

113TH CONGRESS
2D SESSION

S. 2312

To amend titles 5, 10, and 32, United States Code, to eliminate inequities in the treatment of National Guard technicians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2014

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend titles 5, 10, and 32, United States Code, to eliminate inequities in the treatment of National Guard technicians, 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 “National Guard Tech-
5 nician Equity Act”.

6 **SEC. 2. TITLES 10 AND 32, UNITED STATES CODE, AMEND-**
7 **MENTS REGARDING NATIONAL GUARD TECH-**
8 **NICIANS AND RELATED PROVISIONS.**

9 (a) **AUTHORITY TO EMPLOY TECHNICIAN AS NON-**
10 **DUAL STATUS TECHNICIAN AFTER 20 YEARS OF CRED-**

1 ITABLE SERVICE.—Subsection (c) of section 709 of title
2 32, United States Code, is amended to read as follows:

3 “(c) A person shall have the right to be employed
4 under subsection (a) as a non-dual status technician (as
5 defined by section 10217 of title 10) if—

6 “(1) the technician position occupied by the
7 person has been designated by the Secretary con-
8 cerned to be filled only by a non-dual status techni-
9 cian; or

10 “(2) the person occupying the technician posi-
11 tion has at least 20 years of creditable service as a
12 military technician (dual status).”.

13 (b) EXCEPTION TO DUAL-STATUS EMPLOYMENT
14 CONDITION OF MEMBERSHIP IN SELECTED RESERVE.—
15 Section 10216 of title 10, United States Code, is amend-
16 ed—

17 (1) in subsection (a)(1)(B), by inserting “sub-
18 ject to subsection (d),” before “is required”; and

19 (2) in subsection (d)(1), by striking “Unless
20 specifically exempted by law” and inserting “Except
21 as provided in section 709(c)(2) of title 32 or as oth-
22 erwise specifically exempted by law”.

23 (c) CONTINUED COMPENSATION AFTER LOSS OF
24 MEMBERSHIP IN SELECTED RESERVE.—Subsection (e) of

1 section 10216 of title 10, United States Code, is amended
2 to read as follows:

3 “(e) CONTINUED COMPENSATION AFTER LOSS OF
4 MEMBERSHIP IN SELECTED RESERVE.—Funds appro-
5 priated for the Department of Defense may continue to
6 be used to provide compensation to a military technician
7 who was hired as a military technician (dual status), but
8 who is no longer a member of the Selected Reserve.”.

9 (d) EXEMPTION OF MILITARY TECHNICIANS FROM
10 REVIEW BY ARMY QUALITATIVE RETENTION PROGRAM
11 OR AIR FORCE SELECTIVE RETENTION PROGRAM.—Sub-
12 section (f) of such section is amended to read as follows:

13 “(f) EXEMPTION FROM CONSIDERATION BY ARMED
14 FORCES RETENTION BOARDS.—A military technician
15 (dual status) who is fully qualified in the technician’s mili-
16 tary technician (dual status) position and is properly per-
17 forming the technician’s military technician duties in such
18 position—

19 “(1) shall be retained in the armed forces;

20 “(2) may not be considered for involuntary sep-
21 aration by a retention board of the armed force con-
22 cerned; and

23 “(3) shall be entitled to re-enlist as an enlisted
24 member so as to maintain eligibility for continued
25 employment as a military technician (dual status).”.

1 (e) REPEAL OF PERMANENT LIMITATIONS ON NUM-
 2 BER OF NON-DUAL STATUS TECHNICIANS.—Section
 3 10217 of title 10, United States Code, is amended by
 4 striking subsection (e).

5 (f) TECHNICIAN RESTRICTED RIGHT OF APPEAL
 6 AND ADVERSE ACTIONS COVERED.—

7 (1) RIGHTS OF GRIEVANCE, ARBITRATION, AP-
 8 PEAL, AND REVIEW BEYOND AG.—Section 709 of
 9 title 32, United States Code, is amended—

10 (A) in subsection (f)—

11 (i) in the matter preceding paragraph
 12 (1), by striking “Notwithstanding any
 13 other provision of law and under” and in-
 14 serting “Under”; and

15 (ii) in paragraph (4), by striking “a
 16 right of appeal” and inserting “subject to
 17 subsection (j), a right of appeal”; and

18 (B) by adding at the end the following new
 19 subsection:

20 “(j)(1) Notwithstanding subsection (f)(4) or any
 21 other provision of law, a technician and a labor organiza-
 22 tion that is the exclusive representative of a bargaining
 23 unit including the technician shall have the rights of griev-
 24 ance, arbitration, appeal, and review extending beyond the
 25 adjutant general of the jurisdiction concerned and to the

1 Merit Systems Protection Board and thereafter to the
2 United States Court of Appeals for the Federal Circuit,
3 in the same manner as provided in sections 4303, 7121,
4 and 7701–7703 of title 5, with respect to a performance-
5 based or adverse action imposing removal, suspension for
6 more than 14 days, furlough for 30 days or less, or reduc-
7 tion in pay or pay band (or comparable reduction).

8 “(2) This subsection does not apply to a technician
9 who is serving under a temporary appointment or in a trial
10 or probationary period.”.

11 (2) ADVERSE ACTIONS COVERED.—Section
12 709(g) of title 32, United States Code, is amended
13 by striking “7511, and 7512”.

14 (3) CONFORMING AMENDMENT.—Section
15 7511(b) of title 5, United States Code, is amend-
16 ed—

17 (A) by striking paragraph (5); and

18 (B) by redesignating paragraphs (6)
19 through (10) as paragraphs (5) through (9), re-
20 spectively.

21 (g) REPEAL OF PROHIBITION AGAINST OVERTIME
22 PAY FOR NATIONAL GUARD TECHNICIANS.—Section
23 709(h) of title 32, United States Code, is amended by
24 striking the second sentence and inserting the following
25 new sentence: “Notwithstanding section 5542 or 5543 of

1 title 5 or any other provision of law, the Secretary con-
 2 cerned shall pay a technician for irregular or overtime
 3 work at a rate equal to the rate of basic pay applicable
 4 to the technician, except that, at the request of the techni-
 5 cian, the Secretary may grant the technician, instead of
 6 such pay, an amount of compensatory time off from the
 7 technician's scheduled tour of duty equal to the amount
 8 of time spent in such irregular or overtime work.”.

9 **SEC. 3. TITLE 5, UNITED STATES CODE, AMENDMENT RE-**
 10 **GARDING NATIONAL GUARD TECHNICIANS**
 11 **AND RELATED MATTERS.**

12 (a) LEAVE.—

13 (1) IN GENERAL.—Section 6323(a) of title 5,
 14 United States Code, is amended—

15 (A) in paragraph (1), by striking “para-
 16 graph (2)” and inserting “paragraphs (2) and
 17 (3)”;

18 (B) by redesignating paragraph (3) as
 19 paragraph (4); and

20 (C) by inserting after paragraph (2) the
 21 following new paragraph (3):

22 “(3) An employee described in paragraph (1) who vol-
 23 unteers for active Guard and Reserve duty (as described
 24 in section 101(d)(6) of title 10) or training or duty under

1 section 502(f) of title 32 shall not accrue leave under this
2 subsection.”.

3 (2) REPORT.—Not later than 180 days after
4 the date of the enactment of this Act, the Secretary
5 of Defense shall submit to Congress a report setting
6 forth the following:

7 (A) A description of the average number of
8 hours per fiscal year that a Federal employee
9 who is also a member of the National Guard
10 spends in any type of leave status (including
11 leave without pay) in order to cover periods of
12 active duty for training or inactive-duty train-
13 ing (as defined in section 101 of title 37,
14 United States Code), or to engage in other
15 training under sections 502–505 of title 32,
16 United States Code.

17 (B) An assessment whether leave provided
18 under section 6323(a) of title 5, United States
19 Code (as amended by paragraph (1)), is ade-
20 quate to cover the operational tempo of the Na-
21 tional Guard.

22 (b) COMPTROLLER GENERAL OF THE UNITED
23 STATES REPORT ON HEALTH CARE BENEFITS.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the date of the enactment of this Act, the

1 Comptroller General of the United States shall sub-
2 mit to Congress a report setting forth the following:

3 (A) An evaluation of the feasibility of con-
4 verting military technicians from FEHBP cov-
5 erage to coverage provided under the
6 TRICARE Reserve Select option of the
7 TRICARE program.

8 (B) A description of any problems associ-
9 ated with the conversion of military technicians
10 from FEHBP coverage to coverage provided
11 under chapter 55 of title 10, United States
12 Code, during contingency operations.

13 (2) DEFINITIONS.—In this subsection:

14 (A) The term “contingency operation” has
15 the meaning given that term in section
16 101(a)(13) of title 10, United States Code.

17 (B) The term “FEHBP coverage” means
18 coverage provided under chapter 89 of title 5,
19 United States Code.

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