

AMENDMENT TO H.R. 5122
OFFERED BY MS. MCKINNEY

At the appropriate place in title V, insert the following new section:

1 **SEC. 5xx. MILITARY RECRUITING.**

2 (a) INDEPENDENT WITNESS TO ENLISTMENT CON-
3 TRACT.—Section 505(a) of title 10, United States Code,
4 is amended—

5 (1) by inserting “(1)” after “(a)”; and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) The Secretary concerned may not accept an
9 original enlistment of a person in the Regular Army, Reg-
10 ular Navy, Regular Air Force, or Regular Marine Corps,
11 or in a reserve component thereof, or in the Coast Guard
12 Reserve, unless the enlistment contract signed by the per-
13 son is witnessed in writing by a person, other than a per-
14 son who is a member of the armed forces, who is des-
15 ignated by the person entering into the enlistment con-
16 tract. Any such person who is a witness to an enlistment
17 contract may not be accepted for enlistment as a member
18 of the armed forces within 90 days of the witnessing of
19 that document.”.

1 (b) RIGHT TO CONTRACT REVOCATION IN CASES OF
2 SUBSTANTIATED RECRUITMENT IMPROPRIETY.—

3 (1) IN GENERAL.—Chapter 59 of such title is
4 amended by inserting after section 1173 the fol-
5 lowing new section:

6 “§ 1173a. **Enlisted members: contract revocation**
7 **based upon substantiated recruitment**
8 **impropriety**

9 “(a) RIGHT TO CONTRACT REVOCATION.—Upon
10 written application to the Secretary concerned by an en-
11 listed member of an armed force serving an original enlist-
12 ment, made within 180 days after the date of the mem-
13 ber’s entry on active duty under that original enlistment,
14 the member shall be released from the member’s enlist-
15 ment contract and discharged for the member’s own con-
16 venience, with the pay and form of discharge certificate
17 to which the member’s service entitles the member, if the
18 member’s application makes a prima facie case that there
19 was recruitment impropriety in the case of that member
20 and the Secretary concerned determines that there is in-
21 sufficient evidence in rebuttal of the prima facie case. The
22 statement of the recruiter alone shall not constitute suffi-
23 cient rebuttal.

24 “(b) PRIMA FACIE CASE OF RECRUITMENT IMPRO-
25 PRIETY.—For purposes of subsection (a), a prima facie

1 case of recruitment impropriety is made in any of the fol-
2 lowing cases:

3 “(1) The member’s enlistment contract was not
4 witnessed by a person as required under section
5 505(a)(2) of this title.

6 “(2) An original copy of the member’s enlist-
7 ment contract cannot be produced by the military
8 records office or the original copy is missing any
9 pages.

10 “(3) The member alleges with specificity re-
11 cruiter misconduct or recruitment improprieties, in-
12 cluding any of the following:

13 “(A) Coercion, threats, or intimidation for
14 the purpose of inducing a member of the De-
15 layed Entry Program to report to active duty,
16 or a recruitment prospect to enlist, or to dis-
17 suade or obstruct an enlistee from seeking a
18 separation from the Delayed Entry Program.

19 “(B) Misrepresentation as to military enti-
20 tlements and benefits, including the availability
21 of educational money or bonuses.

22 “(C) Misrepresentation as to military proc-
23 essing, assignments, and training, including the
24 likelihood of an assignment exposing an enlistee
25 to combat.

1 “(D) Interfering with the civilian criminal
2 justice process—

3 “(i) by accepting for enlistment a re-
4 cruitment prospect who has unpaid fines or
5 pending charges, is under court order for
6 confinement in a criminal justice facility,
7 or is on probation, on parole, or subject to
8 a similar status; or

9 “(ii) by interceding in a criminal jus-
10 tice proceeding, paying a fine of, appearing
11 in court on behalf of, or testifying for a re-
12 cruitment prospect.

13 “(E) Recommendation to falsify or omit
14 disqualifying conditions on the enlistment appli-
15 cation or contract, or the use of an imposter or
16 ‘ringer’ to take a physical examination or any
17 written examination required as part of the en-
18 listment process in the place of the applicant
19 for enlistment.

20 “(F) Falsifying, concealing, omitting, or
21 otherwise failing to disclose the existence of a
22 disqualifying condition, whether related to med-
23 ical condition, criminal history or past or cur-
24 rent use of controlled substances, or using

1 forged documents to meet any qualification of
2 enlistment.

3 “(G) Recommending, encouraging, or ma-
4 terially assisting a transfer of custody of the
5 prospective enlistee’s minor children for the
6 purpose of meeting enlistment eligibility, or in-
7 forming the enlistee that the enlistee may apply
8 for or be permitted to regain custody of the en-
9 listee’s children during the member’s first en-
10 listment or term of service.

11 “(c) PROCEDURE.—(1) As soon as practically pos-
12 sible after a member revokes an enlistment under sub-
13 section (a), the Secretary concerned shall issue an order
14 releasing such member from the custody and control of
15 the armed forces. Such release shall not constitute a dis-
16 charge. Any such order shall provide for the transpor-
17 tation at the Department’s expense of the member to the
18 member’s home of record or point of enlistment, as the
19 member elects.

20 “(2) A member who revokes an enlistment contract
21 under subsection (a) shall be entitled to a release order
22 under paragraph (1) so long as the member revokes the
23 enlistment contract during the first 180 days of the mem-
24 ber’s continuous active service, regardless of the date on
25 which the Secretary concerned issues the release order.

1 “(3) If the Secretary concerned fails to issue a release
2 order under paragraph (1) within seven days of the date
3 on which the member revokes the member’s enlistment
4 under subsection (a), such member shall be entitled, upon
5 written request, to termination leave beginning on the sev-
6 enth day after the date on which the member revokes the
7 enlistment under subsection (a).

8 “(4) A member who has revoked the member’s enlist-
9 ment under subsection (a) and requested termination leave
10 under paragraph (3) shall not be subject to any adverse
11 action, including prosecution, based on absence without
12 leave, unauthorized leave, or desertion, that began on the
13 date on which the member requested that termination
14 leave.

15 “(d) NOTICE.—Notice of the provisions of this sec-
16 tion, including the right conferred by subsection (a) to re-
17 voke an enlistment contract, shall be given to all enlistees
18 or potential enlistees—

19 “(1) in any form for application to enlist or reenlist;
20 and

21 “(2) in any contract for enlistment or reenlistment.”.

22 (2) CLERICAL AMENDMENT.—The table of sec-
23 tions at the beginning of such chapter is amended
24 by inserting after the item relating to section 1173
25 the following new item:

“1173a. Enlisted members: contract revocation based upon substantiated recruitment impropriety”.

1 (c) ANNUAL REPORT ON RECRUITMENT IMPROPRI-
2 ETIES.—The Secretary of Defense shall include in the Sec-
3 retary’s annual report to Congress under section 113(c)
4 of title 10, United States Code, statistics on the number
5 and types of cases of recruitment improprieties, as well
6 as the rate of disciplinary and prosecutorial actions taken
7 with respect to each such case and final disposition on
8 each substantiated and unsubstantiated case. For pur-
9 poses of this subsection, the term “recruitment impropri-
10 eties” includes any of the following:

11 (1) Acts or omissions in violation of law or reg-
12 ulation with the intent to enlist a person not quali-
13 fied for enlistment or whom the recruiter believes is
14 unqualified for enlistment.

15 (2) Acts or omissions in violation of law or reg-
16 ulation with the intent to grant a person a specific
17 option, MOSC, educational benefit, bonus, or other
18 enlistment benefit for (A) which an applicant is in-
19 eligible, or (B) whom the recruiter does not believe
20 is eligible.

21 (3) Grossly negligent acts or omissions in viola-
22 tion of law, regulation, or policy resulting in a fraud-
23 ulent, erroneous, or defective enlistment or reporting
24 to active duty or transfer of an unqualified person.

1 (4) Absent evidence of an innocent purpose, in-
2 tentional acts or omissions that would constitute
3 grounds for a member of the service to exercise the
4 entitlement to enlistment contract revocation from
5 the service under section 1173a of title 10, United
6 States Code, as added by subsection (b).