

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5139

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 12), 1994

Received

OCTOBER 8 (legislative day, SEPTEMBER 12), 1994

Read twice and referred to the Committee on Governmental Affairs

---

## AN ACT

To amend title 39, United States Code, to provide for procedures under which persons involuntarily separated by the United States Postal Service as a result of having been improperly arrested by the Postal Inspection Service on narcotics charges may seek reemployment.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROCEDURES.**

4 (a) IN GENERAL.—Chapter 4 of title 39, United  
5 States Code, is amended by adding at the end the follow-  
6 ing:

1 **“§414. Provisions relating to certain improperly ar-**  
2 **rested individuals**

3 “(a) Not later than 90 days after the date of the en-  
4 actment of this section, the Judicial Officer shall by regu-  
5 lation establish procedures under which any individual de-  
6 scribed in subsection (b)(1)(A) may seek reemployment  
7 under this section.

8 “(b) The regulations shall include provisions under  
9 which—

10 “(1) a petition for reemployment may be  
11 brought—

12 “(A) by any individual involuntarily sepa-  
13 rated from a position in the Postal Service as  
14 a result of having been arrested by the Postal  
15 Inspection Service—

16 “(i) after December 31, 1983;

17 “(ii) pursuant to any investigation in  
18 which one or more paid confidential in-  
19 formants were used;

20 “(iii) for violating any law of the  
21 United States, or of any State, prohibiting  
22 the use, sale, or possession of a controlled  
23 substance;

24 but only if such individual—

1           “(I) is not convicted, pursuant to such  
2           arrest, of a violation of any law described  
3           in clause (iii); and

4           “(II) has not been reemployed by the  
5           Postal Service; and

6           “(B) after all administrative procedures  
7           otherwise available to petitioner for seeking re-  
8           employment have been exhausted, but not later  
9           than 2 years after the date as of which—

10           “(i) the exhaustion requirement is  
11           met; or

12           “(ii) if later, any such petition may  
13           first be filed under this section;

14           “(2) a petition for reemployment under this sec-  
15           tion shall be considered by a panel of 3 administra-  
16           tive law judges who shall be—

17           “(A) qualified by virtue of their back-  
18           ground, objectivity, and experience; and

19           “(B) individuals detailed to the Postal  
20           Service, for purposes of this section, on a reim-  
21           bursable basis;

22           “(3) the provisions of sections 556 and 557 of  
23           title 5 shall apply to any proceeding conducted by a  
24           panel under this section;

1           “(4) a panel may require the Postal Service to  
2           reemploy the petitioner if, in the panel’s judgment,  
3           the petitioner was improperly arrested due to the ac-  
4           tions of the Inspection Service or its paid confiden-  
5           tial informants;

6           “(5)(A) paragraph (4) shall not be considered  
7           satisfied unless—

8                   “(i) the position in which the petitioner is  
9                   reemployed is reasonably similar to the position  
10                  from which the petitioner was separated; and

11                   “(ii) the rate of pay for the position in  
12                   which petitioner is reemployed is not less than  
13                   the rate which would have been payable to peti-  
14                   tioner, as of the date of reemployment, had the  
15                   petitioner remained continuously employed in  
16                   the position from which separated; and

17                   “(B) the provisions of section 5596(b) (1) and  
18                   (2) of title 5 shall (for purposes of this section)  
19                   apply with respect to any separation referred to in  
20                   paragraph (1)(A) of this subsection, except that the  
21                   total amount of back pay (including interest) which  
22                   may be awarded under such provisions by any panel  
23                   (described in paragraph (2)) may not, in connection  
24                   with any particular separation, exceed \$100,000;

1           “(6) the Postal Service shall be required to con-  
2           tribute to the Civil Service Retirement and Disability  
3           Fund for the benefit of petitioner an amount equal  
4           to that required (under regulations which the Office  
5           of Personnel Management shall prescribe) in order  
6           that, with respect to the period beginning on the  
7           date of involuntary separation and ending on the  
8           date of reemployment, petitioner shall, for retire-  
9           ment purposes, be treated as if such separation had  
10          not occurred; and

11           “(7) any payments required under this section  
12          shall be payable out of the Postal Service Fund.

13          “(c) A determination under this section shall not be  
14          subject to any administrative or judicial review.

15          “(d) For purposes of this section—

16           “(1) the term ‘Judicial Officer’ means the Judi-  
17           cial Officer appointed under section 204;

18           “(2) the term ‘controlled substance’ has the  
19           meaning given such term by section 102(6) of the  
20           Controlled Drug Abuse Prevention and Control Act  
21           of 1970;

22           “(3) the term ‘administrative law judge’ means  
23           an administrative law judge appointed under section  
24           3105 of title 5; and

1           “(4) a confidential informant shall be consid-  
2           ered to be ‘paid’ if such informant receives, or is to  
3           receive, a monetary or nonmonetary benefit (includ-  
4           ing any forbearance from a civil or criminal action)  
5           for the services involved.”.

6           (b) CHAPTER ANALYSIS.—The analysis for chapter  
7 4 of title 39, United States Code, is amended by adding  
8 at the end the following:

“414. Provisions relating to certain improperly arrested individuals.”.

Passed the House of Representatives October 5,  
1994.

Attest:                   DONNALD K. ANDERSON,  
*Clerk.*