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NDAA 2013 Provision on State Professional Licensing

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9.0—Miscellaneous

On January 2, 2013, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013). Section 544 of this new law contains a provision that may be helpful in getting the states to make accommodations for recently separated veterans with respect to state professional licensing and certification rules.

Section 4102A of title 38³ provides for the Federal Government to fund, through the Veterans' Employment and Training Service of the Department of Labor (DOL-VETS), state positions called

¹I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³Section 4102A is *not* the same thing as section 4102(a). Section 4102(a) is subsection (a) of section 4102. Section 4102A is the next section of title 38, after section 4102. Please see Law Review 1123, titled "The Case of the Misplaced Parentheses." I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 838 articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject

Local Veterans' Employment Representatives (LVERs) and Disabled Veterans Outreach Personnel (DVOPs). Section 544 of NDAA 2013 amends section 4102A(c). As amended, a state is required to take into consideration training received and experience gained by a recently separated veteran, while he or she was on active duty, in administering state vocational and professional licensing and certification systems. Under section 4102A(c) as amended, such consideration is required as a condition precedent to the state's receipt of federal funding for DVOP and LVER positions.

I think that this amendment is probably unconstitutional. The Supreme Court has recently held that it is unconstitutional for Congress to threaten to deprive the states of existing federal funding (as opposed to new funding) in an attempt to compel the states to adopt a federal policy. *See National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2603-04 (2012).⁴

I hope that the states will not challenge the constitutionality of this provision and that they will make accommodations for service members and recently separated veterans with respect to state licensing and certification requirements. Problems with those requirements contribute significantly to the high unemployment rate among veterans of Iraq and Afghanistan, especially Reserve Component personnel who were called to the colors and who lost their state licenses, at least temporarily, because they were unable to meet continuing professional education requirements while deployed.

Update – May 2022

10 U.S.C. § 4102A has not been deemed unconstitutional. The statute is still alive today.

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ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week. We added 122 new articles in 2012.

⁴Please see Law Review 12120 (December 2012) for a detailed discussion of this important precedent.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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