

Testimony of Jesse Wm. Barton
Senate Committee on Judiciary
Senate Bill 125-A

April 3, 2013

Senate Bill 125-A, previously approved by the Senate Committee on Veterans & Emergency Preparedness, is intended to ensure State of Oregon administrative agencies' compliance with the certain rights afforded by the federal Servicemembers Civil Relief Act (SCRA—previously called the Soldiers & Sailors Civil Relief Act) to servicemembers on or called onto active duty.

Congress enacted the SCRA for the primary purpose of “provid[ing] for, strengthen[ing], and expedit[ing] the national defense,” by enabling servicemembers “to devote their entire energy to the defense needs of the Nation[.]” 50 USCA § 502(1). SB 125-A addresses the right of servicemembers on or called onto active duty to “stay” civil proceedings, including administrative proceedings. When respected, this right assures servicemembers that—except as the SCRA allows—during their time on active duty, civil proceedings will not proceed and they will not incur default judgments for failure to appear in the proceedings.

The SCRA requires judges, including administrative law judges, to determine whether an **absent** litigant—e.g., a person holding an administrative license of some sort—is on active duty before issuing an adverse order, such as a default judgment, against that litigant. Before a judge may issue such an order, the opposing party—e.g., an administrative agency—must file an affidavit stating that the absent litigant is not on active duty and showing necessary facts in support of the affidavit. Criminal penalties are provided for knowingly filing a false affidavit. Various resources are available to determine whether absent litigants are on active duty. *See* Col. Mark E. Sullivan (ret.), [A Judge's Guide to the Servicemembers Civil Relief Act](#) (answer to question 4).

In a case involving a litigant-servicemember who **has** previously appeared, but whose active-duty service will “materially affect” his or her ability to appear in the future, the SCRA allows the judge on his or her own motion, and requires the judge upon the servicemember’s request, to stay the proceedings for 90 days **if** the servicemember provides certain information, as required by the SCRA. *See* Col. Sullivan (answer to question 5). Moreover, if the servicemember provides the additional information required by the SCRA, the judge must grant an even longer stay **unless** the judge appoints an attorney to represent the servicemember. [**Note:** There is no funding for such appointments. Moreover, such appointments carry so many risks that Col. Sullivan refers to them as a legal “nightmare.” *See* Col. Sullivan (answer to question 6).]

If an adverse order is wrongly entered against a servicemember, he or she may later move to be relieved from the order. The servicemember would not be entitled to automatic relief (because the servicemember must show that he or she had a meritorious or legal defense to the initial claim). But if the servicemember does succeed, and if in the course of that effort he or she otherwise complied with the requirements of House Bill 2303 (2009), the servicemember should be entitled to the recovery of reasonable attorney fees and a minimum damage award of \$1,000.00.

Section 1 of SB 125-A would amend ORS 183.413 to require agencies to notify servicemembers who **are parties to** contested-case hearings of their pertinent SCRA rights. Section 2 would amend ORS 183.415 to require agencies to notify servicemembers who **are entitled to initiate** contested-case hearings of their pertinent SCRA rights. These sections' notification requirements are intended to help maximize the frequency of servicemember exercise of their SCRA rights, and thereby to help minimize the frequency of legal proceedings held and adverse orders issued in contravention of the SCRA.

SB 125-A has been improved from its original form. Between now and mid- to late-2014, soldiers from Oregon's 41st Infantry Brigade Combat Team are scheduled for five active-duty deployments. These include a deployment of nearly 1,500 soldiers in mid-2014 (which will be the state's second-largest deployment since World War II). In recognition of these deployments, the Senate Committee on Veterans & Emergency Preparedness added an emergency clause to the bill. The committee also added amendments allowing state agencies time to exhaust their current store of pre-SB 125-A forms, and clarifying the text that the agencies' revised forms must contain to comply with SB 125-A's SCRA-notification requirements.

The Oregon State Bar urges your support for SB 125-A.