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(MILITARY COMMUNITY AND FAMILY POLICY)

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DoD-State Liaison Office

The Honorable Scott Y. Nishimoto
House Committee on Judiciary

February 14, 2017

HB1526
RELATING TO CIVIL RELIEF FOR STATE MILITARY FORCES

Chair Nishimoto and Members of the Committee:

On behalf of the Department of Defense, I would like to thank you for the opportunity to submit testimony on the policy espoused in HB1526, a bill relating to civil relief for state military forces. My name is Dr. Laurie Crehan. I am with the Department of Defense State Liaison Office which operates under the direction of the Under Secretary of Defense for Manpower and Readiness, and the Deputy Assistant Secretary of Defense for Military Community and Family Policy. I would like to propose some amendments to HB1526 that would expand the consumer protections to some products not found in the federal Service Members Relief Act (SCRA) and to also extend those protections to all active duty members of the Uniformed Services (not just State Service members) who are deployed for over 30 consecutive days. Both of these amendments were recommended by the Veterans, Military, and International Affairs Committee last week.

Service members are protected as consumers through the federal SCRA; however, the federal law does not protect Service members concerning obligations that occur while on active duty. States can provide additional consumer protections that can mirror and expand the federal SCRA. Although this issue is new for the State Liaison Office, research indicates that three (3) states already do what we are seeking here, including IN, OR and NY. Four (4) other states, including Hawaii, have introduced legislation this legislative session. We really appreciate your consideration in joining these other states on this initiative.

Some states have extended their consumer protections beyond what is included in the federal SCRA through state statutes, and applied these additional protections to Service members on federal active duty as well as state activations. Adding provisions in HB1526 that will allow Service members to cancel or put on hold selected contracts under specified conditions will correct this current deficiency. Those products could include telecommunication services, internet services, television service, athletic club or gym memberships, or satellite radio services. Many of these products were not widely used when the federal SCRA was updated in 2003 but are proving to be problematic for federal and state Service members during activation and deployment.

Another suggested change would be to include federal active duty military members under the definition of “military service” by adding wording such as “Under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than 30 consecutive days.” This change would allow protections to federal uniformed Service members who are suddenly deployed and need to put their contracts on hold.

I have attached our background paper on this issue that explains why this is an important issue to our active duty Service members. It may serve to clarify any questions.

In closing, let me say that we are grateful for the tremendous effort that Hawaii has historically given in supporting our Service members and their families. We appreciate the opportunity to submit testimony. Please feel free to contact me if you have any questions. I am in Pacific Time Zone as I live in San Diego.



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STATE ENHANCEMENTS TO THE SERVICE MEMBER'S CIVIL RELIEF ACT (SCRA)

As a result of military duty, Service members can have unintended consumer concerns for which they can be protected through state consumer protection policies.

KEY MESSAGE: Service members are protected as consumers through the federal SCRA; however, the federal law does not protect Service members concerning obligations that occur while on active duty. States can provide additional consumer protections that can mirror and expand the federal SCRA.



DISCUSSION POINTS:

- The 2003 federal SCRA generally provided protections associated with obligations made prior to federal activation, and generally covered stays of some court proceedings; protection from default judgements, evictions, foreclosures and loss of insurance coverage; and limited certain taxes and obligations made before entering active duty.
- Updates to the SCRA since 2003 extended it to cover residential leases, motor vehicle leases and telephone service contracts entered while on active duty, in order to provide relief to Service members when they deploy or assigned overseas, or in some circumstances where they have a permanent change of station. Other changes have also provided remedies and civil enforcement by the U.S. Attorney General.
- Many states have applied several of the protections found in the federal SCRA to members of the National Guard under state activation; however, these protections vary widely. Some states have extended their consumer protections beyond what is included in the federal SCRA through state statutes, and applied these additional protections to Service members on federal active duty as well as state activations.
- DoD recognizes that states need to develop protections that make sense within the context of their consumer protection laws. DoD requests states consider protections:
 - Applicable to active duty for members of the Uniformed Services, (which parallels members covered by the federal SCRA: Army, Navy, Marine Corps, Air Force, Coast Guard, National Guard, Public Health Services and National Oceanic and Atmospheric Administration);¹
 - Applicable to a contract to provide telecommunication services, internet services, television services, athletic club or gym memberships, or satellite radio services;¹
 - Applicable as well to certain residential lease/rental agreements due to moves into government owned/leased housing.

Title VIII of the SCRA provides authority to the Attorney General to enforce the provisions of the federal SCRA (Section 801 – 50 U.S.C. §597). In February 2012, the federal government and 49 state attorneys general reached an unprecedented joint settlement of \$25 Billion with the nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses.

¹ Protections approved as part of Indiana House Bill 1456, 2015

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I wish to offer testimony in support of HB1526, with the following comments.

The intent of this bill is to update HRS 657D, which is Hawaii's version of the federal Servicemembers Civil Relief Act (SCRA), making its protections available and applicable to members of the National Guard. HRS 657D was adapted by copying from the then-existing federal law (the Soldiers' and Sailors' Civil Relief Act), which has since been replaced by the SCRA and amended several times, while HRS 657D has not been updated since 1994. This bill adapts the current SCRA to incorporate its provisions almost verbatim, with minor amendments, into HRS 657D.

The bill is necessary, as HRS 657D needs updating, but it may need somewhat closer scrutiny regarding whether all portions of the SCRA should be adopted and included in HRS 657D. Some of the requirements and sections that were taken verbatim from the federal counterpart (50 U.S.C. § 3911 et. seq.) may not be necessary/applicable to the National Guard. An index of the SCRA is available here: <http://militaryverification.com/scra-index/>; applicable parts can be selected for inclusion or exclusion, and then adapted as appropriate.

For example, the National Guard may not want to take on the responsibility for notification of benefits, which on the federal law is imposed by the SCRA § 3915 on a "Secretary concerned" for the active components, as would be required under § 657D. Since service members already receive notice of the benefits of the SCRA, and 657D essentially mirrors these benefits, it may be duplicative and an added burden on the National Guard without providing any added benefit.

Also, I am in support of changing the definition of military service, and the other suggested changes to include various other contracts (gym memberships, etc.) as proposed by the Regional State Liaison for the DoD State Liaison Office, Ms. Laurie Crehan, Ed.D.

I would also like to call the committee's attention to similar legislation that was passed in California some time ago, amending the California Military and Veterans Code (adding chapter 7.5) available online at: http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=MVC&division=2.&title=&part=1.&chapter=7.5.&article=

The legislation was passed unanimously, and it provided for several protections for service members, including expedited proceedings, no filing fees, and availability of attorney's fees. The bill analysis contains a good discussion of the need for these features, and is available online here: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200920100AB2365

See especially the Assembly Judiciary's analysis, explaining the need for the legislation on pp. 4 – 5, discussing the fee waiver, attorney's fees, and expedited hearing.

Thank you for your time and consideration.

