

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 235

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2011

Mrs. McCASKILL (for herself, Mr. WHITEHOUSE, Ms. COLLINS, Mr. CASEY, and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes.

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Lieutenant Colonel  
3 Dominic ‘Rocky’ Baragona Justice for American Heroes  
4 Harmed by Contractors Act”.

1 **SEC. 2. DEBARMENT OR SUSPENSION OF UNITED STATES**  
2 **GOVERNMENT CONTRACTORS FOR EVASION**  
3 **OF PROCESS OR FAILURE TO APPEAR IN AC-**  
4 **TIONS IN CONNECTION WITH GOVERNMENT**  
5 **CONTRACTS.**

6 (a) IN GENERAL.—Not later than 180 days after the  
7 date of enactment of this Act, the Federal Acquisition  
8 Regulatory Council established under section 1302(a) of  
9 title 41, United States Code, shall amend the Federal Ac-  
10 quisition Regulation to provide that a contractor with the  
11 United States may be debarred or suspended from con-  
12 tracting with the United States if—

13 (1) the contractor evades service of process in  
14 any civil action or criminal prosecution brought  
15 against the contractor by the United States or a cit-  
16 izen or national of the United States in connection  
17 with an obligation under the terms of the contract;  
18 or

19 (2) the contractor refuses or fails to appear be-  
20 fore a Federal court in a matter brought against the  
21 contractor by the United States or a citizen or na-  
22 tional of the United States in connection with an ob-  
23 ligation under the terms of the contract.

24 (b) APPLICABILITY.—The amendments to the Fed-  
25 eral Acquisition Regulation made under subsection (a)

1 shall apply to any action of a contractor that occurs on  
2 or after the effective date of the amendments.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion shall be construed to limit the ability of a contractor  
5 to assert any settled right under the Constitution of the  
6 United States.

7 **SEC. 3. PERSONAL JURISDICTION IN COVERED CIVIL AC-**  
8 **TIONS BY MEMBERS OF THE ARMED FORCES,**  
9 **CIVILIAN EMPLOYEES OF THE UNITED**  
10 **STATES, AND UNITED STATES CITIZEN EM-**  
11 **PLOYEES OF COMPANIES PERFORMING**  
12 **WORK FOR THE UNITED STATES AGAINST EN-**  
13 **TITIES UNDER UNITED STATES GOVERNMENT**  
14 **CONTRACTS PERFORMED ABROAD.**

15 (a) **IN GENERAL.**—Not later than 180 days after the  
16 date of enactment of this Act, the Federal Acquisition  
17 Regulatory Council established under section 1302(a) of  
18 title 41, United States Code, shall amend the Federal Ac-  
19 quisition Regulation to require that any covered con-  
20 tract—

21 (1) requires that the contractor consent to per-  
22 sonal jurisdiction over the contractor in accordance  
23 with paragraphs (3) through (5) with respect to any  
24 covered civil action, including a covered civil action  
25 against 1 or more employees of the contractor for

1 which the contractor may be liable under theories of  
2 vicarious liability;

3 (2) specifies that consent to personal jurisdic-  
4 tion under paragraph (1) shall not operate to de-  
5 prive or terminate personal jurisdiction of the con-  
6 tractor in any court that otherwise has personal ju-  
7 risdiction under another provision of law;

8 (3) requires the contractor to consent to per-  
9 sonal jurisdiction in the United States District  
10 Court for the District of Columbia for a covered civil  
11 action in which—

12 (A) the events giving rise to the cause of  
13 action occurred outside the United States; and

14 (B) personal jurisdiction cannot be estab-  
15 lished in another Federal court; and

16 (4) if the covered contract was awarded to a  
17 contractor that does not maintain an office in the  
18 United States, requires that the contractor designate  
19 an agent located in the United States for service of  
20 process in any covered civil action; and

21 (5) requires that—

22 (A) except as provided in subparagraph

23 (B), any covered civil action shall be analyzed  
24 in accordance with the laws of the United  
25 States; and

1 (B) the substantive law of the State (in-  
2 cluding the District of Columbia) in which the  
3 covered civil action is brought shall be the law  
4 applicable to a covered civil action if—

5 (i) the substantive law otherwise ap-  
6 plicable to the covered civil action would be  
7 the law of the location where the events  
8 giving rise to the cause action occurred;  
9 and

10 (ii) the location is designated as a  
11 hazardous duty zone by the Secretary of  
12 Defense.

13 (b) APPLICABILITY.—The amendments to the Fed-  
14 eral Acquisition Regulation made under subsection (a)  
15 shall apply with respect to any covered contract that is  
16 entered into on or after the effective date of the amend-  
17 ments under subsection (a).

18 **SEC. 4. PERSONAL JURISDICTION FOR ACTIONS BROUGHT**  
19 **BY THE UNITED STATES GOVERNMENT AL-**  
20 **LEGING WRONGDOING UNDER UNITED**  
21 **STATES GOVERNMENT CONTRACTS PER-**  
22 **FORMED ABROAD.**

23 (a) IN GENERAL.—Not later than 180 days after the  
24 date of enactment of this Act, the Federal Acquisition  
25 Regulatory Council established under section 1302(a) of

1 title 41, United States Code, shall amend the Federal Ac-  
2 quisition Regulation to require that any covered con-  
3 tract—

4 (1) requires that the contractor consent to per-  
5 sonal jurisdiction over the contractor by the Federal  
6 courts with respect to any action brought by the  
7 United States alleging wrongdoing associated with  
8 the performance of the covered contract;

9 (2) specifies that consent to personal jurisdic-  
10 tion under paragraph (1) shall not operate to de-  
11 prive or terminate personal jurisdiction of the con-  
12 tractor in any other court that has personal jurisdic-  
13 tion under another provision of law;

14 (3) requires the contractor to consent to per-  
15 sonal jurisdiction in the United States District  
16 Court for the District of Columbia for any action de-  
17 scribed in paragraph (1) in which—

18 (A) the events giving rise to the cause of  
19 action occurred outside the United States; and

20 (B) personal jurisdiction cannot be estab-  
21 lished in another Federal court; and

22 (4) if the covered contract was awarded to a  
23 contractor that does not maintain an office in the  
24 United States, requires that the contractor designate

1 an agent located in the United States for service of  
2 process in any action described in paragraph (1).

3 (b) **APPLICABILITY.**—The amendments to the Fed-  
4 eral Acquisition Regulation made under subsection (a)  
5 shall apply with respect to any covered contract that is  
6 entered into on or after the effective date of the amend-  
7 ments under subsection (a).

8 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
9 tion shall be construed to limit any other jurisdictional  
10 basis for a civil action against or criminal prosecution of  
11 a contractor.

12 **SEC. 5. SAVINGS CLAUSE.**

13 Nothing in this Act shall be construed to limit any  
14 cause of action or remedy under any other provision of  
15 law.

16 **SEC. 6. DEFINITIONS.**

17 In this Act:

18 (1) **CONTRACTOR.**—The term “contractor”,  
19 with respect to a contract, includes the contractor  
20 under the contract, any subcontractor under the  
21 contract, any subordinate contractor under the con-  
22 tract, any subsidiary, parent company, or successor  
23 entity of the contractor formed to act as a successor  
24 in interest of the contractor, and any employee

1       thereof performing work under or in connection with  
2       the contract.

3           (2) COVERED CIVIL ACTION.—The term “cov-  
4       ered civil action” means a civil action alleging a rape  
5       or sexual assault of or serious bodily injury to a  
6       member of the Armed Forces of the United States,  
7       civilian employee of the United States, or employee  
8       of a company performing work arising out of the  
9       performance of the covered contract for the United  
10      States who is a citizen or national of the United  
11      States.

12          (3) COVERED CONTRACT.—The term “covered  
13      contract”—

14           (A) means a contract—

15               (i) for work to be performed outside  
16              the United States that is awarded or en-  
17              tered into by the United States (including  
18              any executive department, independent es-  
19              tablishment, or agency thereof); and

20               (ii) with a value of not less than  
21              \$5,000,000; and

22           (B) includes any subcontract or subordi-  
23      nate contract under a contract described in sub-  
24      paragraph (A).



1           (4) RAPE.—The term “rape” means conduct  
 2 that would violate section 920(a) of title 10, United  
 3 States Code (article 120(a) of the Uniform Code of  
 4 Military Justice), if the conduct was committed by  
 5 a person subject to chapter 47 of title 10, United  
 6 States Code (the Uniform Code of Military Justice).

7           (5) SERIOUS BODILY INJURY.—The term “seri-  
 8 ous bodily injury” has the meaning given that term  
 9 in section 1365 of title 18, United States Code.

10          (6) SEXUAL ASSAULT.—The term “sexual as-  
 11 sault” means conduct that would violate section  
 12 920(c), (h), or (m) of title 10, United States Code  
 13 (article 120(c), (h), or (m) of the Uniform Code of  
 14 Military Justice), if the conduct was committed by  
 15 a person subject to chapter 47 of title 10, United  
 16 States Code (the Uniform Code of Military Justice).

17          (7) UNITED STATES.—The term “United  
 18 States”, in a geographic sense—

19               (A) means the several States and the Dis-  
 20 trict of Columbia; and

21               (B) does not include any military installa-  
 22 tion or facility located outside the area de-  
 23 scribed in subparagraph (A).

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