds paid as benefits under laws administered by the  
18 Secretary. Such amounts shall be paid to the individual  
19 whose benefits were misused unless the Secretary has pre-  
20 viously reissued the misused benefits, in which case the  
21 amounts shall be treated in the same manner as overpay-  
22 ments recouped by the Secretary and shall be deposited to  
23 the credit of the applicable revolving fund, trust fund, or  
24 appropriation.”.

1       (2) *The table of sections at the beginning of such chap-*  
2 *ter is amended by adding after the item added by section*  
3 *303(b) the following new items:*

      “6108. *Civil monetary penalties.*

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

4 **SEC. 305. ANNUAL REPORT.**

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

8 **“§ 5510. Annual report**

9       *“The Secretary shall include in the Annual Benefits*  
10 *Report of the Veterans Benefits Administration or the Sec-*  
11 *retary’s Annual Performance and Accountability Report*  
12 *information concerning fiduciaries who have been ap-*  
13 *pointed to receive payments for beneficiaries of the Depart-*  
14 *ment. As part of such information, the Secretary shall sepa-*  
15 *rately set forth the following:*

16           *“(1) The number of beneficiaries in each cat-*  
17 *egory (veteran, surviving spouse, child, adult disabled*  
18 *child, or parent).*

19           *“(2) The types of benefit being paid (compensa-*  
20 *tion, pension, dependency and indemnity compensa-*  
21 *tion, death pension or benefits payable to a disabled*  
22 *child under chapter 18 of this title).*



1 *tations under sections 5507(c)(2)(D) and 5508 of this title,”*  
2 *after “(d)(3) of such section,”.*

3 **SEC. 307. EFFECTIVE DATES.**

4 *(a) IN GENERAL.—Except as otherwise provided, this*  
5 *title and the amendments made by this title shall take effect*  
6 *on the first day of the seventh month beginning after the*  
7 *date of the enactment of this Act.*

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

11 *(2) Sections 6106 and 6107 of title 38, United States*  
12 *Code, as added by section 303(a), shall apply with respect*  
13 *to any determinations by the Secretary of Veterans Affairs*  
14 *made after the date of the enactment of this Act of misuse*  
15 *of funds by a fiduciary.*

16 **TITLE IV—OTHER MATTERS**

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

18 **ACTIVITIES AT DEPARTMENT HEALTH-CARE**

19 **FACILITIES.**

20 *(a) INVENTORY.—The Secretary of Veterans Affairs*  
21 *shall establish and maintain a national inventory of med-*  
22 *ical waste management activities in the health-care facili-*  
23 *ties of the Department of Veterans Affairs. The inventory*  
24 *shall include the following:*

1           (1) *A statement of the current national policy of*  
2 *the Department on managing and disposing of med-*  
3 *ical waste, including regulated medical waste in all*  
4 *its forms.*

5           (2) *A description of the program of each geo-*  
6 *graphic service area of the Department to manage*  
7 *and dispose of medical waste, including general med-*  
8 *ical waste and regulated medical waste, with a de-*  
9 *scription of the primary methods used in those pro-*  
10 *grams and the associated costs of those programs,*  
11 *with cost information shown separately for in-house*  
12 *costs (including full-time equivalent employees) and*  
13 *contract costs.*

14       (b) *REPORT.*—*Not later than April 15, 2005, the Sec-*  
15 *retary of Veterans Affairs shall submit to the Committees*  
16 *on Veterans' Affairs of the Senate and House of Representa-*  
17 *tives a report on medical waste management activities in*  
18 *the facilities of the Department of Veterans Affairs. The re-*  
19 *port shall include the following:*

20           (1) *The inventory established under subsection*  
21 *(a), including all the matters specified in that sub-*  
22 *section.*

23           (2) *A listing of each violation of medical waste*  
24 *management and disposal regulations reported at any*  
25 *health-care facility of the Department over the pre-*

1       ceding five years by any State or Federal agency,  
2       along with an explanation of any remedial or other  
3       action taken by the Secretary in response to each such  
4       reported violation.

5               (3) A description of any plans to modernize, con-  
6       solidate, or otherwise improve the management of  
7       medical waste and disposal programs at health-care  
8       facilities of the Department, including the projected  
9       costs associated with such plans and any barriers to  
10      achieving goals associated with such plans.

11              (4) An assessment or evaluation of the available  
12      methods of disposing of medical waste and identifica-  
13      tion of which of those methods are more desirable  
14      from an environmental perspective in that they would  
15      be least likely to result in contamination of air or  
16      water or otherwise cause future cleanup problems.

17 **SEC. 402. CARE FOR NEWBORN CHILDREN OF VETERANS**  
18                                   **RECEIVING MATERNITY CARE.**

19       (a) *AUTHORITY TO PROVIDE NEWBORN INFANT*  
20 *CARE.*—Subchapter VIII of chapter 17 of title 38, United  
21 States Code, is amended by adding at the end the following  
22 new section:

1 **“§ 1786. Care for newborn children of veterans receiv-**  
2 **ing maternity care**

3 “(a) *AUTHORITY.*—Subject to subsections (b) and (c),  
4 when a female veteran who is enrolled in the health-care  
5 system established under section 1705 of this title is receiv-  
6 ing maternity care from the Department delivers of a child  
7 in a Department facility or in a non-Department facility  
8 under a Department contract the Secretary may furnish  
9 care to the neonate.

10 “(b) *CARE IN A DEPARTMENT FACILITY.*—In a case  
11 in which a neonate covered by subsection (a) is born in  
12 a Department facility, care furnished for the neonate at  
13 that facility shall be furnished without charge to the veteran  
14 who delivered of that neonate.

15 “(c) *CARE IN A NON-DEPARTMENT FACILITY.*—In a  
16 case in which a neonate covered by subsection (a) is born  
17 in a non-Department facility or is provided care in a non-  
18 Department facility following birth in a Department facil-  
19 ity and transfer from that facility, the Secretary may pro-  
20 vide for the payment of the cost of care and services for  
21 the neonate in the same manner, and subject to the same  
22 limitations, as if such care and services were emergency  
23 treatment furnished the veteran subject to section 1725 of  
24 this title, except that—

25 “(1) the services for which the Secretary may  
26 make payment shall be limited to those items and

1        *services for which payment may be made under the*  
2        *medicare program under title XVIII of the Social Se-*  
3        *curity Act for post-natal care furnished to a neonate;*  
4        *and*

5                *“(2) the rate of payment for such services may*  
6        *not exceed the payment rates applicable to those items*  
7        *and services under the medicare program under such*  
8        *title.”.*

9        *(b) CLERICAL AMENDMENT.—The table of sections at*  
10        *the beginning of such chapter is amended by inserting after*  
11        *the item relating to section 1784 the following new item:*  
              *“1786. Care for newborn children of veterans receiving maternity care.”.*

12        **SEC. 403. TECHNICAL AMENDMENTS TO EDUCATION PRO-**  
13                        **GRAM PROVISIONS.**

14        *(a) INAPPLICABILITY OF WAGE REQUIREMENTS FOR*  
15        *ON-JOB TRAINING PROGRAMS LEADING TO SELF-EMPLOY-*  
16        *MENT.—(1) Section 3677(b) is amended by adding at the*  
17        *end the following new paragraph:*

18                *“(3) Notwithstanding paragraph (1)(A) and sub-*  
19        *section (c)(8), no wages shall be required to be paid an eligi-*  
20        *ble person or veteran by a training establishment described*  
21        *in section 3452(e)(2) of this title.”.*

22                *(2) Section 3452(e), as amended by section 301 of the*  
23        *Veterans Benefits Act of 2003 (Public Law 108–183; 117*  
24        *Stat. 2658), is amended by striking “An” in paragraph (2)*

1 *and inserting “For the period beginning on October 1,*  
2 *2005, and ending on September 30, 2010, an”.*

3       **(b) EFFECTIVE DATE.**—*The amendments made by sub-*  
4 *section (a) shall take effect as if included in the enactment*  
5 *of section 301 of the Veterans Benefits Act of 2003 (Public*  
6 *Law 108–183; 117 Stat. 2658).*

Amend the title so as to read: “A bill 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.”

Union Calendar No. 422

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4658**

[Report No. 108-683]

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## **A BILL**

To amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act.

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SEPTEMBER 13, 2004

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed