

Testimony of Jesse Wm. Barton
Before the Senate Committee on Veterans & Military Affairs
Senate Bill 125
February 7, 2013

Senate Bill 125's concept returns following a May 22, 2012 informational hearing of this committee. The concept is intended to ensure State of Oregon administrative agencies' compliance with rights afforded by the federal Servicemembers Civil Relief Act (SCRA—previously called the Soldiers & Sailors Civil Relief Act).

As background, 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 addresses the right of servicemembers called onto active duty to “stay” civil (but not criminal) proceedings, including administrative proceedings. When respected, this right assures servicemembers that civil proceedings will not proceed during their absence, and that they will not incur default judgments for failure to appear in the proceedings.

Moreover, the SCRA requires judges, including presiding officers in administrative hearings, to determine whether an absent defendant, e.g., a person holding an administrative license of some sort, is on active duty before issuing a default judgment against that defendant. Before a default judgment may be entered, the opposing party, e.g., an administrative agency, must have filed an affidavit stating that the defendant is not on active duty and showing necessary facts to support of the affidavit. (Criminal penalties are provided for knowingly filing a false affidavit.) Various resources are available to determine whether absent defendants are on active duty. *See* Mark E. Sullivan, [A Judge's Guide to the Servicemembers Civil Relief Act](#) (answer to question 4).

If a default judgment is wrongly entered against a defendant who in fact was on active duty, the servicemember-defendant may move for relief from default. 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 complied with the requirements of House Bill 2303 (2009), the servicemember should be entitled to recovery of reasonable attorney fees and a minimum damage award of \$1,000.00.

In two ways, SB 125 would help ensure administrative agency compliance with the SCRA. Section 1 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. (Senate Bill 45 does not provide this second form of assurance.)

SB 125 could be improved. The executive committee of the bar's Military & Veterans Law Section has recently learned that between now and mid- to late-2014, there will be five active-duty deployments of soldiers from Oregon's 41st Infantry Brigade Combat Team. These will include a deployment of nearly

1,500 soldiers in mid-2014. To try to ensure compliance with all of these soldiers' SCRA rights, a fourth section could be added to the bill, which would carry an emergency clause.

Finally, it is important to recognize that administrative agencies should endure no undue hardship in meeting SB 125's requirements (and certainly no hardship that would outweigh the rights of the state's servicemembers, and the risks of HB 2303 sanctions). For example, about five years ago the state Judicial Department faced the problem of judges' lack of compliance with the SCRA. Particularly through the leadership of Multnomah County Circuit Court Judge Maureen McKnight, the Judicial Conference took steps to ensure Judicial Department compliance.

Similarly, two years ago the legislature passed House Bill 2702 (2011). It allows servicemembers to stay their DUII diversion programs while on active duty. Notwithstanding the administrative burdens that this legislation was sure to impose—including the required revision of standard forms—the Judicial Department voiced no opposition to the bill. HB 2702 carried an emergency clause. It took effect on June 1, 2011. About five weeks later, on July 8, the Judicial Department issued revised forms that comply with HB 2702.

The Oregon State Bar urges your support for SB 125.