

103^D CONGRESS
1ST SESSION

H. R. 995

[Report No. 103-65, Part I]

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

APRIL 28, 1993

Additional sponsors: Mr. EVERETT, Mr. HEFNER, Mr. RICHARDSON, Mr. STENHOLM, Mr. PAYNE of Virginia, Mr. PARKER, Ms. WATERS, Ms. BROWN of Florida, and Mr. BISHOP

APRIL 28, 1993

Reported from the Committee on Veterans' Affairs with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of the introduced bill, see copy of bill as introduced on February 18, 1993]

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 Em-*
 5 *ployment and Reemployment Rights Act of 1993”.*

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

7 *(a) RESTATEMENT AND IMPROVEMENT OF EMPLOY-*
 8 *MENT AND REEMPLOYMENT RIGHTS.—Chapter 43 of title*
 9 *38, United States Code, is amended to read as follows:*

10 **“CHAPTER 43—EMPLOYMENT AND REEMPLOY-**
 11 **MENT RIGHTS OF MEMBERS OF THE UNI-**
 12 **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 INVESTIGATIONS

“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.*

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

3 ***“§ 4301. Purposes; sense of Congress***

4 *“(a) The purposes of this chapter are—*

5 *“(1) to encourage noncareer service in the uni-*
6 *formed services by eliminating or minimizing the dis-*
7 *advantages to civilian careers and employment which*
8 *can result from such service;*

9 *“(2) to minimize the disruption to the lives of*
10 *persons performing service in the uniformed services*
11 *as well as to their employers, their fellow employees,*
12 *and their communities, by providing for the prompt*
13 *reemployment of such persons upon their completion*
14 *of such service under honorable conditions; and*

15 *“(3) to prohibit discrimination against persons*
16 *because of their service in the uniformed services.*

17 *“(b) It is the sense of Congress that the Federal Gov-*
18 *ernment should be a model employer in carrying out the*
19 *reemployment practices provided for in this chapter.*

20 ***“§ 4302. Relation to other law and plans or agree-***
21 ***ments***

22 *“(a) Nothing in this chapter shall supersede, nullify,*
23 *or diminish any Federal or State law (including any local*

1 *law or ordinance) or any contract, practice, policy, agree-*
2 *ment, plan, or other matter provided by an employer which*
3 *establishes rights or benefits which are greater than or in*
4 *addition to those provided in this chapter.*

5 “(b) *This chapter supersedes State laws (including any*
6 *local law or ordinance), employer practices, policies, agree-*
7 *ments, and plans, and other matters that reduce, limit, or*
8 *eliminate in any manner rights or benefits provided by this*
9 *chapter, including the establishment of additional pre-*
10 *requisites to the exercise of such rights.*

11 **“§ 4303. Definitions**

12 “*For the purposes of this chapter:*

13 “(1) *The term ‘Attorney General’ means the At-*
14 *torney General of the United States or any person*
15 *designated by the Attorney General to carry out a re-*
16 *sponsibility of the Attorney General under this*
17 *chapter.*

18 “(2) *The term ‘benefit’, ‘benefit of employment’,*
19 *or ‘rights and benefits’ means any aspect of the em-*
20 *ployment relationship, other than wages or salary for*
21 *work performed, provided by contract or employer*
22 *practice or custom, that offers advantage, profit,*
23 *privilege, gain, status, account, or interest and in-*
24 *cludes, but is not limited to, pension plans and pay-*
25 *ments, insurance coverage and awards, employee stock*

1 *ownership plans, bonuses, severance pay, supple-*
2 *mental unemployment benefits, vacations, and selec-*
3 *tion of work hours or locations of employment.*

4 “(3) *The term ‘employee’ means any person em-*
5 *ployed by an employer.*

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

11 “(i) *a person, institution, organization, or*
12 *other entity to whom the employer has delegated*
13 *the performance of employment-related respon-*
14 *sibilities;*

15 “(ii) *the Federal Government;*

16 “(iii) *a State;*

17 “(iv) *any successor in interest to a person,*
18 *institution, organization, or other entity referred*
19 *to in this subparagraph; and*

20 “(v) *a person, institution, organization, or*
21 *other entity that has denied initial employment*
22 *in violation of section 4311.*

23 “(B) *In the case of a National Guard technician*
24 *employed under section 709 of title 32, the term ‘em-*

1 *ployer’ means the adjutant general of the State in*
2 *which the technician is employed.*

3 *“(C) Except as an actual employer of employees,*
4 *an employee pension benefit plan described in section*
5 *3(2) of the Employee Retirement Income Security Act*
6 *of 1974 (29 U.S.C. 1002(2)) shall be deemed to be an*
7 *employer only with respect to the obligation to pro-*
8 *vide benefits described in section 4316.*

9 *“(5) The term ‘Federal Government’ includes the*
10 *executive branch, the judicial branch, and the legisla-*
11 *tive branch, with the executive branch including—*

12 *“(A) any department, administration, agen-*
13 *cy, commission, board, or independent establish-*
14 *ment in, or other part of, the executive branch*
15 *(including any executive agency as defined in*
16 *section 105 of title 5);*

17 *“(B) the United States Postal Service and*
18 *the Postal Rate Commission;*

19 *“(C) any nonappropriated fund activity of*
20 *the United States; and*

21 *“(D) any corporation wholly owned by the*
22 *United States.*

23 *“(6) The term ‘health plan’ means an insurance*
24 *policy or contract, medical or hospital service agree-*
25 *ment, membership or subscription contract, or other*

1 *arrangement under which health services for individ-*
2 *uals are provided or the expenses of such services are*
3 *paid.*

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

11 “(8) The term ‘other than a temporary position’
12 *means a position of employment as to which there is*
13 *a reasonable expectation that it will continue indefi-*
14 *nitely.*

15 “(9) The term ‘qualified’ means having the abil-
16 *ity to perform the essential tasks of an employment*
17 *position.*

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

22 “(11) Notwithstanding section 101, the term
23 *‘Secretary’ means the Secretary of Labor or any per-*
24 *son designated by such Secretary to carry out an ac-*
25 *tivity under this chapter.*

1 “(12) The term ‘seniority’ means longevity in
2 employment together with any benefits of employment
3 which accrue with, or are determined by, longevity in
4 employment.

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

15 “(14) The term ‘State’ means each of the several
16 States of the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, Guam, the Virgin
18 Islands, and other territories of the United States (in-
19 cluding the agencies and political subdivisions there-
20 of).

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

1 “(B) In determining whether an action would
2 impose an undue hardship on an employer, factors to
3 be considered include—

4 “(i) the nature and cost of the action needed
5 under this chapter;

6 “(ii) the overall financial resources of the
7 facility or facilities involved in the provision of
8 the action; the number of persons employed at
9 such facility; the effect on expenses and resources,
10 or the impact otherwise of such action upon the
11 operation of the facility;

12 “(iii) the overall financial resources of the
13 employer; the overall size of the business of an
14 employer with respect to the number of its em-
15 ployees; the number, type, and location of its fa-
16 cilities; and

17 “(iv) the type of operation or operations of
18 the employer, including the composition, struc-
19 ture, and functions of the work force of such em-
20 ployer; the geographic separateness, administra-
21 tive, or fiscal relationship of the facility or fa-
22 cilities in question to the employer.

23 “(16) The term ‘uniformed services’ means the
24 Armed Forces, the Army National Guard and the Air
25 National Guard when engaged in active duty for

1 *training, inactive duty training, or full-time Na-*
2 *tional Guard duty, the commissioned corps of the*
3 *Public Health Service, and any other category of per-*
4 *sons designated by the President in time of war or*
5 *emergency.*

6 “SUBCHAPTER II—EMPLOYMENT AND REEM-
7 PLOYMENT RIGHTS AND LIMITATIONS; PRO-
8 HIBITIONS

9 “**§ 4311. Discrimination against persons who serve in**
10 **the uniformed services and acts of re-**
11 **prisal prohibited**

12 “(a) A person who is a member of, applies to be a
13 member of, performs, has performed, applies to perform, or
14 has an obligation to perform service in a uniformed service
15 shall not be denied initial employment, reemployment, re-
16 tention in employment, promotion, or any benefit of em-
17 ployment by an employer on the basis of that membership,
18 application for membership, service, application for service,
19 or obligation.

20 “(b) An employer shall be considered to have denied
21 a person initial employment, reemployment, retention in
22 employment, promotion, or a benefit of employment in vio-
23 lation of this section if the person’s membership, applica-
24 tion for membership, service, application for service, or obli-
25 gation for service in the uniformed services is a motivating

1 *factor in the employer's action, unless the employer can*
2 *demonstrate that the action would have been taken in the*
3 *absence of such membership, application for membership,*
4 *service, application for service, or obligation.*

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

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

17 **“§ 4312. Reemployment rights of persons who serve in**
18 **the uniformed services**

19 “(a) *Subject to subsections (b), (c), and (d) and to sec-*
20 *tion 4317, any person who is absent from a position of em-*
21 *ployment (other than a temporary position) by reason of*
22 *service in the uniformed services shall be entitled to the re-*
23 *employment rights and benefits and other employment bene-*
24 *fits of this chapter if—*

1 “(1) the person (or an appropriate officer of the
2 uniformed service in which such service is performed)
3 has given advance written or verbal notice of such
4 service to such person’s employer;

5 “(2) except as provided in subsection (c), the cu-
6 mulative length of the absence and of all previous ab-
7 sences from a position of employment with that em-
8 ployer by reason of service in the uniformed services
9 does not exceed five years; and

10 “(3) except as provided in subsection (f), the per-
11 son reports to, or submits an application for reem-
12 ployment to, such employer in accordance with the
13 provisions of subsection (e).

14 “(b) No notice is required under subsection (a)(1) if
15 the giving of such notice is precluded by military necessity
16 or, under all of the relevant circumstances, the giving of
17 such notice is otherwise impossible or unreasonable. A deter-
18 mination of military necessity for the purposes of this sub-
19 section shall be made pursuant to regulations prescribed by
20 the Secretary of Defense and shall not be subject to judicial
21 review.

22 “(c) Subsection (a) shall apply if such person’s cumu-
23 lative period of service in the uniformed services, with re-
24 spect to the employer relationship for which a person seeks

1 *reemployment, does not exceed five years, except that any*
2 *such period of service shall not include any service—*

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

5 *“(2) during which such person was unable to ob-*
6 *tain orders releasing such person from a period of*
7 *service in the uniformed services before the expiration*
8 *of such five-year period and such inability was*
9 *through no fault of such person;*

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

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

18 *“(A) ordered to or retained on active duty*
19 *under section 672(a), 672(g), 673, 673b, 673c, or*
20 *688 of title 10;*

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

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 duty
5 under section 673b of title 10;

6 “(D) ordered to active duty in support, as
7 determined by the Secretary concerned, of a crit-
8 ical 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 10.

13 “(d)(1) An employer is not required to reemploy a per-
14 son under this chapter if—

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

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

22 “(2) In any administrative or judicial proceeding in-
23 volving an issue of whether—

1 “(A) any reemployment referred to in paragraph
2 (1) is impossible or unreasonable because of a change
3 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)(B)
6 would impose an undue hardship on the operation of
7 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 to
11 in subsection (a) shall, upon the completion of a period of
12 service in the uniformed services, notify the employer re-
13 ferred to in such subsection of the person’s intent to return
14 to a position of employment with such employer as follows:

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

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

1 “(ii) as soon as possible after the expiration
2 of the eight-hour period referred to in clause (i),
3 if reporting within the period referred to in such
4 clause is impossible or unreasonable through no
5 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 serv-
13 ice in the uniformed services was for more than 30
14 days but less than 181 days, by submitting an appli-
15 cation for reemployment with the employer not later
16 than 14 days after the completion of the period of
17 service or as soon as possible after such 14-day period
18 if submitting such application within such period is
19 impossible or unreasonable through no fault of the
20 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 convalesc-*
5 *ing from, an illness or injury incurred in, or aggravated*
6 *by, the performance of a period of service in the uniformed*
7 *services shall, at the end of the period that is necessary for*
8 *the person to recover from such illness or injury submit an*
9 *application for reemployment with such employer. Such pe-*
10 *riod of recovery may not exceed two years, except as pro-*
11 *vided in subparagraph (B).*

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

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

24 “(g)(1) *A person who submits an application for reem-*
25 *ployment in accordance with subparagraph (C) or (D) of*

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

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

5 “(B) the person has not exceeded the service limi-
6 tations set forth in subsection (a)(2) (except as per-
7 mitted 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 para-
12 graph (1) that satisfies regulations prescribed by the Sec-
13 retary shall satisfy the documentation requirements in such
14 paragraph.

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

1 *any rights or benefits afforded the person under this*
2 *chapter.*

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

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

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

1 *ployment under section 4312 upon completion of a period*
2 *of service in the uniformed services shall be promptly reem-*
3 *ployed in a position of employment in accordance with the*
4 *following priorities:*

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

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

14 “(B) *in the position of employment in*
15 *which the person was employed on the date of the*
16 *commencement of the service in the uniformed*
17 *services, only if the person is not qualified to*
18 *perform the duties of the position referred to in*
19 *subparagraph (A) after reasonable efforts by the*
20 *employer to qualify the person.*

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

24 “(A) *in the position of employment in*
25 *which the person would have been employed if*

1 *the continuous employment of such person with*
2 *the employer had not been interrupted by such*
3 *service, or a position of like seniority, status and*
4 *pay, the duties of which the person is qualified*
5 *to perform; or*

6 *“(B) in the position of employment in*
7 *which the person was employed on the date of the*
8 *commencement of the service in the uniformed*
9 *services, or a position of like seniority, status*
10 *and pay, the duties of which the person is quali-*
11 *fied to perform, only if the person is not quali-*
12 *fied to perform the duties of a position referred*
13 *to in subparagraph (A) after reasonable efforts*
14 *by the employer to qualify the person.*

15 *“(3) In the case of a person who has a disability*
16 *incurred in, or aggravated by, a period of service in*
17 *the uniformed services, and if, after reasonable efforts*
18 *by the employer to accommodate the disability, such*
19 *person is not qualified due to such disability to be*
20 *employed in the position of employment in which the*
21 *person would have been employed if the continuous*
22 *employment of such person with the employer had not*
23 *been interrupted by such service—*

24 *“(A) in any other position which is equiva-*
25 *lent in seniority, status, and pay, the duties of*

1 *which the person is qualified to perform or*
2 *would become qualified to perform with reason-*
3 *able efforts by the employer; or*

4 *“(B) if not employed under subparagraph*
5 *(A), in a position which is the nearest approxi-*
6 *mation to a position referred to in subparagraph*
7 *(A) in terms of seniority, status, and pay con-*
8 *sistent with circumstances of such person’s case.*

9 *“(4) In the case of a person who is not qualified*
10 *to be employed in the position of employment in*
11 *which the person would have been employed if the*
12 *continuous employment of such person with the em-*
13 *ployer had not been interrupted by such service or in*
14 *the position of employment in which such person was*
15 *employed on the date of the commencement of the*
16 *service in the uniform services for any reason other*
17 *than disability incurred in, or aggravated by, a pe-*
18 *riod of service in the uniformed services and who can-*
19 *not become qualified with reasonable efforts by the*
20 *employer, in any other position of lesser status and*
21 *pay which such person is qualified to perform, with*
22 *full seniority.*

23 *“(b)(1) If two or more persons are entitled to reemploy-*
24 *ment under section 4312 in the same position of employ-*
25 *ment and more than one of them has reported for such reem-*

1 *ployment, the person who left the position first shall have*
2 *the prior right to reemployment in that position.*

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

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

15 “(B) In the case of a person who has a disability
16 *incurred in, or aggravated by, a period of service in*
17 *the uniformed services that requires reasonable efforts*
18 *by the employer for the person to be able to perform*
19 *the duties of the position of employment, in any other*
20 *position referred to in subsection (a)(3) (in the order*
21 *of priority set out in that subsection) that provides a*
22 *similar status and pay to a position referred to in*
23 *paragraph (1) of this subsection, consistent with cir-*
24 *cumstances of such person’s case, with full seniority.*

1 **“§ 4314. Reemployment by the Federal Government**

2 “(a) Except as provided in subsections (b), (c), and
3 (d), if a person is entitled to reemployment by the Federal
4 Government under section 4312, such person shall be reem-
5 ployed in a position of employment as described in section
6 4313.

7 “(b) If the employer of a person described in subsection
8 (a) was, at the time such person entered service in the uni-
9 formed services, an agency in the executive branch, and the
10 Director of the Office of Personnel Management determines
11 that—

12 “(1) such employer no longer exists and its func-
13 tions have not been transferred to another part of the
14 executive branch; or

15 “(2) it is impossible or unreasonable for such
16 employer to reemploy such person,
17 the Director shall identify an alternative position of like
18 seniority, status, and pay for which such person is qualified
19 in another part of the executive branch, and the Director
20 shall cause employment in such position to be offered to
21 such person.

22 “(c) If the employer of a person described in subsection
23 (a) was, at the time such person entered service in the uni-
24 formed services, a part of the judicial branch or the legisla-
25 tive branch of the Federal Government, and such employer
26 determines that—

1 “(1) it is impossible or unreasonable for such
2 employer to reemploy such person; and

3 “(2) such person is otherwise eligible to acquire
4 a status for transfer to a position in the competitive
5 service in accordance with section 3304(c) of title 5,
6 such person shall, upon application to the Director of the
7 Office of Personnel Management, be considered for and of-
8 fered employment in an alternative position in the executive
9 branch on the same basis as described in subsection (b).

10 “(d) If the adjutant general of a State determines that
11 it is impossible or unreasonable to reemploy a person who
12 was a National Guard technician employed under section
13 709 of title 32, and such person is otherwise eligible to ac-
14 quire a status for transfer to a position in the competitive
15 service in accordance with section 3304(d) of title 5, such
16 person shall, upon application to the Director of the Office
17 of Personnel Management, be considered for and offered em-
18 ployment in an alternative position in the executive branch
19 of the Federal Government on the same basis as described
20 in subsection (b).

21 **“§4315. Rights, benefits, and obligations of persons**
22 **absent from employment for service in a**
23 **uniformed service**

24 “(a) A person who is reemployed under this chapter
25 is entitled to the seniority and other rights and benefits de-

1 *terminated by seniority that the person had on the date of*
2 *the commencement of service in the uniformed services plus*
3 *the additional seniority and rights and benefits that such*
4 *person would have attained if the person had remained con-*
5 *tinuously employed.*

6 “(b) *A person who performs service in the uniformed*
7 *services is considered to be on furlough or leave of absence*
8 *while in the uniformed services and is also entitled to such*
9 *other rights and benefits, not determined by seniority, relat-*
10 *ing to other employees on furlough or leave of absence which*
11 *were in effect by contract, practice, policy, agreement, or*
12 *plan at the commencement of such period of service or were*
13 *established while such person is performing such service.*
14 *Such person may be required to pay the employee cost, if*
15 *any, of any funded benefit continued pursuant to the pre-*
16 *ceding sentence to the extent other employees on furlough*
17 *or leave of absence are so required.*

18 “(c)(1) *Notwithstanding subsection (b), a person who*
19 *performs service in the uniformed services shall, at such per-*
20 *son’s request, continue to be covered by any insurance pro-*
21 *vided by such employer for up to 18 months. Such person*
22 *may be required to pay the entire cost of any benefit contin-*
23 *ued pursuant to the preceding sentence, except that in the*
24 *case of persons ordered to training or service for fewer than*

1 31 days, such person may be required to pay only the em-
2 ployee share, if any, of the cost of such benefit.

3 “(2) In the case of employer-sponsored health benefits,
4 an exclusion or waiting period may not be imposed in con-
5 nection with coverage of a health or physical condition of
6 a person entitled to participate in these benefits, either
7 under paragraph (1) or upon reinstatement, or in connec-
8 tion with a health or physical condition of any other person
9 who is covered by the benefit by reason of the coverage of
10 such person, if—

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

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

18 “(C) the condition of such person has not been
19 determined by the Secretary of Veterans Affairs to be
20 service-connected.

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

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

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

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

7 “(e) Any person who is absent from or leaves a posi-
8 tion (other than a temporary position) in the employ of
9 any employer for voluntary or involuntary service in the
10 uniformed services may utilize, with respect to the employer
11 and during any period of such service, accrued or other
12 leave which the person could have utilized if the person had
13 remained in such position.

14 **“§ 4316. Employee pension benefit plans**

15 “(a)(1)(A) Except as provided in subparagraph (B),
16 in the case of a right provided pursuant to an employee
17 pension benefit plan described in section 3(2) of the Em-
18 ployee Retirement Income Security Act of 1974 (29 U.S.C.
19 1002(2)) or a right provided under any Federal or State
20 law governing pension benefits for governmental employees,
21 the right to pension benefits of a person reemployed under
22 this chapter shall be determined under this section.

23 “(B) In the case of benefits under the Thrift Savings
24 Plan, the rights of a person reemployed under this chapter
25 shall be those rights provided in section 8432b of title 5.

1 *The first sentence of this subparagraph shall not be con-*
2 *strued to affect any other right or benefit under this*
3 *chapter.*

4 “(2)(A) *A person reemployed under this chapter shall*
5 *be treated as not having incurred a break in service with*
6 *the employer or employers maintaining the plan by reason*
7 *of such person’s period or periods of service in the uni-*
8 *formed services.*

9 “(B) *Each period served by a person in the uniformed*
10 *services shall, upon reemployment under this chapter, be*
11 *deemed to constitute service with the employer or employers*
12 *maintaining the plan for purposes of determining the*
13 *nonforfeitability of the person’s accrued benefits and for the*
14 *purpose of determining the accrual of benefits under the*
15 *plan.*

16 “(b)(1)(A) *An employer reemploying a person under*
17 *this chapter shall be liable to an employee pension benefit*
18 *plan for funding any obligation of the plan to provide the*
19 *benefits described in subsection (a)(2). For purposes of de-*
20 *termining the amount of such liability and for purposes of*
21 *section 515 of the Employee Retirement Income Security*
22 *Act of 1974 (29 U.S.C. 1145) or any similar Federal or*
23 *State law governing pension benefits for governmental em-*
24 *ployees, service in the uniformed services that is deemed*
25 *under subsection (a) to be service with the employer shall*

1 *be deemed to be service with the employer under the terms*
2 *of the plan or any applicable collective bargaining agree-*
3 *ment. In the case of a multiemployer plan, as defined in*
4 *section 3(37) of the Employee Retirement Income Security*
5 *Act of 1974 (29 U.S.C. 1002(37)), any liability of the plan*
6 *described in this paragraph shall be allocated by the plan*
7 *in such manner as the sponsor maintaining the plan shall*
8 *provide.*

9 “(B) An employee entitled to pension benefits under
10 this chapter, with respect to a period of service described
11 in subsection (a)(2)(B)—

12 “(i) shall have earnings credited with respect to
13 an employer contribution in the same manner and to
14 the same extent as earnings are credited to other em-
15 ployees during the period of service, subject to para-
16 graph (3), irrespective of when the contribution is
17 made;

18 “(ii) shall have allocated the amount of—

19 “(I) any employer contribution that was
20 voluntary; and

21 “(II) any employer contribution the total
22 amount of which was determined without ref-
23 erence to the number of, or compensation of, plan
24 participants before being allocated to the ac-
25 counts of participants; and

1 “(iii) may have allocated the amount of any for-
2 feiture,
3 in the same manner and to the same extent the allocation
4 occurs for other employees during the period of service.

5 “(2) A person reemployed under this chapter shall be
6 entitled to accrued benefits pursuant to subsection (a) that
7 are contingent on the making of, or derived from, employee
8 contributions or elective deferrals (as defined in section
9 402(g)(3) of the Internal Revenue Code of 1986) only to
10 the extent the person makes payment to the plan with re-
11 spect to such contributions or deferrals. No such payment
12 may exceed the amount the person would have been per-
13 mitted or required to contribute had the person remained
14 continuously employed by the employer throughout the pe-
15 riod of service described in subsection (a)(2)(B). Any pay-
16 ment to the plan described in this paragraph shall be made
17 during any reasonable continuous period (beginning with
18 the date of reemployment) as the employer and the person
19 may agree.

20 “(3) For purposes of computing an employer’s liability
21 under paragraph (1)(A) or the employee’s contributions
22 under paragraph (2), the employee’s compensation during
23 the period of service described in subsection (a)(2)(B)—

1 “(A) shall be computed at the same rate as the
2 employee received from the employer immediately be-
3 fore such period; or

4 “(B) if the employee’s compensation was not
5 based on a fixed rate, shall be computed on the basis
6 of the employee’s average rate of compensation during
7 the 12-month period immediately preceding such pe-
8 riod (or, if shorter, the period of employment imme-
9 diately preceding such period).

10 “(c) Any employer who reemploys a person under this
11 chapter and who is an employer contributing to a multiem-
12 ployer plan, as defined in section 3(37) of the Employee
13 Retirement Income Security Act of 1974 (29 U.S.C.
14 1002(37)), under which benefits are or may be payable to
15 such person by reason of the obligations set forth in this
16 chapter, shall, within 30 days after the date of such reem-
17 ployment, provide information, in writing, of such reem-
18 ployment to the administrator of such plan.

19 **“§ 4317. Character of service**

20 “A person’s entitlement to the benefits of this chapter
21 by reason of the service of such person in one of the uni-
22 formed services terminates upon the occurrence of any of
23 the following events:

1 **“§ 4322. Enforcement of employment or reemployment**
2 **rights**

3 “(a)(1) A person who claims that—

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

7 “(B)(i) such employer has failed or refused, or is
8 about to fail or refuse, to comply with the provisions
9 of this chapter; or

10 “(ii) in the case that the employer is the Federal
11 Government, such employer or the Office of Personnel
12 Management has failed or refused, or is about to fail
13 or refuse, to comply with the provisions of this chap-
14 ter,

15 may file a complaint with the Secretary in accordance with
16 subsection (b), and the Secretary shall investigate such com-
17 plaint.

18 “(2) In the case that the employer is the Federal Gov-
19 ernment, subsection (a) of section 4323 shall be applicable
20 to such investigation but not subsections (b) and (c) of such
21 section.

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

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

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

6 “(3) Before the receipt of a written complaint, the Sec-
7 retary shall, upon request, provide technical assistance to
8 the potential claimant and, if the Secretary determines it
9 appropriate, to such claimant’s employer.

10 “(c)(1)(A) Except as provided in paragraph (2), if the
11 Secretary, after investigation, is reasonably satisfied that
12 the employer has failed to comply with the provisions of
13 this chapter, if efforts to obtain voluntary compliance are
14 not successful, and if the claimant requests in writing that
15 the claim be referred for litigation, the Secretary shall refer
16 the case to the Attorney General. If the Attorney General
17 is reasonably satisfied that the person requesting represen-
18 tation is entitled to the rights or benefits sought, the Attor-
19 ney General shall appear and act as attorney for the claim-
20 ant in the filing of a complaint and other appropriate mo-
21 tions and pleadings and the prosecution thereof in the dis-
22 trict courts of the United States and on appeal.

23 “(B) If the Attorney General declines to represent a
24 person after receiving a referral from the Secretary or if
25 a person chooses not to apply to the Secretary for assistance

1 or to utilize the Attorney General for representation under
2 this section, such person may be represented before the dis-
3 trict court or on appeal by counsel of the person's choice.

4 “(2)(A) In the case where the employer is the Federal
5 Government, if the Secretary, after investigation, is reason-
6 ably satisfied that the employer has failed to comply with
7 the provisions of this chapter, if efforts to obtain voluntary
8 compliance are not successful, and if the claimant requests
9 in writing that the claim be referred for litigation, the case
10 shall be referred to the Office of the Special Counsel, litiga-
11 tion shall be before the Merit Systems Protection Board, and
12 if the Special Counsel is reasonably satisfied that the person
13 requesting representation is entitled to the rights or benefits
14 sought, the Special Counsel shall appear and act as attor-
15 ney for the claimant in filing an appeal to the Merit Sys-
16 tems Protection Board and in pursuing that appeal.

17 “(B) If the Special Counsel declines to represent a per-
18 son after receiving a referral from the Secretary or if a per-
19 son chooses not to apply to the Secretary for assistance or
20 to utilize the Special Counsel for representation under this
21 section, such person may be represented before the Merit
22 Systems Protection Board or on appeal by counsel of the
23 person's choice.

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

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

3 “(i) *to comply with the provisions of this chap-*
4 *ter;*

5 “(ii) *to compensate the person for any loss of*
6 *wages or benefits suffered by reason of such employer’s*
7 *failure to comply with the provisions of this chapter;*
8 *and*

9 “(iii) *to pay, in addition to the compensation*
10 *paid under clause (ii), the person an amount equal*
11 *to such compensation as liquidated damages, if the*
12 *court determines that the employer’s failure to comply*
13 *with the provisions of this chapter was willful.*

14 “(B) *Any compensation and payment under clauses*
15 *(ii) and (iii) of subparagraph (A) shall be in addition to,*
16 *and shall not be deemed to diminish, any of the other rights*
17 *and benefits provided for in this chapter.*

18 “(3)(A) *No fees or court costs shall be charged or taxed*
19 *against any person claiming rights or benefits under this*
20 *chapter.*

21 “(B) *In any action or proceeding to enforce a provi-*
22 *sion of this chapter by a person described in paragraph (2)*
23 *who obtained private counsel for such action or proceeding,*
24 *the court, in its discretion, may award any such person*
25 *who prevails in such action or proceeding a reasonable at-*

1 *torney's fee, expert witness fees, and other litigation ex-*
2 *penses.*

3 “(4) *The court may use its full equity powers, includ-*
4 *ing temporary or permanent injunctions and temporary re-*
5 *straining orders, to vindicate fully the rights or benefits of*
6 *persons under this chapter.*

7 “(5) *An action under this chapter may be initiated*
8 *only by a person claiming rights or benefits under this*
9 *chapter, not by an employer, prospective employer, or other*
10 *entity with obligations under this chapter.*

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

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

15 “(8) *A State shall be subject to the same remedies, in-*
16 *cluding prejudgment interest, as may be imposed upon any*
17 *private employer under this section.*

18 “(e)(1) *This subsection applies only with respect to the*
19 *Federal Government as employer.*

20 “(2)(A) *If the Merit Systems Protection Board con-*
21 *cludes that the Federal Government, as employer, has failed*
22 *to comply with the provisions of this chapter or that the*
23 *Director of the Office of Personnel Management has not met*
24 *an obligation set forth in section 4314, the Board shall enter*
25 *an order specifically requiring the employing agency or the*

1 *Director to comply with such provisions and to compensate*
2 *such person for any loss of wages or benefits suffered by*
3 *reason of the employing agency's or the Director's unlawful*
4 *action.*

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

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

14 *“(B) The Secretary and the Special Counsel shall not*
15 *represent persons with respect to review of decisions of the*
16 *Merit Systems Protection Board under this chapter in the*
17 *United States Court of Appeals for the Federal Circuit or*
18 *the Supreme Court.*

19 *“(C) If a person seeks such judicial review, or in any*
20 *case in which a person is involved in the Board's decision*
21 *is being appealed by another party, such person may be*
22 *represented by counsel of the person's choice.*

23 **“§ 4323. Conduct of investigation; subpoenas**

24 *“(a) In carrying out investigations under this chapter,*
25 *the Secretary's duly authorized representatives shall at all*

1 *reasonable times have access to, for the purpose of examina-*
2 *tion, and the right to copy and receive, any documents of*
3 *any person or employer.*

4 “(b) *Except as provided in section 4322(a)(2), in car-*
5 *rying out investigations under this chapter, the Secretary*
6 *may require by subpoena the attendance and testimony of*
7 *witnesses and the production of documents relating to any*
8 *matter under investigation. In case of disobedience of the*
9 *subpoena or contumacy and on request of the Secretary, the*
10 *Attorney General may apply to any district court of the*
11 *United States in whose jurisdiction such disobedience or*
12 *contumacy occurs for an order enforcing the Secretary’s*
13 *subpoena.*

14 “(c) *Except as provided in section 4322(a)(2), upon*
15 *application, the district courts of the United States shall*
16 *have jurisdiction to issue writs commanding any person or*
17 *employer to comply with the subpoena of the Secretary or*
18 *to comply with any order of the Secretary made pursuant*
19 *to a lawful investigation under this chapter, and the dis-*
20 *trict courts shall have jurisdiction to punish failure to obey*
21 *a subpoena or other lawful order of the Secretary as a con-*
22 *tempt of court.*

1 “SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

2 “§ 4331. **Regulations**

3 “(a) *The Secretary (in consultation with the Secretary*
4 *of Defense) may prescribe regulations implementing the*
5 *provisions of this chapter with regard to the application*
6 *of this chapter to States, local governments, and private em-*
7 *ployers.*

8 “(b)(1) *The Director of the Office of Personnel Manage-*
9 *ment (in consultation with the Secretary and the*
10 *Secretary of Defense) may prescribe regulations implement-*
11 *ing the provisions of this chapter with regard to the appli-*
12 *cation of this chapter to the Federal Government as em-*
13 *ployer. Such regulations shall be consistent with the regula-*
14 *tions pertaining to the States and private employers, except*
15 *that employees of the Federal Government may be given*
16 *greater or additional rights. Nothing in this subsection con-*
17 *stitutes authority for the Director to prescribe any matter*
18 *for which any regulation may be prescribed under para-*
19 *graph (2).*

20 “(2) *Regulations may be prescribed—*

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

23 “(B) *by the Office of Special Counsel to carry*
24 *out its responsibilities under this chapter.*

1 **“§ 4332. Reports**

2 *“The Secretary shall, after consultation with the Attor-*
3 *ney General and the Special Counsel referred to in section*
4 *4322(b)(2) and no later than February 1, 1995, and each*
5 *February 1 thereafter, transmit to the Congress, a report*
6 *containing the following matters for the fiscal year ending*
7 *before such February 1:*

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

11 *“(2) The number of cases referred to the Attorney*
12 *General or the Special Counsel pursuant to section*
13 *4322(c)(1) or 4322(c)(2), respectively, during such fis-*
14 *cal year.*

15 *“(3) The number of pleadings filed by the Attor-*
16 *ney General pursuant to section 4322(c)(1) during*
17 *such fiscal year.*

18 *“(4) The nature and status of each case reported*
19 *on pursuant to paragraph (1), (2), or (3).*

20 *“(5) An indication of whether there are any ap-*
21 *parent patterns of violation of the provisions of this*
22 *chapter, together with an explanation thereof.*

23 *“(6) Recommendations for administrative or leg-*
24 *islative action that the Secretary, the Attorney Gen-*
25 *eral, or the Special Counsel considers necessary for*
26 *the effective implementation of this chapter, including*

1 *any action that could be taken to encourage medi-*
 2 *ation, before claims are filed under this chapter, be-*
 3 *tween employers and persons seeking employment or*
 4 *reemployment.*

5 **“§ 4333. Outreach**

6 *“The Secretary, the Secretary of Defense, and the Sec-*
 7 *retary of Veterans Affairs shall take such actions as such*
 8 *Secretaries determine are appropriate to inform persons en-*
 9 *titled to rights and benefits under this chapter and employ-*
 10 *ers of the rights, benefits, and obligations of such persons*
 11 *and such employers under this chapter.”.*

12 **(b) CONFORMING AMENDMENTS.—**

13 **(1) AMENDMENTS TO TITLE 38.—***The tables of*
 14 *chapters at the beginning of title 38, United States*
 15 *Code, and the beginning of part III of such title are*
 16 *each amended by striking out the item relating to*
 17 *chapter 43 and inserting in lieu thereof the following:*

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

18 **(2) AMENDMENT TO TITLE 5.—****(A)** *Section*
 19 *1204(a)(1) of title 5, United States Code, is amended*
 20 *by striking out “section 4323” and inserting in lieu*
 21 *thereof “chapter 43”.*

22 **(B)** *Subchapter II of chapter 35 of such title is*
 23 *repealed.*

1 (C) *The table of sections for chapter 35 of such*
2 *title is amended by striking out the heading relating*
3 *to subchapter II of such chapter and the item relating*
4 *to section 3551 of such chapter.*

5 (3) *AMENDMENT TO TITLE 10.—Section 706(c)(1)*
6 *of title 10, United States Code, is amended by strik-*
7 *ing out “section 4321” and inserting in lieu thereof*
8 *“chapter 43”.*

9 (c) *AMENDMENTS TO TITLE 28.—Section 631 of title*
10 *28, United States Code, is amended—*

11 (1) *by striking out subsection (j);*

12 (2) *by redesignating subsections (k) and (l) as*
13 *subsections (j) and (k), respectively; and*

14 (3) *in subsection (j), as redesignated by para-*
15 *graph (2), by striking out “under the terms of” and*
16 *all that follows through “section,” the first place it*
17 *appears and inserting in lieu thereof “under chapter*
18 *43 of title 38.”.*

19 **SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIRE-**
20 **MENTS.**

21 *Section 5303A(b)(3) of title 38, United States Code,*
22 *is amended—*

23 (1) *by striking out “or” at the end of subpara-*
24 *graph (E);*

1 (2) *by striking out the period at the end of sub-*
2 *paragraph (F) and inserting in lieu thereof “; or”;*
3 *and*

4 (3) *by adding at the end thereof the following*
5 *new subparagraph:*

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

7 **SEC. 4. THRIFT SAVINGS PLAN.**

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

10 **“§ 8432b. Contributions of persons who perform mili-**
11 **tary service**

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

13 “(1) *separates or enters leave-without-pay status*
14 *in order to perform military service; and*

15 “(2) *is subsequently restored to or reemployed in*
16 *a position which is subject to this chapter, pursuant*
17 *to chapter 43 of title 38.*

18 “(b)(1) *Each employee to whom this section applies*
19 *may contribute to the Thrift Savings Fund, in accordance*
20 *with this subsection, an amount not to exceed the amount*
21 *described in paragraph (2).*

22 “(2) *The maximum amount which an employee may*
23 *contribute under this subsection is equal to—*

24 “(A) *the contributions under section 8432(a)*
25 *which would have been made, over the period begin-*

1 *ning on date of separation or commencement of leave-*
2 *without-pay status (as applicable) and ending on the*
3 *day before the date of restoration or reemployment (as*
4 *applicable); reduced by*

5 *“(B) any contributions under section 8432(a) ac-*
6 *tually made by such employee over the period de-*
7 *scribed in subparagraph (A).*

8 *“(3) Contributions under this subsection—*

9 *“(A) shall be made at the same time and in the*
10 *same manner as would any contributions under sec-*
11 *tion 8432(a);*

12 *“(B) shall be made over the period of time speci-*
13 *fied by the employee under paragraph (4)(B); and*

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

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

18 *“(A) the total amount such employee wishes to*
19 *contribute under this subsection with respect to any*
20 *particular period referred to in paragraph (2)(B);*
21 *and*

22 *“(B) the period of time over which the employee*
23 *wishes to make contributions under this subsection.*

24 *The employing agency may place a maximum limit on the*
25 *period of time referred to in subparagraph (B), which can-*

1 *not be shorter than two times the period referred to in para-*
2 *graph (2)(B) and not longer than four times such period.*

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

6 *“(1) in the same manner as would be required*
7 *under section 8432(c)(2) if the employee contributions*
8 *were being made under section 8432(a); and*

9 *“(2) disregarding any contributions then actu-*
10 *ally being made under section 8432(a) and any agen-*
11 *cy contributions relating thereto.*

12 *“(d) An employee to whom this section applies is enti-*
13 *tled to have contributed to the Thrift Savings Fund on such*
14 *employee’s behalf an amount equal to—*

15 *“(1) 1 percent of such employee’s basic pay (as*
16 *determined under subsection (e)) for the period re-*
17 *ferred to in subsection (b)(2)(B); reduced by*

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

21 *“(e) For purposes of any computation under this sec-*
22 *tion, an employee shall, with respect to the period referred*
23 *to in subsection (b)(2)(B), be considered to have been paid*
24 *at the rate which would have been payable over such period*
25 *had such employee remained continuously employed in the*

1 *position which such employee last held before separating or*
2 *entering leave-without-pay status to perform military*
3 *service.*

4 “(f)(1) *The employing agency shall be required to pay*
5 *lost earnings on contributions made pursuant to subsections*
6 *(c) and (d). Such earnings shall be calculated retroactively*
7 *to the date the contribution would have been made had the*
8 *employee not separated or entered leave without pay status*
9 *to perform military service.*

10 “(2) *Procedures for calculating and crediting the earn-*
11 *ings payable pursuant to paragraph (1) shall be prescribed*
12 *by the Executive Director.*

13 “(g) *Amounts paid under subsection (c), (d), or (f)*
14 *shall be paid—*

15 “(1) *by the agency to which the employee is re-*
16 *stored or in which such employee is reemployed;*

17 “(2) *from the same source as would be the case*
18 *under section 8432(e) with respect to sums required*
19 *under section 8432(c); and*

20 “(3) *within the time prescribed by the Executive*
21 *Director.*

22 “(h)(1) *For purposes of section 8432(g), in the case*
23 *of an employee to whom this section applies—*

24 “(A) *a separation from civilian service in order*
25 *to perform the military service on which the employ-*

1 *ee's restoration or reemployment rights are based*
2 *shall be disregarded; and*

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

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

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

15 *“(i) The Executive Director shall prescribe regulations*
16 *to carry out this section.”.*

17 *(2) The table of sections for chapter 84 of title 5, Unit-*
18 *ed States Code, is amended by inserting after the item relat-*
19 *ing to section 8432a the following:*

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

20 *(b) PRESERVATION OF CERTAIN RIGHTS.—(1) Section*
21 *8433(d) of title 5, United States Code, is amended by strik-*
22 *ing “subsection (e).” and inserting “subsection (e), unless*
23 *an election under section 8432b(h)(2) is made to treat such*
24 *separation for purposes of this subsection as if it had never*
25 *occurred.”.*

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

6 (c) ELECTION TO RESUME REGULAR CONTRIBUTIONS
7 UPON RESTORATION OR REEMPLOYMENT.—Section 8432 of
8 title 5, United States Code, is amended by adding at the
9 end the following:

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

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

12 “(B) who, during the period of such employee’s
13 absence from civilian service (as referred to in section
14 8432b(b)(2)(B))—

15 “(i) is eligible to make an election described
16 in subsection (b)(1); or

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

22 “(2) The Executive Director shall prescribe regulations
23 to ensure that any employee to whom this subsection applies
24 shall, within a reasonable time after being restored or reem-
25 ployed (in the manner described in section 8432b(a)(2)),

1 *be afforded the opportunity to make, for purposes of this*
2 *section, any election which would be allowable during a pe-*
3 *riod described in subsection (b)(1)(A).”.*

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

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

11 *“(A) any reference in such section to contribu-*
12 *tions under section 8432(a) shall be considered a ref-*
13 *erence to employee contributions under this section;*

14 *“(B) the contribution rate under section*
15 *8432b(b)(2)(A) shall be the maximum percentage al-*
16 *lowable under subsection (b)(2) of this section; and*

17 *“(C) subsections (c) and (d) of section 8432b*
18 *shall be disregarded.”.*

19 *(e) EFFECTIVE DATE; APPLICABILITY.—This section*
20 *and the amendments made by this section—*

21 *(1) shall take effect on the date of enactment of*
22 *this Act; and*

23 *(2) shall apply to any employee whose release*
24 *from military service, discharge from hospitalization,*
25 *or other similar event making the individual eligible*

1 *to seek restoration or reemployment under chapter 43*
2 *of title 38, United States Code, occurs on or after Au-*
3 *gust 2, 1990.*

4 *(f) RULES FOR APPLYING AMENDMENTS TO EMPLOY-*
5 *EES RESTORED OR REEMPLOYED BEFORE EFFECTIVE*
6 *DATE.—In the case of any employee (described in sub-*
7 *section (e)(2)) who is reemployed or restored (in the cir-*
8 *cumstances described in section 8432b(a) of title 5, United*
9 *States Code, as amended by this section) before the date of*
10 *enactment of this Act, the amendments made by this section*
11 *shall apply to such employee, in accordance with their*
12 *terms, subject to the following:*

13 *(1) The employee shall be deemed not to have*
14 *been reemployed or restored until—*

15 *(A) the date of enactment of this Act, or*

16 *(B) the first day following such employee’s*
17 *reemployment or restoration on which such em-*
18 *ployee is or was eligible to make an election re-*
19 *lating to contributions to the Thrift Savings*
20 *Fund,*

21 *whichever occurs or occurred first.*

22 *(2) If the employee changed agencies during the*
23 *period between date of actual reemployment or res-*
24 *toration and the date of enactment of this Act, the*

1 *employing agency as of such date of enactment shall*
2 *be considered the reemploying or restoring agency.*

3 *(3)(A) For purposes of any computation under*
4 *section 8432b of such title, pay shall be determined in*
5 *accordance with subsection (e) of such section, except*
6 *that, with respect to the period described in subpara-*
7 *graph (B), actual pay attributable to such period*
8 *shall be used.*

9 *(B) The period described in this subparagraph is*
10 *the period beginning on the first day of the first ap-*
11 *plicable pay period beginning on or after the date of*
12 *the employee's actual reemployment or restoration*
13 *and ending on the day before the date determined*
14 *under paragraph (1).*

15 *(4) Deem section 8432b(b)(2)(A) of such title to*
16 *be amended by striking "ending on the day before the*
17 *date of restoration or reemployment (as applicable)"*
18 *and inserting "ending on the date determined under*
19 *section 4(f)(1) of the Uniformed Services Employment*
20 *and Reemployment Rights Act of 1993".*

21 **SEC. 5. TECHNICAL AMENDMENT.**

22 *Section 9(d) of Public Law 102-16 (105 Stat. 55) is*
23 *amended by striking out "Act" the first place it appears*
24 *and inserting in lieu thereof "section".*

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

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

7 (2) *The provisions of chapter 43 of title 38, United*
8 *States Code, in effect on the day before such date of enact-*
9 *ment, shall continue to apply to reemployments initiated*
10 *before the end of such 60-day period.*

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

21 (4) *A person who initiates reemployment under chap-*
22 *ter 43 of title 38, United States Code, during or after the*
23 *60-day period beginning on the date of enactment of this*
24 *Act and whose reemployment is made in connection with*
25 *a period of service in the uniform services that was initiated*
26 *before the end of such period shall be deemed to have satis-*

1 *fied the notification requirement of section 4312(a)(1) of*
2 *title 38, United States Code, as provided in the amendments*
3 *made by this Act, if the person complied with any applica-*
4 *ble notice requirement under chapter 43, United States*
5 *Code, as in effect on the day before the date of enactment*
6 *of this Act.*

7 **(b) DISCRIMINATION.**—*The provisions of section 4311*
8 *of title 38, United States Code, as provided in the amend-*
9 *ments made by this Act, and the provisions of subchapter*
10 *III of chapter 43 of such title, as provided in the amend-*
11 *ments made by this Act, that are necessary for the imple-*
12 *mentation of such section 4311 shall become effective on the*
13 *date of enactment of this Act.*

14 **(c) INSURANCE.**—*(1) Except as provided in paragraph*
15 *(2), the provisions of section 4315(c) of title 38, United*
16 *States Code, as provided in the amendments made by this*
17 *Act, concerning insurance coverage shall become effective on*
18 *the date of enactment of this Act.*

19 **(2)** *A person on active duty on the date of enactment*
20 *of this Act, or a family member or personal representative*
21 *of such person, may, after the date of enactment of this Act,*
22 *elect to reinstate or continue insurance coverage as provided*
23 *in such section 4315. If such an election is made, insurance*
24 *coverage shall remain in effect for the remaining portion*

1 *of the 18-month period that began on the date of such per-*
2 *son's separation from civilian employment.*

3 *(d) DISABILITY.—(1) Section 4313(a)(3) of chapter 43*
4 *of title 38, United States Code, as provided in the amend-*
5 *ments made by this Act, shall apply to reemployments initi-*
6 *ated on or after August 1, 1990.*

7 *(2) Effective as of August 1, 1990, section 4307 of title*
8 *38, United States Code (as in effect on the date of enactment*
9 *of this Act), is hereby repealed, and the table of sections*
10 *at the beginning of chapter 43 of such title (as in effect*
11 *on the date of enactment of this Act) is amended by striking*
12 *out the item relating to section 4307.*

13 *(e) REPORTS.—The reports made by the Secretary of*
14 *Labor pursuant to section 4332 of title 38, United States*
15 *Code, as provided in the amendments made by this Act,*
16 *shall be made with respect to cases pertaining to chapter*
17 *43 of such title without regard to whether a case originated*
18 *under such chapter before, on, or after the date of enactment*
19 *of this Act.*

20 *(f) PREVIOUS ACTIONS.—Except as otherwise pro-*
21 *vided, the amendments made by this Act do not affect*
22 *reemployments that were initiated, rights, benefits, and du-*
23 *ties that matured, penalties that were incurred, and pro-*
24 *ceedings that were begun before the end of the 60-day period*
25 *referred to in subsection (a).*



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