

103^D CONGRESS
1ST SESSION

H. R. 995

To amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1993

Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. PENNY, Mr. SMITH of New Jersey, Mr. SLATTERY, Mr. CLYBURN, and Mr. QUINN) introduced the following bill; which was referred jointly to the Committees on Veterans' Affairs and Post Office and Civil Service

A BILL

To amend title 38, United States Code, to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the "Uniformed Services
5 Employment and Reemployment Rights Act of 1993".

1 **SEC. 2. REVISION OF CHAPTER 43 OF TITLE 38.**

2 (a) RESTATEMENT AND IMPROVEMENT OF EMPLOY-
 3 MENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title
 4 38, United States Code, is amended to read as follows:

5 **“CHAPTER 43—EMPLOYMENT AND REEMPLOY-**
 6 **MENT RIGHTS OF MEMBERS OF THE UNI-**
 7 **FORMED SERVICES**

“SUBCHAPTER I—PURPOSES, RELATION TO OTHER LAW, AND
 DEFINITIONS

“Sec.

“4301. Purposes; sense of Congress.

“4302. Relation to other law and plans or agreements.

“4303. Definitions.

“SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS
 AND LIMITATIONS; PROHIBITIONS

“4311. Discrimination against persons who serve in the uniformed services and
 acts of reprisal prohibited.

“4312. Reemployment rights of persons who serve in the uniformed services.

“4313. Reemployment positions.

“4314. Reemployment by the Federal Government.

“4315. Rights, benefits, and obligations of persons absent from employment for
 service in a uniformed service.

“4316. Employee pension benefit plans.

“4317. Character of service.

“SUBCHAPTER III—PROCEDURES FOR ASSISTANCE;
 ENFORCEMENT; AND INVESTIGATION

“4321. Assistance in obtaining employment or reemployment.

“4322. Enforcement of employment or reemployment rights.

“4323. Conduct of investigation; subpoenas.

“SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

“4331. Regulations.

“4332. Reports.

“4333. Outreach.

8 “SUBCHAPTER I—PURPOSES, RELATION TO
 9 OTHER LAW, AND DEFINITIONS

10 **“§ 4301. Purposes; sense of Congress**

11 “(a) The purposes of this chapter are—

1 agreements, and plans, and other matters that reduce,
2 limit, or eliminate in any manner rights or benefits pro-
3 vided by this chapter, including the establishment of addi-
4 tional prerequisites to the exercise of such rights.

5 **“§ 4303. Definitions**

6 “For the purposes of this chapter:

7 “(1) The term ‘Attorney General’ means the
8 Attorney General of the United States or any person
9 designated by the Attorney General to carry out a
10 responsibility of the Attorney General under this
11 chapter.

12 “(2) The term ‘benefit’, ‘benefit of employ-
13 ment’, or ‘rights and benefits’ means any aspect of
14 the employment relationship, other than wages or
15 salary for work performed, provided by contract or
16 employer practice or custom, that offers advantage,
17 profit, privilege, gain, status, account, or interest
18 and includes, but is not limited to, pension plans
19 and payments, insurance coverage and awards, em-
20 ployee stock ownership plans, bonuses, severance
21 pay, supplemental unemployment benefits, vacations,
22 and selection of work hours or locations of employ-
23 ment.

24 “(3) The term ‘employee’ means any person
25 employed by an employer.

1 “(4)(A) Except as provided in subparagraphs
2 (B) and (C), the term ‘employer’ means any person,
3 institution, organization, or other entity that pays
4 salary or wages for work performed or that has con-
5 trol over employment opportunities, including—

6 “(i) a person, institution, organization, or
7 other entity to whom the employer has dele-
8 gated the performance of employment-related
9 responsibilities;

10 “(ii) the Federal Government;

11 “(iii) a State;

12 “(iv) any successor in interest to a person,
13 institution, organization, or other entity re-
14 ferred to in this subparagraph; and

15 “(v) a person, institution, organization, or
16 other entity that has denied initial employment
17 in violation of section 4311.

18 “(B) In the case of a National Guard techni-
19 cian employed under section 709 of title 32, the
20 term ‘employer’ means the adjutant general of the
21 State in which the technician is employed.

22 “(C) Except as an actual employer of employ-
23 ees, an employee pension benefit plan described in
24 section 3(2) of the Employee Retirement Income Se-
25 curity Act of 1974 (29 U.S.C. 1002(2)) shall be

1 deemed to be an employer only with respect to the
2 obligation to provide benefits described in section
3 4316.

4 “(5) The term ‘Federal Government’ includes
5 the executive branch, the judicial branch, and the
6 legislative branch, with the executive branch includ-
7 ing—

8 “(A) any department, administration,
9 agency, commission, board, or independent es-
10 tablishment in, or other part of, the executive
11 branch (including any executive agency as de-
12 fined in section 105 of title 5);

13 “(B) the United States Postal Service and
14 the Postal Rate Commission;

15 “(C) any nonappropriated fund activity of
16 the United States; and

17 “(D) any corporation wholly owned by the
18 United States.

19 “(6) The term ‘health plan’ means an insurance
20 policy or contract, medical or hospital service agree-
21 ment, membership or subscription contract, or other
22 arrangement under which health services for individ-
23 uals are provided or the expenses of such services
24 are paid.

1 “(7) The term ‘notice’ means (with respect to
2 subchapter II) any written or verbal notification of
3 an obligation or intention to perform service in the
4 uniformed services provided to an employer by the
5 employee who will perform such service or by the
6 uniformed service in which such service is to be per-
7 formed.

8 “(8) The term ‘other than a temporary posi-
9 tion’ means a position of employment as to which
10 there is a reasonable expectation that it will continue
11 indefinitely.

12 “(9) The term ‘qualified’ means having the
13 ability to perform the essential tasks of an employ-
14 ment position.

15 “(10) The term ‘reasonable efforts’ means ac-
16 tions, including training provided by an employer,
17 that do not create an undue hardship on the em-
18 ployer.

19 “(11) Notwithstanding section 101, the term
20 ‘Secretary’ means the Secretary of Labor or any
21 person designated by such Secretary to carry out an
22 activity under this chapter.

23 “(12) The term ‘seniority’ means longevity in
24 employment together with any benefits of employ-

1 ment which accrue with, or are determined by, lon-
2 gevity in employment.

3 “(13) The term ‘service in the uniformed serv-
4 ices’ means the performance of duty on a voluntary
5 or involuntary basis in a uniformed service under
6 competent authority and includes active duty, active
7 duty for training, initial active duty for training, in-
8 active duty training, full-time National Guard duty,
9 and a period for which a person is absent from a po-
10 sition of employment for the purpose of an examina-
11 tion to determine the fitness of the person to per-
12 form any such duty.

13 “(14) The term ‘State’ means each of the sev-
14 eral States of the United States, the District of Co-
15 lumbia, the Commonwealth of Puerto Rico, Guam,
16 the Virgin Islands, and other territories of the Unit-
17 ed States (including the agencies and political sub-
18 divisions thereof).

19 “(15)(A) The term ‘undue hardship’ means an
20 action requiring significant difficulty or expense,
21 when considered in light of the factors set forth in
22 subparagraph (B).

23 “(B) In determining whether an action would
24 impose an undue hardship on an employer, factors
25 to be considered include—

1 “(i) the nature and cost of the action need-
2 ed under this chapter;

3 “(ii) the overall financial resources of the
4 facility or facilities involved in the provision of
5 the action; the number of persons employed at
6 such facility; the effect on expenses and re-
7 sources, or the impact otherwise of such action
8 upon the operation of the facility;

9 “(iii) the overall financial resources of the
10 employer; the overall size of the business of an
11 employer with respect to the number of its em-
12 ployees; the number, type, and location of its
13 facilities; and

14 “(iv) the type of operation or operations of
15 the employer, including the composition, struc-
16 ture, and functions of the work force of such
17 employer; the geographic separateness, adminis-
18 trative, or fiscal relationship of the facility or
19 facilities in question to the employer.

20 “(16) The term ‘uniformed services’ means the
21 Armed Forces, the Army National Guard and the
22 Air National Guard when engaged in active duty for
23 training, inactive duty training, or full-time National
24 Guard duty, the commissioned corps of the Public
25 Health Service, and any other category of persons

1 designated by the President in time of war or emer-
2 gency.

3 “SUBCHAPTER II—EMPLOYMENT AND REEM-
4 PLOYMENT RIGHTS AND LIMITATIONS;
5 PROHIBITIONS

6 “§ 4311. **Discrimination against persons who serve in**
7 **the uniformed services and acts of re-**
8 **prisal prohibited**

9 “(a) A person who is a member of, applies to be a
10 member of, performs, has performed, applies to perform,
11 or has an obligation to perform service in a uniformed
12 service shall not be denied initial employment, reemploy-
13 ment, retention in employment, promotion, or any benefit
14 of employment by an employer on the basis of that mem-
15 bership, application for membership, service, application
16 for service, or obligation.

17 “(b) An employer shall be considered to have denied
18 a person initial employment, reemployment, retention in
19 employment, promotion, or a benefit of employment in vio-
20 lation of this section if the person’s membership, applica-
21 tion for membership, service, application for service, or ob-
22 ligation for service in the uniformed services is a motivat-
23 ing factor in the employer’s action, unless the employer
24 can demonstrate that the action would have been taken

1 in the absence of such membership, application for mem-
2 bership, service, application for service, or obligation.

3 “(c)(1) An employer may not discriminate in employ-
4 ment against or take any adverse employment action
5 against any person because such person has taken an ac-
6 tion to enforce a protection afforded any person under this
7 chapter, has testified or otherwise made a statement in
8 or in connection with any proceeding under this chapter,
9 has assisted or otherwise participated in an investigation
10 under this chapter, or has exercised a right provided for
11 in this chapter.

12 “(2) The prohibition in paragraph (1) shall apply
13 with respect to a person regardless of whether that person
14 has performed service in the uniformed services.

15 **“§4312. Reemployment rights of persons who serve**
16 **in the uniformed services**

17 “(a) Subject to subsections (b), (c), and (d) and to
18 section 4317, any person who is absent from a position
19 of employment (other than a temporary position) by rea-
20 son of service in the uniformed services shall be entitled
21 to the reemployment rights and benefits and other employ-
22 ment benefits of this chapter if—

23 “(1) the person (or an appropriate officer of the
24 uniformed service in which such service is per-

1 formed) has given advance written or verbal notice
2 of such service to such person's employer;

3 “(2) except as provided in subsection (c), the
4 cumulative length of the absence and of all previous
5 absences from a position of employment with that
6 employer by reason of service in the uniformed serv-
7 ices does not exceed five years; and

8 “(3) except as provided in subsection (f), the
9 person reports to, or submits an application for re-
10 employment to, such employer in accordance with
11 the provisions of subsection (e).

12 “(b) No notice is required under subsection (a)(1) if
13 the giving of such notice is precluded by military necessity
14 or, under all of the relevant circumstances, the giving of
15 such notice is otherwise impossible or unreasonable. A de-
16 termination of military necessity for the purposes of this
17 subsection shall be made pursuant to regulations pre-
18 scribed by the Secretary of Defense and shall not be sub-
19 ject to judicial review.

20 “(c) Subsection (a) shall apply if such person's cumu-
21 lative period of service in the uniformed services, with re-
22 spect to the employer relationship for which a person seeks
23 reemployment, does not exceed five years, except that any
24 such period of service shall not include any service—

1 “(1) that is required, beyond five years, to com-
2 plete an initial period of obligated service;

3 “(2) during which such person was unable to
4 obtain orders releasing such person from a period of
5 service in the uniformed services before the expira-
6 tion of such five-year period and such inability was
7 through no fault of such person;

8 “(3) performed as required pursuant to section
9 270 of title 10, under section 502(a) or 503 of title
10 32, or to fulfill additional training requirements de-
11 termined and certified in writing by the Secretary
12 concerned to be necessary for professional develop-
13 ment or for completion of skill training or retrain-
14 ing; or

15 “(4) performed by a member of a uniformed
16 service who is—

17 “(A) ordered to or retained on active duty
18 under section 672(a), 672(g), 673, 673b, 673c,
19 or 688 of title 10;

20 “(B) ordered to or retained on active duty
21 (other than for training) under any provision of
22 law during a war or during a national emer-
23 gency declared by the President or the Con-
24 gress;

1 “(C) ordered to active duty (other than for
2 training) in support, as determined by the Sec-
3 retary concerned, of an operational mission for
4 which personnel have been ordered to active
5 duty under section 673b of title 10;

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

10 “(E) called into Federal service as a mem-
11 ber of the National Guard under chapter 15 of
12 title 10 or under section 3500 or 8500 of title
13 10.

14 “(d)(1) An employer is not required to reemploy a
15 person under this chapter if—

16 “(A) the employer’s circumstances have so
17 changed as to make such reemployment impossible
18 or unreasonable, or

19 “(B) in the case of a person entitled to reem-
20 ployment under section 4313 (a)(3), (a)(4), or
21 (b)(2)(B), such employment would impose an undue
22 hardship on the operation of the employer.

23 “(2) In any judicial proceeding involving an issue of
24 whether—

1 “(A) any reemployment referred to in para-
2 graph (1) is impossible or unreasonable because of
3 a change in an employer’s circumstances, or

4 “(B) any accommodation, training, or effort re-
5 ferred to in section 4313 (a)(3), (a)(4), or (b)(2) or
6 (3) would impose an undue hardship on the oper-
7 ation of the business of the employer,

8 the employer shall have the burden of proving the impos-
9 sibility or unreasonableness or undue hardship.

10 “(e)(1) Subject to paragraph (2), a person referred
11 to in subsection (a) shall, upon the completion of a period
12 of service in the uniformed services, notify the employer
13 referred to in such subsection of the person’s intent to
14 return to a position of employment with such employer
15 as follows:

16 “(A) In the case of a person whose period of
17 service in the uniformed services was less than 31
18 days, by reporting to the employer—

19 “(i) not later than the beginning of the
20 first full regularly scheduled work period on the
21 first full calendar day following the completion
22 of the period of service and the expiration of
23 eight hours after a period allowing for the safe
24 transportation of the person from the place of
25 that service to the person’s residence; or

1 “(ii) as soon as possible after the expira-
2 tion of the eight-hour period referred to in
3 clause (i), if reporting within the period re-
4 ferred to in such clause is impossible or unrea-
5 sonable through no fault of the person.

6 “(B) In the case of a person who is absent from
7 a position of employment for a period of any length
8 for the purposes of an examination to determine the
9 person’s fitness to perform service in the uniformed
10 services, by reporting in the manner and time re-
11 ferred to in subparagraph (A).

12 “(C) In the case of a person whose period of
13 service in the uniformed services was for more than
14 30 days but less than 181 days, by submitting an
15 application for reemployment with the employer not
16 later than 14 days after the completion of the period
17 of service or as soon as possible after such 14-day
18 period if submitting such application within such pe-
19 riod is impossible or unreasonable through no fault
20 of the person.

21 “(D) In the case of a person whose period of
22 service in the uniformed services was for more than
23 180 days, by submitting an application for reemploy-
24 ment with the employer not later than 90 days after
25 the completion of the period of service or as soon as

1 possible after such 90-day period if submitting such
2 application within such period is impossible or un-
3 reasonable through no fault of the person.

4 “(2)(A) A person who is hospitalized for, or con-
5 valescing from, an illness or injury incurred in, or aggra-
6 vated by, the performance of a period of service in the
7 uniformed services shall, at the end of the period that is
8 necessary for the person to recover from such illness or
9 injury submit an application for reemployment with such
10 employer. Such period of recovery may not exceed two
11 years, except as provided in subparagraph (B).

12 “(B) Such two-year period shall be extended by the
13 minimum time required to accommodate the cir-
14 cumstances beyond such person’s control which make re-
15 porting within the time limit specified in subparagraph
16 (A) impossible or unreasonable.

17 “(f) A person who fails to report for employment or
18 reemployment within the time limits specified in sub-
19 section (e) does not automatically forfeit such person’s
20 right under subsection (a) but shall be subject to the con-
21 duct rules, established policy, and general practices of the
22 employer pertaining to explanations and discipline with re-
23 spect to absence from scheduled work.

24 “(g)(1) A person who submits an application for re-
25 employment in accordance with subparagraph (C) or (D)

1 of subsection (e)(1) or subsection (e)(2) shall provide to
2 the person's employer (upon the request of such employer)
3 documentation to establish that—

4 “(A) the person's application is timely;

5 “(B) the person has not exceeded the service
6 limitations set forth in subsection (a)(2) (except as
7 permitted under subsection (c)); and

8 “(C) the person's entitlement to the benefits
9 under this chapter has not terminated under section
10 4317.

11 “(2) Documentation of any matter referred to in
12 paragraph (1) that satisfies regulations prescribed by the
13 Secretary shall satisfy the documentation requirements in
14 such paragraph.

15 “(3) The failure of a person to provide documentation
16 that satisfies regulations prescribed pursuant to para-
17 graph (2) shall not be a basis for denying reemployment
18 in accordance with the provisions of this chapter if the
19 failure occurs because such documentation does not exist
20 or is not readily available at the time of the request of
21 the employer. If, after such reemployment, documentation
22 becomes available that establishes that such person does
23 not meet one or more of the requirements referred to in
24 subparagraphs (A) through (C) of paragraph (1), the em-
25 ployer of such person may terminate the employment of

1 the person and the provision of any rights or benefits af-
2 forded the person under this chapter.

3 “(4) It shall be unlawful for an employer to delay
4 or attempt to defeat a reemployment obligation by de-
5 manding documentation that does not then exist or is not
6 then readily available.

7 “(h) The right of a person to reemployment under
8 this section shall not entitle such person to retention, pref-
9 erence, or displacement rights over any person with a su-
10 perior claim under the provisions of title 5, United States
11 Code, relating to veterans and other preference eligibles.

12 “(i) In any determination of a person’s entitlement
13 to protection under this chapter, the timing, frequency,
14 and duration of the person’s training or service or the na-
15 ture of such training or service (including voluntary serv-
16 ice) in the uniformed services shall not be a basis for deny-
17 ing protection of such training or service if the service
18 does not exceed the limitations set forth in subsection (c),
19 and the notice requirements established in subsection
20 (a)(1) and the notification requirements established in
21 subsection (e) are met.

22 **“§4313. Reemployment positions**

23 “(a) Subject to subsection (b) in the case of any em-
24 ployee and subject to section 4314 in the case of reemploy-
25 ment by the Federal Government, a person entitled to re-

1 employment under section 4312 upon completion of a pe-
2 riod of service in the uniformed services shall be promptly
3 reemployed in a position of employment in accordance
4 with the following priorities:

5 “(1) Except as provided in paragraphs (3) and
6 (4), in the case of a person whose period of service
7 in the uniformed services was for less than 91
8 days—

9 “(A) in the position of employment in
10 which the person would have been employed if
11 the continuous employment of such person with
12 the employer had not been interrupted by such
13 service, the duties of which the person is quali-
14 fied to perform; or

15 “(B) in the position of employment in
16 which the person was employed on the date of
17 the commencement of the service in the uni-
18 formed services, only if the person is not quali-
19 fied to perform the duties of the position re-
20 ferred to in subparagraph (A) after reasonable
21 efforts by the employer to qualify the person.

22 “(2) Except as provided in paragraphs (3) and
23 (4), in the case of a person whose period of service
24 in the uniformed services was for more than 90
25 days—

1 “(A) in the position of employment in
2 which the person would have been employed if
3 the continuous employment of such person with
4 the employer had not been interrupted by such
5 service, or a position of like seniority, status
6 and pay, the duties of which the person is quali-
7 fied to perform; or

8 “(B) in the position of employment in
9 which the person was employed on the date of
10 the commencement of the service in the uni-
11 formed services, or a position of like seniority,
12 status and pay, the duties of which the person
13 is qualified to perform, only if the person is not
14 qualified to perform the duties of a position re-
15 ferred to in subparagraph (A) after reasonable
16 efforts by the employer to qualify the person.

17 “(3) In the case of a person who has a disabili-
18 ty incurred in, or aggravated by, a period of service
19 in the uniformed services, and if, after reasonable ef-
20 forts by the employer to accommodate the disability,
21 such person is not qualified due to such disability to
22 be employed in the position of employment in which
23 the person would have been employed if the continu-
24 ous employment of such person with the employer
25 had not been interrupted by such service—

1 “(A) in any other position which is equiva-
2 lent in seniority, status, and pay, the duties of
3 which the person is qualified to perform or
4 would become qualified to perform with reason-
5 able efforts by the employer; or

6 “(B) if not employed under subparagraph
7 (A), in a position which is the nearest approxi-
8 mation to a position referred to in subpara-
9 graph (A) in terms of seniority, status, and pay
10 consistent with circumstances of such person’s
11 case.

12 “(4) In the case of a person who is not quali-
13 fied to be employed in the position of employment in
14 which the person would have been employed if the
15 continuous employment of such person with the em-
16 ployer had not been interrupted by such service or
17 in the position of employment in which such person
18 was employed on the date of the commencement of
19 the service in the uniform services for any reason
20 other than disability incurred in, or aggravated by,
21 a period of service in the uniformed services and
22 who cannot become qualified with reasonable efforts
23 by the employer, in any other position of lesser sta-
24 tus and pay which such person is qualified to per-
25 form, with full seniority.

1 “(b)(1) If two or more persons are entitled to reem-
2 ployment under section 4312 in the same position of em-
3 ployment and more than one of them has reported for such
4 reemployment, the person who left the position first shall
5 have the prior right to reemployment in that position.

6 “(2) Any person entitled to reemployment under sec-
7 tion 4312 who is not reemployed in a position of employ-
8 ment by reason of paragraph (1) shall be entitled to reem-
9 ployment as follows:

10 “(A) Except as provided in subparagraph (B),
11 in any other position of employment referred to in
12 subsection (a)(1) or (a)(2), as the case may be (in
13 the order of priority set out in the applicable sub-
14 section), that provides a similar status and pay to a
15 position of employment referred to in paragraph (1)
16 of this subsection, consistent with circumstances of
17 such person’s case, with full seniority.

18 “(B) In the case of a person who has a disabil-
19 ity incurred in, or aggravated by, a period of service
20 in the uniform services that requires reasonable ef-
21 forts by the employer for the person to be able to
22 perform the duties of the position of employment, in
23 any other position referred to in subsection (a)(3)
24 (in the order of priority set out in that subsection)
25 that provides a similar status and pay to a position

1 referred to in paragraph (1) of this subsection, con-
2 sistent with circumstances of such person's case,
3 with full seniority.

4 **“§4314. Reemployment by the Federal Government**

5 “(a) Except as provided in subsections (b), (c), and
6 (d), if a person is entitled to reemployment by the Federal
7 Government under section 4312, such person shall be re-
8 employed in a position of employment as described in sec-
9 tion 4313.

10 “(b) If the employer of a person described in sub-
11 section (a) was, at the time such person entered service
12 in the uniformed services, an agency in the executive
13 branch, and the Director of the Office of Personnel Man-
14 agement determines that—

15 “(1) such employer no longer exists and its
16 functions have not been transferred to another part
17 of the executive branch; or

18 “(2) it is not feasible for such employer to re-
19 employ such person,

20 the Director shall identify an alternative position of like
21 seniority, status, and pay for which such person is quali-
22 fied in another part of the executive branch, and the Di-
23 rector shall cause employment in such position to be of-
24 fered to such person.

1 “(c) If the employer of a person described in sub-
2 section (a) was, at the time such person entered service
3 in the uniformed services, a part of the judicial branch
4 or the legislative branch of the Federal Government, and
5 such employer determines that—

6 “(1) it is not feasible for such employer to re-
7 employ such person; and

8 “(2) such person is otherwise eligible to acquire
9 a status for transfer to a position in the competitive
10 service in accordance with section 3304(c) of title 5,
11 such person shall, upon application to the Director of the
12 Office of Personnel Management, be considered for and
13 offered employment in an alternative position in the execu-
14 tive branch on the same basis as described in subsection
15 (b).

16 “(d) If the adjutant general of a State determines
17 that it is not feasible to reemploy a person who was a
18 National Guard technician employed under section 709 of
19 title 32, and such person is otherwise eligible to acquire
20 a status for transfer to a position in the competitive serv-
21 ice in accordance with section 3304(d) of title 5, such per-
22 son shall, upon application to the Director of the Office
23 of Personnel Management, be considered for and offered
24 employment in an alternative position in the executive

1 branch of the Federal Government on the same basis as
2 described in subsection (b).

3 **§4315. Rights, benefits, and obligations of persons**
4 **absent from employment for service in a**
5 **uniformed service**

6 “(a) A person who is reemployed under this chapter
7 is entitled to the seniority and other rights and benefits
8 determined by seniority that the person had on the date
9 of the commencement of service in the uniformed services
10 plus the additional seniority and rights and benefits that
11 such person would have attained if the person had re-
12 mained continuously employed.

13 “(b) A person who performs service in the uniformed
14 services is considered to be on furlough or leave of absence
15 while in the uniformed services and is also entitled to such
16 other rights and benefits, not determined by seniority, re-
17 lating to other employees on furlough or leave of absence
18 which were in effect by contract, policy, or practice at the
19 commencement of such period of service or were estab-
20 lished while such person is performing such service. Such
21 person may be required to pay the employee cost, if any,
22 of any funded benefit continued pursuant to the preceding
23 sentence to the extent other employees on furlough or
24 leave of absence are so required.

1 “(c)(1) Notwithstanding subsection (b), a person who
2 performs service in the uniformed services shall, at such
3 person’s request, continue to be covered by any insurance
4 provided by such employer for up to 18 months. Such per-
5 son may be required to pay the entire cost of any benefit
6 continued pursuant to the preceding sentence, except that
7 in the case of persons ordered to training or service for
8 fewer than 31 days, such person may be required to pay
9 only the employee share, if any, of the cost of such benefit.

10 “(2) In the case of employer-sponsored health bene-
11 fits, an exclusion or waiting period may not be imposed
12 in connection with coverage of a health or physical condi-
13 tion of a person entitled to participate in these benefits,
14 either under paragraph (1) or upon reinstatement, or in
15 connection with a health or physical condition of any other
16 person who is covered by the benefit by reason of the cov-
17 erage of such person, if—

18 “(A) the condition arose before or during that
19 person’s period of training or service in the uni-
20 formed services;

21 “(B) an exclusion or waiting period would not
22 have been imposed for the condition during a period
23 of coverage resulting from participation by such per-
24 son in the benefits; and

1 “(C) the condition of such person has not been
2 determined by the Secretary of Veterans Affairs to
3 be service-connected.

4 “(d) A person who is reemployed by an employer
5 under this chapter shall not be discharged from such em-
6 ployment, except for cause—

7 “(1) if such person’s period of service was 181
8 days or more, within one year;

9 “(2) if such person’s period of service was 31
10 days or more but less than 181 days, within six
11 months; or

12 “(3) if such person’s period of service was less
13 than 31 days, within a period of time that is equal
14 to the period of service concerned.

15 “(e) Any person who is absent from or leaves a posi-
16 tion (other than a temporary position) in the employ of
17 any employer for voluntary or involuntary service in the
18 uniformed services may utilize, with respect to the em-
19 ployer and during any period of such service, accrued or
20 other leave which the person could have utilized if the per-
21 son had remained in such position.

22 **“§4316. Employee pension benefit plans**

23 “(a)(1)(A) Except as provided in subparagraph (B),
24 in the case of a right provided pursuant to an employee
25 pension benefit plan described in section 3(2) of the Em-

1 ployee Retirement Income Security Act of 1974 (29
2 U.S.C. 1002(2)) or a right provided under any Federal
3 or State law governing pension benefits for governmental
4 employees, the right to pension benefits of a person reem-
5 ployed under this chapter shall be determined under this
6 section.

7 “(B) In the case of benefits under the Thrift Savings
8 Plan, the rights of a person reemployed under this chapter
9 shall be those rights provided in section 8432b of title 5.
10 The first sentence of this subparagraph shall not be con-
11 strued to affect any other right or benefit under this
12 chapter.

13 “(2)(A) A person reemployed under this chapter shall
14 be treated as not having incurred a break in service with
15 the employer or employers maintaining the plan by reason
16 of such person’s period or periods of service in the uni-
17 formed services.

18 “(B) Each period served by a person in the uniformed
19 services shall, upon reemployment under this chapter, be
20 deemed to constitute service with the employer or employ-
21 ers maintaining the plan for purposes of determining the
22 nonforfeitability of the person’s accrued benefits and for
23 the purpose of determining the accrual of benefits under
24 the plan.

1 “(b)(1) An employer reemploying a person under this
2 chapter shall be liable to an employee pension benefit plan
3 for funding any obligation of the plan to provide the bene-
4 fits described in subsection (a)(2). For purposes of deter-
5 mining the amount of such liability and for purposes of
6 section 515 of the Employee Retirement Income Security
7 Act of 1974 (29 U.S.C. 1145) or any similar Federal or
8 State law governing pension benefits for governmental em-
9 ployees, service in the uniformed services that is deemed
10 under subsection (a) to be service with the employer shall
11 be deemed to be service with the employer under the terms
12 of the plan or any applicable collective bargaining agree-
13 ment. In the case of a multiemployer plan, as defined in
14 section 3(37) of the Employee Retirement Income Secu-
15 rity Act of 1974 (29 U.S.C. 1002(37)), any liability of
16 the plan described in this paragraph shall be allocated by
17 the plan in such manner as the sponsor maintaining the
18 plan shall provide.

19 “(2) A person reemployed under this chapter shall
20 be entitled to accrued benefits pursuant to subsection (a)
21 that are contingent on the making of, or derived from,
22 employee contributions or elective deferrals (as defined in
23 section 402(g)(3) of the Internal Revenue Code of 1986)
24 only to the extent the person makes payment to the plan
25 with respect to such contributions or deferrals. No such

1 payment may exceed the amount the person or employer
2 would have been permitted or required to contribute had
3 the person remained continuously employed by the em-
4 ployer throughout the period of service described in sub-
5 section (a)(2)(B). Any payment to the plan described in
6 this paragraph shall be made during any reasonable con-
7 tinuous period (beginning with the date of reemployment)
8 as the employer and the person may agree.

9 “(3) For purposes of computing an employer’s liabil-
10 ity under paragraph (1) or the employee’s contributions
11 under paragraph (2), the employee’s compensation during
12 the period of service described in subsection (a)(2)(B)—

13 “(A) shall be computed at the same rate as the
14 employee received from the employer immediately
15 before such period; or

16 “(B) if the employee’s compensation was not
17 based on a fixed rate, shall be computed on the basis
18 of the employee’s average rate of compensation dur-
19 ing the 12-month period immediately preceding such
20 period (or, if shorter, the period of employment im-
21 mediately preceding such period).

22 “(c) Any employer who reemploys a person under this
23 chapter and who is an employer contributing to a multiem-
24 ployer plan, as defined in section 3(37) of the Employee
25 Retirement Income Security Act of 1974 (29 U.S.C.

1 1002(37)), under which benefits are or may be payable
2 to such person by reason of the obligations set forth in
3 this chapter, shall, within 30 days after the date of such
4 reemployment, provide information, in writing, of such re-
5 employment to the administrator of such plan.

6 **“§ 4317. Character of service**

7 “A person’s entitlement to the benefits of this chapter
8 by reason of the service of such person in one of the uni-
9 formed services terminates upon the occurrence of any of
10 the following events:

11 “(1) A separation of such person from such
12 uniformed service with a dishonorable or bad con-
13 duct discharge.

14 “(2) A separation of such person from such
15 uniformed service under other than honorable condi-
16 tions, as characterized pursuant to regulations pre-
17 scribed by the Secretary concerned.

18 “(3) A dismissal of such person permitted
19 under section 1161(a) of title 10.

20 “(4) A dropping of such person from the rolls
21 pursuant to section 1161(b) of title 10.

1 “SUBCHAPTER III—PROCEDURES FOR ASSIST-
2 ANCE, ENFORCEMENT, AND INVESTIGA-
3 TIONS

4 **“§ 4321. Assistance in obtaining employment or reem-
5 ployment**

6 “The Secretary (through the Veterans’ Employment
7 and Training Service) shall provide assistance to any per-
8 son with respect to employment and reemployment rights
9 and benefits to which such person is entitled under this
10 chapter. In providing such assistance, the Secretary may
11 request the assistance of existing Federal and State agen-
12 cies engaged in similar or related activities and utilize the
13 assistance of volunteers.

14 **“§ 4322. Enforcement of employment or reemploy-
15 ment rights**

16 “(a) (1) A person who claims that—

17 “(A) such person is entitled under this chapter
18 to employment or reemployment rights or benefits
19 with respect to employment by an employer; and

20 “(B) (i) such employer has failed or refused, or
21 is about to fail or refuse, to comply with the provi-
22 sions of this chapter; or

23 “(ii) in the case that the employer is the Fed-
24 eral Government, such employer or the Office of
25 Personnel Management has failed or refused, or is

1 about to fail or refuse, to comply with the provisions
2 of this chapter,
3 may file a complaint with the Secretary in accordance with
4 subsection (b), and the Secretary shall investigate such
5 complaint.

6 “(2) In the case that the employer is the Federal
7 Government, subsection (a) of section 4323 shall be appli-
8 cable to such investigation but not subsections (b) and (c)
9 of such section.

10 “(3) This subsection does not apply to any action re-
11 lating to benefits to be provided by the Thrift Savings
12 Plan.

13 “(b)(1) A person described in subsection (a) may file
14 a complaint in accordance with paragraph (2) and apply
15 to the Secretary for assistance in asserting that complaint.

16 “(2) Such complaint shall be in writing, be in such
17 form as the Secretary may prescribe, include the name
18 and address of the employer against whom the complaint
19 is filed, and contain a summary of the allegations that
20 form the basis for the complaint.

21 “(3) Before the receipt of a written complaint, the
22 Secretary shall, upon request, provide technical assistance
23 to the potential claimant and, if the Secretary determines
24 it appropriate, to such claimant’s employer.

1 “(c)(1)(A) Except as provided in paragraph (2), if
2 the Secretary, after investigation, is reasonably satisfied
3 that the employer has failed to comply with the provisions
4 of this chapter, if efforts to obtain voluntary compliance
5 are not successful, and if the claimant requests in writing
6 that the claim be referred for litigation, the Secretary shall
7 refer the case to the Attorney General. If the Attorney
8 General is reasonably satisfied that the person requesting
9 representation is entitled to the rights or benefits sought,
10 the Attorney General shall appear and act as attorney for
11 the claimant in the filing of a complaint and other appro-
12 priate motions and pleadings and the prosecution thereof
13 in the district courts of the United States and on appeal.

14 “(B) If the Attorney General declines to represent a
15 person after receiving a referral from the Secretary or if
16 a person chooses not to apply to the Secretary for assist-
17 ance or to utilize the Attorney General for representation
18 under this section, such person may be represented before
19 the district court or on appeal by counsel of the person’s
20 choice.

21 “(2)(A) In the case where the employer is the Federal
22 Government, if the Secretary, after investigation, is rea-
23 sonably satisfied that the employer has failed to comply
24 with the provisions of this chapter, if efforts to obtain vol-
25 untary compliance are not successful, and if the claimant

1 requests in writing that the claim be referred for litigation,
2 the case shall be referred to the Office of the Special
3 Counsel, litigation shall be before the Merit Systems Pro-
4 tection Board, and if the Special Counsel is reasonably
5 satisfied that the person requesting representation is enti-
6 tled to the rights or benefits sought, the Special Counsel
7 shall appear and act as attorney for the claimant in filing
8 an appeal to the Merit Systems Protection Board and in
9 pursuing that appeal.

10 “(B) If the Special Counsel declines to represent a
11 person after receiving a referral from the Secretary or if
12 a person chooses not to apply to the Secretary for assist-
13 ance or to utilize the Special Counsel for representation
14 under this section, such person may be represented before
15 the Merit Systems Protection Board or on appeal by coun-
16 sel of the person’s choice.

17 “(d)(1) This subsection applies only with respect to
18 a State or private employer.

19 “(2)(A) The district courts of the United States may
20 require the State or private employer, as the case may
21 be—

22 “(i) to comply with the provisions of this chap-
23 ter;

24 “(ii) to compensate the person for any loss of
25 wages or benefits suffered by reason of such employ-

1 er's failure to comply with the provisions of this
2 chapter; and

3 "(iii) to pay, in addition to the compensation
4 paid under clause (ii), the person an amount equal
5 to such compensation as liquidated damages, if the
6 court determines that the employer's failure to com-
7 ply with the provisions of this chapter was willful.

8 "(B) Any compensation and payment under clauses
9 (ii) and (iii) of subparagraph (A) shall be in addition to,
10 and shall not be deemed to diminish, any of the other
11 rights and benefits provided for in this chapter.

12 "(3)(A) No fees or court costs shall be charged or
13 taxed against any person claiming rights or benefits under
14 this chapter.

15 "(B) In any action or proceeding to enforce a provi-
16 sion of this chapter by a person described in paragraph
17 (2) who obtained private counsel for such action or pro-
18 ceeding, the court, in its discretion, may award any such
19 person who prevails in such action or proceeding a reason-
20 able attorney's fee, expert witness fees, and other litiga-
21 tion expenses.

22 "(4) The court may use its full equity powers, includ-
23 ing temporary or permanent injunctions and temporary
24 restraining orders, to vindicate fully the rights or benefits
25 of persons under this chapter.

1 “(5) An action under this chapter may be initiated
2 only by a person claiming rights or benefits under this
3 chapter, not by an employer, prospective employer, or
4 other entity with obligations under this chapter.

5 “(6) In any action under this chapter, only the em-
6 ployer shall be deemed a necessary party respondent.

7 “(7) No State statute of limitations shall apply to any
8 proceedings under this chapter.

9 “(8) A State shall be subject to the same remedies,
10 including prejudgment interest, as may be imposed upon
11 any private employer under this section.

12 “(e)(1) This subsection applies only with respect to
13 the Federal Government as employer.

14 “(2)(A) If the Merit Systems Protection Board con-
15 cludes that the Federal Government, as employer, has
16 failed to comply with the provisions of this chapter or that
17 the Director of the Office of Personnel Management has
18 not met an obligation set forth in section 4314, the Board
19 shall enter an order specifically requiring the employing
20 agency or the Director to comply with such provisions and
21 to compensate such person for any loss of wages or bene-
22 fits suffered by reason of the employing agency’s or the
23 Director’s unlawful action.

1 “(B) Any such compensation shall be in addition to
2 and shall not be deemed to diminish any of the other
3 rights or benefits provided for by this chapter.

4 “(3)(A) A claimant under this chapter may petition
5 the United States Court of Appeals for the Federal Circuit
6 to review a decision of the Merit Systems Protection
7 Board denying such claimant the relief sought, in whole
8 or in part, subject to the conditions and in accordance
9 with the procedures set forth in section 7703 of title 5.

10 “(B) The Secretary and the Special Counsel shall not
11 represent persons with respect to review of decisions of
12 the Merit Systems Protection Board under this chapter
13 in the United States Court of Appeals for the Federal Cir-
14 cuit or the Supreme Court.

15 “(C) If a person seeks such judicial review, or in any
16 case in which a person is involved in the Board’s decision
17 is being appealed by another party, such person may be
18 represented by counsel of the person’s choice.

19 **“§ 4323. Conduct of investigation; subpoenas**

20 “(a) In carrying out investigations under this chap-
21 ter, the Secretary’s duly authorized representatives shall
22 at all reasonable times have access to, for the purpose of
23 examination, and the right to copy and receive, any docu-
24 ments of any person or employer.

1 cation of this chapter to States, local governments, and
2 private employers.

3 “(b)(1) The Director of the Office of Personnel Man-
4 agement (in consultation with the Secretary and the
5 Secretary of Defense) may prescribe regulations imple-
6 menting the provisions of this chapter with regard to the
7 application of this chapter to the Federal Government as
8 employer. Such regulations shall be consistent with the
9 regulations pertaining to the States and private employers,
10 except that employees of the Federal Government may be
11 given greater or additional rights. Nothing in this sub-
12 section constitutes authority for the Director to prescribe
13 any matter for which any regulation may be prescribed
14 under paragraph (2).

15 “(2) Regulations may be prescribed—

16 “(A) by the Merit Systems Protection Board to
17 carry out its responsibilities under this chapter; and

18 “(B) by the Office of Special Counsel to carry
19 out its responsibilities under this chapter.

20 **“§ 4332. Reports**

21 “The Secretary shall, after consultation with the At-
22 torney General and the Special Counsel referred to in sec-
23 tion 4322(b)(2) and no later than February 1, 1995, and
24 each February 1 thereafter, transmit to the Congress, a

1 report containing the following matters for the fiscal year
2 ending before such February 1:

3 “(1) The number of cases reviewed by the De-
4 partment of Labor under this chapter during the fis-
5 cal year for which the report is made.

6 “(2) The number of cases referred to the Attor-
7 ney General or the Special Counsel pursuant to sec-
8 tion 4322(c)(1) or 4322(c)(2), respectively, during
9 such fiscal year.

10 “(3) The number of pleadings filed by the At-
11 torney General pursuant to section 4322(c)(1) dur-
12 ing such fiscal year.

13 “(4) The nature and status of each case re-
14 ported on pursuant to paragraph (1), (2), or (3).

15 “(5) An indication of whether there are any ap-
16 parent patterns of violation of the provisions of this
17 chapter, together with an explanation thereof.

18 “(6) Recommendations for administrative or
19 legislative action that the Secretary, the Attorney
20 General, or the Special Counsel considers necessary
21 for the effective implementation of this chapter, in-
22 cluding any action that could be taken to encourage
23 mediation, before claims are filed under this chapter,
24 between employers and persons seeking employment
25 or reemployment.

1 **“§ 4333. Outreach**

2 “The Secretary, the Secretary of Defense, and the
3 Secretary of Veterans Affairs shall take such actions as
4 such Secretaries determine are appropriate to inform per-
5 sons entitled to rights and benefits under this chapter and
6 employers of the rights, benefits, and obligations of such
7 persons and such employers under this chapter.”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) AMENDMENTS TO TITLE 38.—The tables of
10 chapters at the beginning of title 38, United States
11 Code, and the beginning of part III of such title are
12 each amended by striking out the item relating to
13 chapter 43 and inserting in lieu thereof the follow-
14 ing:

**“43. Employment and reemployment rights of members of
the uniformed services 4301”.**

15 (2) AMENDMENT TO TITLE 5.—(A) Section
16 1204(a)(1) of title 5, United States Code, is amend-
17 ed by striking out “section 4323” and inserting in
18 lieu thereof “chapter 43”.

19 (B) Subchapter II of chapter 35 of such title is
20 repealed.

21 (C) The table of sections for chapter 35 of such
22 title is amended by striking out the items relating to
23 subchapter II.

1 “(G) to benefits under chapter 43 of this title.”.

2 **SEC. 4. THRIFT SAVINGS PLAN.**

3 (a) IN GENERAL.—(1) Title 5, United States Code,
4 is amended by inserting after section 8432a the following:

5 **“§8432b. Contributions of persons who perform mili-**
6 **tary service**

7 “(a) This section applies to any employee who—

8 “(1) separates or enters leave-without-pay sta-
9 tus in order to perform military service; and

10 “(2) is subsequently restored to or reemployed
11 in a position which is subject to this chapter, pursu-
12 ant to chapter 43 of title 38.

13 “(b)(1) Each employee to whom this section applies
14 may contribute to the Thrift Savings Fund, in accordance
15 with this subsection, an amount not to exceed the amount
16 described in paragraph (2).

17 “(2) The maximum amount which an employee may
18 contribute under this subsection is equal to—

19 “(A) the contributions under section 8432(a)
20 which would have been made, over the period begin-
21 ning on date of separation or commencement of
22 leave-without-pay status (as applicable) and ending
23 on the day before the date of restoration or reem-
24 ployment (as applicable)—

1 “(i) assuming a contribution rate of 10
2 percent; and

3 “(ii) not counting any amounts which
4 would be attributable to any period during
5 which such employee was not or would not have
6 been eligible to contribute due to subparagraph
7 (A), (B), or (C) of section 8432(b)(2) (except
8 that section 8432(b)(2)(C) shall not be a basis
9 for discounting any amounts if the election to
10 terminate contributions involved is made within
11 2 months before commencing military service);
12 reduced by

13 “(B) any contributions under section 8432(a)
14 actually made by such employee over the period de-
15 scribed in subparagraph (A) (in the matter before
16 clause (i) thereof).

17 “(3) Contributions under this subsection—

18 “(A) shall be made at the same time and in the
19 same manner as would any contributions under sec-
20 tion 8432(a);

21 “(B) shall be made over the period of time
22 specified by the employee under paragraph (4)(B);
23 and

24 “(C) shall be in addition to any contributions
25 then actually being made under section 8432(a).

1 “(4) The Executive Director shall prescribe the time,
2 form, and manner in which an employee may specify—

3 “(A) the total amount such employee wishes to
4 contribute under this subsection with respect to any
5 particular period referred to in paragraph (2)(B);
6 and

7 “(B) the period of time over which the em-
8 ployee wishes to make contributions under this sub-
9 section (not shorter than the period referred to in
10 paragraph (2)(B) and not longer than 4 times such
11 period).

12 “(c) If an employee makes contributions under sub-
13 section (b), the employing agency shall make contributions
14 to the Thrift Savings Fund on such employee’s behalf—

15 “(1) in the same manner as would be required
16 under section 8432(c)(2) if the employee contribu-
17 tions were being made under section 8432(a); and

18 “(2) disregarding any contributions then actu-
19 ally being made under section 8432(a) and any
20 agency contributions relating thereto.

21 “(d)(1) An employee to whom this section applies is
22 entitled to have contributed to the Thrift Savings Fund
23 on such employee’s behalf an amount equal to—

1 “(A) 1 percent of such employee’s basic pay (as
2 determined under subsection (e)) for the period re-
3 ferred to in subsection (b)(2)(B); reduced by

4 “(B) any contributions actually made on such
5 employee’s behalf under section 8432(c)(1) with re-
6 spect to the period referred to in subsection
7 (b)(2)(B).

8 “(2) An amount under this subsection shall be paid—

9 “(A) by the agency to which the employee is re-
10 stored or in which such employee is reemployed;

11 “(B) from the same source as would be the case
12 under section 8432(e) with respect to sums required
13 under section 8432(c); and

14 “(C) within the time prescribed by the Execu-
15 tive Director.

16 “(e) For purposes of any computation under this sec-
17 tion, an employee shall, with respect to the period referred
18 to in subsection (b)(2)(B), be considered to have been paid
19 at the rate which would have been payable over such pe-
20 riod had such employee remained continuously employed
21 in the position which such employee last held before sepa-
22 rating or entering leave-without-pay status to perform
23 military service.

24 “(f)(1) For purposes of section 8432(g), in the case
25 of an employee to whom this section applies—

1 “(A) a separation from civilian service in order
2 to perform the military service on which the employ-
3 ee’s restoration or reemployment rights are based
4 shall be disregarded; and

5 “(B) such employee shall be credited with a pe-
6 riod of civilian service equal to the period referred
7 to in subsection (b)(2)(B).

8 “(2)(A) An employee to whom this section applies
9 may elect, for purposes of section 8433(d), or paragraph
10 (1) or (2) of section 8433(h), as the case may be, to have
11 such employee’s separation (described in subsection
12 (a)(1)) treated as if it had never occurred.

13 “(B) An election under this paragraph shall be made
14 within such period of time after restoration or reemploy-
15 ment (as the case may be) and otherwise in such manner
16 as the Executive Director prescribes.

17 “(g) The Executive Director shall prescribe regula-
18 tions to carry out this section.”.

19 (2) The table of sections for chapter 84 of title 5,
20 United States Code, is amended by inserting after the
21 item relating to section 8432a the following:

 “8432b. Contributions of persons who perform military service.”.

22 (b) PRESERVATION OF CERTAIN RIGHTS.—(1) Sec-
23 tion 8433(d) of title 5, United States Code, is amended
24 by striking “subsection (e).” and inserting “subsection (e),
25 unless an election under section 8432b(f)(2) is made to

1 treat such separation for purposes of this subsection as
2 if it had never occurred.”.

3 (2) Paragraphs (1) and (2) of section 8433(h) are
4 each amended by striking the period at the end and insert-
5 ing “, or unless an election under section 8432b(f)(2) is
6 made to treat such separation for purposes of this para-
7 graph as if it had never occurred.”.

8 (c) ELECTION TO RESUME REGULAR CONTRIBU-
9 TIONS UPON RESTORATION OR REEMPLOYMENT.—Sec-
10 tion 8432 of title 5, United States Code, is amended by
11 adding at the end the following:

12 “(i)(1) This subsection applies to any employee—

13 “(A) to whom section 8432b applies; and

14 “(B) who, during the period of such employee’s
15 absence from civilian service (as referred to in sec-
16 tion 8432b(b)(2)(B))—

17 “(i) is eligible to make an election de-
18 scribed in subsection (b)(1); or

19 “(ii) would be so eligible but for having ei-
20 ther elected to terminate individual contribu-
21 tions to the Thrift Savings Fund within 2
22 months before commencing military service or
23 separated in order to perform military service.

24 “(2) The Executive Director shall prescribe regula-
25 tions to ensure that any employee to whom this subsection

1 applies shall, within a reasonable time after being restored
2 or reemployed (in the manner described in section
3 8432b(a)(2)), be afforded the opportunity to make, for
4 purposes of this section, any election which would be al-
5 lowable during a period described in subsection
6 (b)(1)(A).”.

7 (d) APPLICABILITY TO EMPLOYEES UNDER CSRS.—
8 Section 8351(b) of title 5, United States Code, is amended
9 by adding at the end the following:

10 “(11) In applying section 8432b to an employee con-
11 tributing to the Thrift Savings Fund after being restored
12 to or reemployed in a position subject to this subchapter,
13 pursuant to chapter 43 of title 38—

14 “(A) any reference in such section to contribu-
15 tions under section 8432(a) shall be considered a
16 reference to employee contributions under this sec-
17 tion;

18 “(B) the contribution rate assumed under sec-
19 tion 8432b(b)(2)(A)(i) shall be the maximum per-
20 centage allowable under subsection (b)(2) of this
21 section; and

22 “(C) subsections (c) and (d) of section 8432b
23 shall be disregarded.”.

24 (e) EFFECTIVE DATE; APPLICABILITY.—This section
25 and the amendments made by this section—

1 (1) shall take effect on the date of enactment
2 of this Act; and

3 (2) shall apply to any employee whose release
4 from military service, discharge from hospitalization,
5 or other similar event making the individual eligible
6 to seek restoration or reemployment under chapter
7 43 of title 38, United States Code, occurs on or
8 after August 2, 1990.

9 (f) RULES FOR APPLYING AMENDMENTS TO EM-
10 PLOYEES RESTORED OR REEMPLOYED BEFORE EFFEC-
11 TIVE DATE.—In the case of any employee (described in
12 subsection (e)(2)) who is reemployed or restored (in the
13 circumstances described in section 8432b(a) of title 5,
14 United States Code, as amended by this section) before
15 the date of enactment of this Act, the amendments made
16 by this section shall apply to such employee, in accordance
17 with their terms, subject to the following:

18 (1) The employee shall be deemed not to have
19 been reemployed or restored until—

20 (A) the date of enactment of this Act, or

21 (B) the first day following such employee's
22 reemployment or restoration on which such em-
23 ployee is or was eligible to make an election re-
24 lating to contributions to the Thrift Savings
25 Fund,

1 whichever occurs or occurred first.

2 (2) If the employee changed agencies during the
3 period between date of actual reemployment or res-
4 toration and the date of enactment of this Act, the
5 employing agency as of such date of enactment shall
6 be considered the reemploying or restoring agency.

7 (3)(A) For purposes of any computation under
8 section 8432b of such title, pay shall be determined
9 in accordance with subsection (e) of such section, ex-
10 cept that, with respect to the period described in
11 subparagraph (B), actual pay attributable to such
12 period shall be used.

13 (B) The period described in this subparagraph
14 is the period beginning on the first day of the first
15 applicable pay period beginning on or after the date
16 of the employee's actual reemployment or restoration
17 and ending on the day before the date determined
18 under paragraph (1).

19 (4) Deem section 8432b(b)(2)(A) of such title
20 to be amended, in the matter before clause (i), by
21 striking "ending on the day before the date of res-
22 toration or reemployment (as applicable)" and in-
23 serting "ending on the date determined under sec-
24 tion 4(f)(1) of the Uniformed Services Employment
25 and Reemployment Rights Act of 1993".

1 **SEC. 5. TECHNICAL AMENDMENT.**

2 Section 9(d) of Public Law 102-16 (105 Stat. 55)
3 is amended by striking out “Act” the first place it appears
4 and inserting in lieu thereof “section”.

5 **SEC. 6. TRANSITION RULES AND EFFECTIVE DATES.**

6 (a) REEMPLOYMENT.—(1) Except as otherwise pro-
7 vided in this Act, the amendments made by this Act shall
8 be effective with respect to reemployments initiated on or
9 after the first day after the 60-day period beginning on
10 the date of enactment of this Act.

11 (2) The provisions of chapter 43 of title 38, United
12 States Code, in effect on the day before such date of enact-
13 ment, shall continue to apply to reemployments initiated
14 before the end of such 60-day period.

15 (3) In determining the number of years of service
16 that may not be exceeded in an employee-employer rela-
17 tionship with respect to which a person seeks reemploy-
18 ment under chapter 43 of title 38, United States Code,
19 as in effect before or after the date of enactment of this
20 Act, there shall be included all years of service without
21 regard to whether the periods of service occurred before
22 or after such date of enactment unless the period of serv-
23 ice is exempted by the chapter 43 that is applicable, as
24 provided in paragraphs (1) and (2), to the reemployment
25 concerned.

1 (4) A person who initiates reemployment under chap-
2 ter 43 of title 38, United States Code, during or after the
3 60-day period beginning on the date of enactment of this
4 Act and whose reemployment is made in connection with
5 a period of service in the uniform services that was initi-
6 ated before the end of such period shall be deemed to have
7 satisfied the notification requirement of section
8 4312(a)(1) of title 38, United States Code, as provided
9 in the amendments made by this Act, if the person com-
10 plied with any applicable notice requirement under chapter
11 43, United States Code, as in effect on the day before
12 the date of enactment of this Act.

13 (b) DISCRIMINATION.—The provisions of section
14 4311 of title 38, United States Code, as provided in the
15 amendments made by this Act, and the provisions of sub-
16 chapter III of chapter 43 of such title, as provided in the
17 amendments made by this Act, that are necessary for the
18 implementation of such section 4311 shall become effec-
19 tive on the date of enactment of this Act.

20 (c) INSURANCE.—(1) Except as provided in para-
21 graph (2), the provisions of section 4315(c) of title 38,
22 United States Code, as provided in the amendments made
23 by this Act, concerning insurance coverage shall become
24 effective on the date of enactment of this Act.

1 (2) A person on active duty on the date of enactment
2 of this Act, or a family member or personal representative
3 of such person, may, after the date of enactment of this
4 Act, elect to reinstate or continue insurance coverage as
5 provided in such section 4315. If such an election is made,
6 insurance coverage shall remain in effect for the remaining
7 portion of the 18-month period that began on the date
8 of such person's separation from civilian employment.

9 (d) DISABILITY.—(1) Section 4313(a)(3) of chapter
10 43 of title 38, United States Code, as provided in the
11 amendments made by this Act, shall apply to
12 reemployments initiated on or after August 1, 1990.

13 (2) Effective as of August 1, 1990, section 4307 of
14 title 38, United States Code (as in effect on the date of
15 enactment of this Act), is hereby repealed, and the table
16 of sections at the beginning of chapter 43 of such title
17 (as in effect on the date of enactment of this Act) is
18 amended by striking out the item relating to section 4307.

19 (e) REPORTS.—The reports made by the Secretary
20 of Labor pursuant to section 4332 of title 38, United
21 States Code, as provided in the amendments made by this
22 Act, shall be made with respect to cases pertaining to
23 chapter 43 of such title without regard to whether a case
24 originated under such chapter before, on, or after the date
25 of enactment of this Act.

1 (f) PREVIOUS ACTIONS.—Except as otherwise pro-
2 vided, the amendments made by this Act do not affect
3 reemployments that were initiated, rights, benefits, and
4 duties that matured, penalties that were incurred, and
5 proceedings that were begun before the end of the 60-day
6 period referred to in subsection (a).

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