SEC. ___. EXCLUSION OF ACTIVE DUTY STATUS FOR REQUIRED MEDICAL EVALUATION AND CARE FROM THE FIVE-YEAR SERVICE LIMITATION ESTABLISHED IN THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT.

(a) IN GENERAL.—Section 4312(c)(4)(A) of title 38, United States Code, is amended—

(1) by inserting "12301(h)," after "12301(g),"; and

(2) by striking "331, 332, 359, 360, 367, or 712" and inserting "2127, 2128, 2308, 2309, 2314, or 3713".

(b) APPLICABILITY.—The amendment made by subsection (a)(1) of this section shall apply to a member of a uniformed service who is ordered to or retained on active duty under section 12301(h) of title 10, United States Code, after the date of the enactment of this Act.

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would add active duty status for medical care to the list of authorities excluded from the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) five-year service limit. Currently, section 12301(h) of title 10, United States Code (U.S.C.), states that "When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty – to receive medical care; to be medically evaluated for disability or other purposes; or to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member." Currently, section 12301(h) of title 10, U.S.C., is not identified as a statutory exemption under USERRA. The result is that reserve component Service members receiving medical care under section 12301(h) of title 10, U.S.C., authority, some of whom are assigned to wounded warrior units for significant amounts of time, have this period of service counted against their individual five-year cumulative absence limitation as defined in USERRA.

After discussions with representatives from the Department of Labor and the military representatives to the Department of Defense USERRA Working Group, it was determined that adding section 12301(h) of title 10, U.S.C., to the list of statutory exemptions identified in section 4312(c)(4)(A) of title 38, U.S.C., is a justifiable exemption across all Services, and will

help avoid the confusion often created for Service members and employers when exempting periods of service via secretarial authority.

In addition, this proposal includes a conforming amendment that is required due to the redesignation of sections in title 14, U.S.C., by Public Law 115-282.

Budget Implications: No budget impact. This change only impacts determinations of whether a Service member has met or exceeded their five-year limitation for reemployment benefits with their current civilian employer.

Changes to Existing Law: This proposal would make the following changes to section 4312 of title 38, United States Code:

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§4312. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES.

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(a) Subject to subsections (b), (c), and (d) and to section 4304, any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if-

(1) the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer;

(2) the cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services does not exceed five years; and

(3) except as provided in subsection (f), the person reports to, or submits an application for reemployment to, such employer in accordance with the provisions of subsection (e).

(b) No notice is required under subsection (a)(1) if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service-

(1) that is required, beyond five years, to complete an initial period of obligated service;

(2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;

(3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing

by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is-

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12301(h), 12302, 12304, 12304a, 12304b, or 12305 of title 10 or under section ~~331, 332, 359, 360, 367, or 712~~ 2127, 2128, 2308, 2309, 2314, or 3713 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10; or

(F) ordered to full-time National Guard duty (other than for training) under section 502(f)(2)(A) of title 32 when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds, as determined by the Secretary concerned.

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