

103^D CONGRESS
1ST SESSION

S. 843

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.

IN THE SENATE OF THE UNITED STATES

APRIL 29 (legislative day, APRIL 19), 1993

Mr. ROCKEFELLER (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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.

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 REEM-**
 6 **PLOYMENT RIGHTS OF MEMBERS OF**
 7 **THE UNIFORMED SERVICES**

“SUBCHAPTER I—GENERAL

“Sec.

- “4301. Purposes; sense of Congress.
- “4302. Relation to other law; construction.
- “4303. Definitions.
- “4304. Character of service.

“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. Reemployment by certain Federal agencies.
- “4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service.
- “4317. Employee pension benefit plans.

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

- “4321. Assistance in obtaining reemployment or other employment rights or benefits.
- “4322. Enforcement of rights with respect to a State or private employer.
- “4323. Enforcement of rights with respect to the Federal executive agencies.
- “4324. Enforcement of rights with respect to certain Federal agencies.
- “4325. Conduct of investigation; subpoenas.

“SUBCHAPTER IV—MISCELLANEOUS

- “4331. Regulations.
- “4332. Outreach.

1 “SUBCHAPTER I—GENERAL

2 **“§ 4301. Purposes; sense of Congress**

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

4 “(1) to encourage noncareer service in the uni-
5 formed services by eliminating or minimizing the dis-
6 advantages to civilian careers and employment which
7 can result from such service;8 “(2) to minimize the disruption to the lives of
9 persons performing service in the uniformed services
10 as well as to their employers, their fellow employees,
11 and their communities, by providing for the prompt
12 reemployment of such persons upon their completion
13 of such service under honorable conditions; and14 “(3) to prohibit discrimination against persons
15 because of their service in the uniformed services.16 “(b) It is the sense of Congress that the Federal Gov-
17 ernment should be a model employer in carrying out the
18 reemployment practices provided for in this chapter.19 **“§ 4302. Relation to other law; construction**20 “(a) Nothing in this chapter shall supersede, nullify
21 or diminish any Federal or State law (including any local
22 law or ordinance) or employer practice, policy, agreement,
23 or plan that establishes a right or benefit more beneficial
24 to a person than a right or benefit provided for such per-

1 son in this chapter or is in addition to a right or benefit
2 provided for such person in this chapter.

3 “(b) This chapter supersedes any State law (includ-
4 ing any local law or ordinance) or employer practice, pol-
5 icy, agreement, or plan that reduces, limits, or eliminates
6 in any manner any right or benefit provided by this chap-
7 ter, including the establishment of additional prerequisites
8 to the exercise of any such right or the receipt of any such
9 benefit that is not a prerequisite established by or under
10 this chapter.

11 **“§ 4303. Definitions**

12 “For the purposes of this chapter—

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

18 “(2) The term ‘benefit’, ‘benefit of employ-
19 ment’, or ‘rights and benefits’ means any advantage,
20 profit, privilege, gain, status, account, or interest
21 that accrues by reason of an employment contract or
22 an employer practice or custom (other than wages or
23 salary for work performed) and includes rights
24 under a pension or health plan, insurance coverage
25 and awards, rights under an employee stock owner-

1 ship plan, bonuses, severance pay, supplemental un-
2 employment benefits, vacations, and the opportunity
3 to select work hours or location of employment.

4 “(3)(A) The term ‘employee’ means any person
5 employed by an employer.

6 “(B) With respect to employment in a foreign
7 country, the term ‘employee’ includes an individual
8 who is a citizen of the United States.

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

14 “(i) a person, institution, organization, or
15 other entity to whom the employer has dele-
16 gated the performance of employment-related
17 responsibilities;

18 “(ii) the Federal Government;

19 “(iii) a State;

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

23 “(v) a person, institution, organization, or
24 other entity that has denied initial employment
25 in violation of section 4311 of this title.

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

5 “(C) Except as an actual employer of employ-
6 ees, an employee pension benefit plan described in
7 section 3(2) of the Employee Retirement Income Se-
8 curity Act of 1974 (29 U.S.C. 1002(2)) shall be
9 deemed to be an employer only with respect to the
10 obligation to provide benefits described in section
11 4317 of this title.

12 “(5) The term ‘Federal executive agency’ in-
13 cludes the United States Postal Service, the Postal
14 Rate Commission, any nonappropriated fund instru-
15 mentality of the United States, and any Executive
16 agency (as that term is defined in section 105 of
17 title 5) other than an agency referred to in section
18 2302(a)(2)(C)(ii) of title 5.

19 “(6) The term ‘Federal Government’ includes
20 any Federal executive agency, the legislative branch
21 of the United States, and the judicial branch of the
22 United States.

23 “(7) 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
3 are paid.

4 “(8) 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
9 uniformed service in which such service is to be per-
10 formed.

11 “(9) The term ‘qualified’, with respect to an
12 employment position, means having the ability to
13 perform the essential tasks of the position.

14 “(10) The term ‘reasonable efforts’, in the case
15 of actions required of an employer under this chap-
16 ter, means actions, including training provided by an
17 employer, whose carrying out does not place an
18 undue hardship on the employer.

19 “(11) The term ‘Secretary’ means the Secretary
20 of Labor or any person designed by such Secretary
21 to carry out an activity under this chapter.

22 “(12) The term ‘seniority’ means longevity in
23 employment together with any benefits of employ-
24 ment which accrue with, or are determined by, lon-
25 gevity in employment.

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

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

17 “(15) The term ‘undue hardship’, in the case of
18 actions taken by an employer, means actions requir-
19 ing significant difficulty or expense, when considered
20 in light of—

21 “(A) the nature and cost of the action
22 needed under this chapter;

23 “(B) the overall financial resources of the
24 facility or facilities involved in the provision of
25 the action; the number of persons employed at

1 such facility; the effect on expenses and re-
2 sources, or the impact otherwise of such action
3 upon the operation of the facility;

4 “(C) the overall financial resources of the
5 employer; the overall size of the business of an
6 employer with respect to the number of its em-
7 ployees; the number, type, and location of its
8 facilities; and

9 “(D) the type of operation or operations of
10 the employer, including the composition, struc-
11 ture, and functions of the work force of such
12 employer; the geographic separateness, adminis-
13 trative, or fiscal relationship of the facility or
14 facilities in question to the employer.

15 “(16) The term ‘uniformed services’ means the
16 Armed Forces, the Army National Guard and the
17 Air National Guard when engaged in active duty for
18 training, inactive duty training, or full-time National
19 Guard duty, the commissioned corps of the Public
20 Health Service, and any other category of persons
21 designated by the President in time of war or emer-
22 gency.

23 **“§ 4304. Character of service**

24 “A person’s entitlement to the benefits of this chapter
25 by reason of the service of such person in one of the uni-

1 formed services terminates upon the occurrence of any of
2 the following events:

3 “(1) A separation of such person from such
4 uniformed service with a dishonorable or bad con-
5 duct discharge.

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

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

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

14 “SUBCHAPTER II—EMPLOYMENT AND REEM-
15 PLOYMENT RIGHTS AND LIMITATIONS;
16 PROHIBITIONS

17 “§4311. **Discrimination against persons who serve in**
18 **the uniformed services and acts of re-**
19 **prisal prohibited**

20 “(a) A person who is a member of, applies to be a
21 member of, performs, has performed, applies to perform,
22 or has an obligation to perform service in a uniformed
23 service shall not be denied initial employment, reemploy-
24 ment, retention in employment, promotion, or any benefit

1 of employment by an employer on the basis of that mem-
2 bership, application for membership, service, or obligation.

3 “(b) An employer shall be considered to have denied
4 a person initial employment, reemployment, retention in
5 employment, promotion, or a benefit of employment in vio-
6 lation of this section if the person’s membership, applica-
7 tion for membership, service, application for service, or ob-
8 ligation for service in the uniformed services is a motivat-
9 ing factor in the employer’s action, unless the employer
10 can demonstrate that the action would have been taken
11 in the absence of such membership, application for mem-
12 bership, service, application for service, or obligation.

13 “(c)(1) An employer may not discriminate in employ-
14 ment against or take any adverse employment action
15 against any person because such person has taken an ac-
16 tion to enforce a protection afforded any person under this
17 chapter, has testified or otherwise made a statement in
18 or in connection with any proceeding under this chapter,
19 has assisted or otherwise participated in an investigation
20 under this chapter, or has exercised a right provided for
21 in this chapter.

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

1 “(d)(1) An employer may take an action otherwise
2 prohibited by this section with respect to an employee in
3 a workplace in a foreign country if compliance with such
4 section would cause such employer to violate the law of
5 the foreign country in which the workplace is located.

6 “(2) If an employer controls a corporation incor-
7 porated and located in a foreign country, any practice pro-
8 hibited by this chapter that is engaged in by such corpora-
9 tion shall be presumed to be engaged in by such employer.

10 “(3)(A) The prohibitions of this section shall not
11 apply to an employer who is a foreign person not con-
12 trolled by an American employer.

13 “(B) For purposes of this paragraph the determina-
14 tion of whether an employer controls a corporation shall
15 be based on—

16 “(i) the interrelation of operations;

17 “(ii) the common management;

18 “(iii) the centralized control of labor relations;

19 and

20 “(iv) the common ownership or financial control
21 of the employer and the corporation.

22 **“§4312. Reemployment rights of persons who serve**
23 **in the uniformed services**

24 “(a) Subject to subsections (b), (c), and (d) and sec-
25 tion 4304 of this title, any person who is absent from a

1 position of employment by reason of service in the uni-
2 formed services shall be entitled to the reemployment
3 rights and benefits and other employment benefits of this
4 chapter if—

5 “(1) the person (or an appropriate officer of the
6 uniformed service in which such service is per-
7 formed) has given advance written or verbal notice
8 of such service to such person’s employer;

9 “(2) the cumulative length of the absence and
10 of all previous absences from a position of employ-
11 ment with that employer by reason of service in the
12 uniformed services does not exceed five years; and

13 “(3) the person reports to, or submits an appli-
14 cation for reemployment to, such employer in ac-
15 cordance with subsection (e).

16 “(b) No notice is required under subsection (a)(1) if
17 the giving of such notice is precluded by military necessity
18 or the giving of such notice is otherwise impossible or un-
19 reasonable. A determination of military necessity for the
20 purposes of this subsection shall be made pursuant to reg-
21 ulations prescribed by the Secretary of Defense and shall
22 not be subject to judicial review.

23 “(c) Subsection (a) shall apply to a person who is
24 absent from a position of employment by reason of service
25 in the uniformed services if such person’s cumulative pe-

1 riod of service in the uniformed services, with respect to
2 the employer relationship for which a person seeks reem-
3 ployment, does not exceed five years, except that any such
4 period of service shall not include any service—

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

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

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

19 “(4) performed by a member of a uniformed
20 service who is—

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

24 “(B) ordered to or retained on active duty
25 (other than for training) under any provision of

1 law during a war or during a national emer-
2 gency declared by the President or the Con-
3 gress;

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

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

13 “(E) called into Federal service as a mem-
14 ber of the National Guard under chapter 15 of
15 title 10 or under section 3500 or 8500 of title
16 10.

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

19 “(A) the employer’s circumstances have so
20 changed as to make such reemployment impossible
21 or unreasonable; or

22 “(B) in the case of a person entitled to reem-
23 ployment under subsection (a)(3), (a)(4), or
24 (b)(2)(B) of section 4313 of this title, such employ-

1 ment would impose an undue hardship on the em-
2 ployer.

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

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

8 “(B) any accommodation, training, or effort re-
9 ferred to in subsection (a)(3), (a)(4), or (b)(2)(B) of
10 section 4313 of this title would impose an undue
11 hardship on the employer,

12 the employer shall have the burden of proving the impos-
13 sibility or unreasonableness or undue hardship.

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

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

23 “(i) not later than the beginning of the
24 first full regularly scheduled work period on the
25 first full calendar day following the completion

1 of the period of service and the expiration of
2 eight hours after a period allowing for the safe
3 transportation of the person from the place of
4 that service to the person's residence; or

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

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

16 “(C) In the case of a person whose period of
17 service in the uniformed services was for more than
18 30 days but less than 181 days, by submitting an
19 application for reemployment with the employer not
20 later than 14 days after the completion of the period
21 of service.

22 “(D) In the case of a person whose period of
23 service in the uniformed services was for more than
24 180 days, by submitting an application for reemploy-

1 ment with the employer not later than 90 days after
2 the completion of the period of service.

3 “(2)(A) A person who is hospitalized for, or con-
4 valescing from, an illness or injury incurred in, or aggra-
5 vated by, the performance of service in the uniformed serv-
6 ices shall, at the end of the period that is necessary for
7 the person to recover from such illness or injury, report
8 to the person’s employer (in the case of a person described
9 in subparagraph (A) or (B) of paragraph (1)) or submit
10 an application for reemployment with such employer (in
11 the case of a person described in subparagraph (C) or (D)
12 of such paragraph). Except as provided in subparagraph
13 (B), such period of recovery may not exceed two years.

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

19 “(3) A person who fails to report for employment or
20 reemployment within the appropriate period specified in
21 this subsection shall not automatically forfeit such per-
22 son’s entitlement to the rights and benefits referred to in
23 subsection (a) but shall be subject to the conduct rules,
24 established policy, and general practices of the employer

1 pertaining to explanations and discipline with respect to
2 absence from scheduled work.

3 “(f)(1) A person who submits an application for re-
4 employment in accordance with subparagraph (C) or (D)
5 of subsection (e)(1) or subsection (e)(2) shall provide to
6 the person’s employer (upon the request of such employer)
7 documentation to establish that—

8 “(A) the person’s application is timely;

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

12 “(C) the person’s entitlement to the benefits
13 under this chapter has not been terminated pursuant
14 to section 4304 of this title.

15 “(2) Documentation of any matter referred to in
16 paragraph (1) that satisfies regulations prescribed by the
17 Secretary shall satisfy the documentation requirements in
18 such paragraph.

19 “(3)(A) Except as provided in subparagraph (B), the
20 failure of a person to provide documentation that satisfies
21 regulations prescribed pursuant to paragraph (2) shall not
22 be a basis for denying reemployment in accordance with
23 the provisions of this chapter if the failure occurs because
24 such documentation does not exist or is not readily avail-
25 able at the time of the request of the employer. If, after

1 such reemployment, documentation becomes available that
2 establishes that such person does not meet one or more
3 of the requirements referred to in subparagraphs (A), (B),
4 and (C) of paragraph (1), the employer of such person
5 may terminate the employment of the person and the pro-
6 vision of any rights or benefits afforded the person under
7 this chapter.

8 “(B) An employer who reemploys a person absent
9 from a position of employment for more than 90 days may
10 require that the person provide the employer with the doc-
11 umentation referred to in subparagraph (A) before begin-
12 ning to treat the person as not having incurred a break
13 in service for pension purposes under section
14 4317(a)(2)(A) of this title.

15 “(4) An employer may not delay or attempt to defeat
16 a reemployment obligation by demanding documentation
17 that does not then exist or is not then readily available.

18 “(g) The right of a person to reemployment under
19 this section shall not entitle such person to retention, pref-
20 erence, or displacement rights over any person with a su-
21 perior claim under the provisions of title, 5, United States
22 Code, relating to veterans and other preference eligibles.

23 “(h) In any determination of a person’s entitlement
24 to protection under this chapter, the timing, frequency,
25 and duration of the person’s training or service, or the

1 nature of such training or service (including voluntary
2 service) in the uniformed services, shall not be a basis for
3 denying protection of this chapter if the service does not
4 exceed the limitations set forth in subsection (c) and the
5 notice requirements established in subsection (a)(1) and
6 the notification requirements established in subsection (e)
7 are met.

8 **“§ 4313. Reemployment positions**

9 “(a) Subject to subsection (b) (in the case of any em-
10 ployee) and section 4314 of this title (in the case of an
11 employee of the Federal Government), a person entitled
12 to reemployment under section 4312 of this title upon
13 completion of a period of service in the uniformed services
14 shall be promptly reemployed in a position of employment
15 as follows (and in accordance with the order of priority
16 set forth in the applicable paragraph):

17 “(1) Except as provided in paragraphs (3) and
18 (4), in the case of a person whose period of service
19 in the uniformed services was for less than 31
20 days—

21 “(A) in the position of employment in
22 which the person would have been employed if
23 the continuous employment of such person with
24 the employer had not been interrupted by such

1 service, the duties of which the person is quali-
2 fied to perform; or

3 “(B) if the person is not qualified to per-
4 form the duties of the position referred to in
5 subparagraph (A) after reasonable efforts by
6 the employer to qualify the person, in the posi-
7 tion of employment in which the person was
8 employed on the date of the commencement of
9 the service in the uniformed services.

10 “(2) Except as provided in paragraphs (3) and
11 (4), in the case of a person whose period of service
12 in the uniformed services was for more than 30
13 days—

14 “(A) in the position of employment in
15 which the person would have been employed if
16 the continuous employment of such person with
17 the employer had not been interrupted by such
18 service, or a position of like seniority, status,
19 and pay, the duties of which the person is quali-
20 fied to perform; or

21 “(B) if the person is not qualified to per-
22 form the duties of a position referred to in sub-
23 paragraph (A) after reasonable efforts by the
24 employer to qualify the person, in the position
25 of employment in which the person was em-

1 employed on the date of the commencement of the
2 service in the uniformed services, or a position
3 of like seniority, status and pay, the duties of
4 which the person is qualified to perform.

5 “(3) In the case of a person who has a disabili-
6 ty incurred in, or aggravated by, such service, and
7 who (after reasonable efforts by the employer to ac-
8 commodate the disability) is not qualified due to
9 such disability to be employed in the position of em-
10 ployment in which the person would have been em-
11 ployed if the continuous employment of such person
12 with the employer had not been interrupted by such
13 service—

14 “(A) in any other position which is equiva-
15 lent in seniority, status, and pay, the duties of
16 which the person is qualified to perform or
17 would become qualified to perform with reason-
18 able efforts by the employer; or

19 “(B) if not employed under subparagraph
20 (A), in a position which is the nearest approxi-
21 mation to a position referred to in subpara-
22 graph (A) in terms of seniority, status, and pay
23 consistent with circumstances of such person’s
24 case.

1 “(4) In the case of a person who (A) is not
2 qualified to be employed in (i) the position of em-
3 ployment in which the person would have been em-
4 ployed if the continuous employment of such person
5 with the employer had not been interrupted by such
6 service, or (ii) in the position of employment in
7 which such person was employed on the date of the
8 commencement of the service in the uniform services
9 for any reason (other than disability incurred in, or
10 aggravated by, service in the uniformed services),
11 and (B) cannot become qualified with reasonable ef-
12 forts by the employer, in any other position of lesser
13 status and pay which such person is qualified to per-
14 form, with full seniority.

15 “(b)(1) If two or more persons are entitled to reem-
16 ployment under section 4312 of this title in the same posi-
17 tion of employment and more than one of them has re-
18 ported for such reemployment, the person who left the po-
19 sition first shall have the prior right to reemployment in
20 that position.

21 “(2) Any person entitled to reemployment under sec-
22 tion 4312 of this title who is not reemployed in a position
23 of employment by reason of paragraph (1) shall be entitled
24 to be reemployed as follows:

1 “(A) Except as provided in subparagraph (B),
2 in any other position of employment referred to in
3 subsection (a)(1) or (a)(2), as the case may be (in
4 the order of priority set out in the applicable sub-
5 section), that provides a similar status and pay to a
6 position of employment referred to in paragraph (1)
7 of this subsection, consistent with circumstances of
8 such person’s case, with full seniority.

9 “(B) In the case of a person who has a disabili-
10 ty incurred in, or aggravated by, service in the uni-
11 formed services that requires reasonable efforts by
12 the employer for the person to be able to perform
13 the duties of the position of employment, in any po-
14 sition referred to in subsection (a)(3) (in the order
15 of priority set out in that subsection) that provides
16 a similar status and pay to a position referred to in
17 paragraph (1), consistent with circumstances of such
18 person’s case, with full seniority.

19 **“§4314. Reemployment by the Federal Government**

20 “(a) Except as provided in subsections (b), (c), (d),
21 and (e), if a person is entitled to reemployment by the
22 Federal Government under section 4312 of this title, such
23 person shall be reemployed in a position of employment
24 as described in section 4313 of this title.

1 “(b)(1) If the Director of the Office of Personnel
2 Management makes a determination described in para-
3 graph (2) with respect to a person who was employed by
4 a Federal executive agency at the time the person entered
5 the service from which the person seeks reemployment
6 under this section, the Director shall—

7 “(A) identify a position of like seniority, status,
8 and pay at another Federal executive agency that
9 satisfies the requirements of section 4313 of this
10 title and for which the person is qualified; and

11 “(B) ensure that the person is offered such po-
12 sition.

13 “(2) The Director shall carry out the duties referred
14 to in paragraph (1) if the Director determines that—

15 “(A) the Federal executive agency that em-
16 ployed the person referred to in such paragraph no
17 longer exists and the functions of such agency have
18 not been transferred to another Federal executive
19 agency; or

20 “(B) it is impossible or unreasonable for the
21 agency to reemploy the person.

22 “(c) If the employer of a person described in sub-
23 section (a) was, at the time such person entered the serv-
24 ice from which such person seeks reemployment under this
25 section, a part of the judicial branch or the legislative

1 branch of the Federal Government, and such employer de-
2 termines that it is impossible or unreasonable for such em-
3 ployer to reemploy such person, such person shall, upon
4 application to the Director of the Office of Personnel Man-
5 agement, be ensured an offer of employment in an alter-
6 native position in a Federal executive agency on the basis
7 described in subsection (b).

8 “(d) If the adjutant general of a State determines
9 that it is impossible or unreasonable to reemploy a person
10 who was a National Guard technician employed under sec-
11 tion 709 of title 32, such person shall, upon application
12 to the Director of the Office of Personnel Management,
13 be ensured an offer of employment in an alternative posi-
14 tion in a Federal executive agency on the basis described
15 in subsection (b).

16 “(e) The Director of the Office of Personnel Manage-
17 ment shall ensure the offer of employment to a person in
18 a position in a Federal executive agency on the basis de-
19 scribed in subsection (b) if—

20 “(1) the person was an employee of an agency
21 referred to in section 2302(a)(2)(C)(ii) of title 5 at
22 the time the person entered the service from which
23 the person seeks reemployment under this section;

24 “(2) the appropriate officer of the agency deter-
25 mines under section 4315(c) of this title that reem-

1 employment of the person by the agency is impossible,
2 unreasonable, or not practicable; and

3 “(3) the person submits an application to the
4 Director for an offer of employment under this sub-
5 section.

6 **“§ 4315. Reemployment by certain Federal agencies**

7 “(a) The head of each agency referred to in section
8 2302(a)(2)(C)(ii) of title 5 shall prescribe—

9 “(1) the conditions under which persons who
10 are absent from positions of employment with such
11 agency by reason of service in the uniformed services
12 shall be reemployed by such agency; and

13 “(2) procedures for ensuring that the persons
14 who satisfy such conditions are reemployed by such
15 agency.

16 “(b) In prescribing conditions and procedures under
17 subsection (a), the head of the agency shall ensure, to the
18 maximum extent practicable, that—

19 “(1) the conditions under which persons shall
20 be reemployed by the agency are similar to the con-
21 ditions for the entitlement of a person to reemploy-
22 ment rights under section 4312 of this title; and

23 “(2) the procedures for the reemployment of
24 such persons provide for the reemployment of such

1 persons by the agency in a manner that is similar
2 to the manner described in section 4313 of this title.

3 “(c)(1) In prescribing conditions and procedures
4 under subsection (a), the head of the agency shall des-
5 ignate an officer of the agency who shall determine if the
6 reemployment of a person by the agency under this section
7 is impossible, unreasonable, or not practicable.

8 “(2)(A) Upon making a determination that the reem-
9 ployment of a person under this chapter is impossible, un-
10 reasonable, or not practicable, such officer shall notify
11 such person and the Director of the Office of Personnel
12 Management of such determination.

13 “(B) The head of each agency shall, on an annual
14 basis, submit to the Select Committee on Intelligence of
15 the Senate and the Permanent Select Committee on Intel-
16 ligence of the House of Representatives a report of the
17 number of persons whose reemployment with the agency
18 was determined to be impossible, unreasonable, or not
19 practicable during the year preceding the report and the
20 reason for each such determination.

21 “(C) A determination under paragraph (1) shall not
22 be subject to judicial review.

1 **“§4316. Rights, benefits, and obligations of persons**
2 **absent from employment for service in a**
3 **uniformed service**

4 “(a) A person who is reemployed under this chapter
5 after a period of service in the uniformed services is enti-
6 tled to the seniority and other rights and benefits deter-
7 mined by seniority that the person had on the date of the
8 commencement of such service plus the additional senior-
9 ity and rights and benefits that such person would have
10 attained if the person had remained continuously em-
11 ployed.

12 “(b)(1) Subject to paragraphs (2), (3), (4), and (5),
13 a person who performs service in the uniformed services
14 shall be (A) deemed to be on furlough or leave of absence
15 while performing such service, and (B) 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 practice, policy, agreement, or plan
19 at the commencement of such service or were established
20 while such person performs such service. Such person may
21 be required to pay the employee cost, if any, of any funded
22 benefit continued pursuant to the preceding sentence to
23 the extent other employees on furlough or leave of absence
24 are so required.

25 “(2) A person is not entitled under this subsection
26 to coverage under a health plan to the extent that the per-

1 son is entitled to care or treatment from the Federal Gov-
2 ernment as a result of such person's service in the uni-
3 formed services.

4 “(3) A person is not entitled under this subsection
5 to coverage, under a life insurance policy, of a death in-
6 curred by the person as a result of the person's participa-
7 tion in, or assignment to an area of, armed conflict to the
8 extent that such coverage is excluded or limited by a provi-
9 sion of such policy.

10 “(4) The requirement that an employer provide rights
11 or benefits under paragraph (1) to a person deemed to
12 be on furlough or leave of absence shall expire on the ear-
13 lier of—

14 “(A) the date of the end of the 18-month period
15 that begins on the date on which the person com-
16 mences the performance of the service referred to in
17 paragraph (1); or

18 “(B) the date on which the person completes
19 the performance of such service.

20 “(5) A person is not entitled under this subsection
21 to a right or benefit provided under an employee pension
22 benefit plan.

23 “(c)(1)(A) Subject to subparagraphs (B) and (C), if
24 a person's employer-sponsored health-plan coverage would
25 otherwise terminate due to an extended absence from em-

1 ployment for purposes of performing service in the uni-
2 formed services, the person shall have the right to elect
3 to continue health-plan coverage acquired through civilian
4 employment in accordance with this paragraph so that
5 such coverage continues for a maximum of 18 months
6 after such absence begins. A person who elects to continue
7 health-plan coverage under this paragraph may be re-
8 quired to pay not more than 102 percent of the full pre-
9 mium (determined in the same manner as the applicable
10 premium under section 4980B(f)(4) of the Internal Reve-
11 nue Code of 1986 (26 U.S.C. 4980B(f)(4))) associated
12 with such coverage for the employer's other employees, ex-
13 cept that in the case of a person who performs a period
14 of service in the uniformed services for less than 31 days,
15 such person may not be required to pay more than the
16 employee share, if any, for such coverage.

17 “(B) A person who elects to continue health-plan cov-
18 erage under this paragraph shall not be entitled to cov-
19 erage under the plan to the extent that the person is enti-
20 tled to care or treatment from the Federal Government
21 as a result of such person's service in the uniformed serv-
22 ices.

23 “(C) The period of coverage of a person and the per-
24 son's dependents under a continuation of health-plan cov-

1 erage elected by the person under this paragraph shall be
2 the lesser of—

3 “(i) 18 months; or

4 “(ii) the period of the person’s service in the
5 uniformed services.

6 “(2) In the case of a person whose coverage by an
7 employer-sponsored health plan as an employee is termi-
8 nated by reason of the service of such person in the uni-
9 formed services, an exclusion or waiting period may not
10 be imposed by any person in connection with the reinstate-
11 ment of the coverage of the person upon reemployment
12 under this chapter, or in connection with any other indi-
13 vidual who is covered by the health plan by reason of the
14 reinstatement of the coverage of such person upon reem-
15 ployment, if an exclusion or waiting period would not have
16 been imposed under such health plan had coverage of such
17 person by such health plan not been terminated as a result
18 of such service.

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

22 “(1) within one year after the date of such re-
23 employment, if the person’s period of service before
24 the reemployment was more than 180 days; or

1 “(2) within 180 days after the date of such re-
2 employment, if the person’s period of service before
3 the reemployment was more than 30 days but less
4 than 181 days.

5 “(e)(1) Any person described in paragraph (2) whose
6 employment with an employer referred to in that para-
7 graph is interrupted by a period of service in the uni-
8 formed services shall be permitted, upon request of that
9 person, to use during such period of service any vacation
10 or annual leave with pay accrued by the person before the
11 commencement of such service.

12 “(2) A person entitled to the benefit described in
13 paragraph (1) is a person who—

14 “(A) has accrued vacation or annual leave with
15 pay under a policy or practice of a State (as an em-
16 ployer) or private employer; or

17 “(B) has accrued such leave as an employee of
18 the Federal Government pursuant to subchapter I of
19 chapter 63 of title 5.

20 **“§4317. Employee pension benefit plans**

21 “(a)(1)(A) Except as provided in subparagraph (B),
22 in the case of a right provided pursuant to an employee
23 pension benefit plan described in section 3(2) of the Em-
24 ployee Retirement Income Security Act of 1974 (29
25 U.S.C. 1002(2)) or a right provided under any Federal

1 or State law governing pension benefits for governmental
2 employees, the right to pension benefits of a person reem-
3 ployed under this chapter shall be determined under this
4 section.

5 “(B) In the case of benefits under the Thrift Savings
6 Plan, the rights of a person reemployed under this chapter
7 shall be those rights provided in section 8432b of title 5.
8 This subparagraph shall not be construed to affect any
9 other right or benefit under this chapter.

10 “(2)(A) Except as provided in section 4312(f)(3)(B)
11 of this title, a person reemployed under this chapter shall
12 be treated as not having incurred a break in service with
13 the employer or employers maintaining the plan by reason
14 of such person’s period or periods of service in the uni-
15 formed services.

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

23 “(b)(1) An employer reemploying a person under this
24 chapter shall be liable to an employee benefit pension plan
25 for funding any obligation of the plan to provide the bene-

1 fits described in subsection (a)(2). For purposes of deter-
2 mining the amount of such liability and for purposes of
3 section 515 of the Employee Retirement Income Security
4 Act of 1974 (29 U.S.C. 1145) or any similar Federal or
5 State law governing pension benefits for governmental em-
6 ployees, service in the uniformed services that is deemed
7 under subsection (a) to be service with the employer shall
8 be deemed to be service with the employer under the terms
9 of the plan or any applicable collective bargaining agree-
10 ment. In the case of a multiemployer plan, as defined in
11 section 3(37) of the Employee Retirement Income Secu-
12 rity Act of 1974 (29 U.S.C. 1002(37)), any liability of
13 the plan described in this paragraph shall be allocated by
14 the plan in such manner as the sponsor maintaining the
15 plan may provide (or, if the sponsor does not so provide,
16 shall be allocated to the last employer employing the per-
17 son before the period described in subsection (a)(2)(B)).

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

1 would have been permitted or required to contribute had
2 the person remained continuously employed by the em-
3 ployer throughout the period of service described in sub-
4 section (a)(2)(B). Any payment to the plan described in
5 this paragraph shall be made during any reasonable con-
6 tinuous period (beginning with the date of reemployment)
7 as the employer and the person may agree but in no event
8 shall such person be afforded a payment period shorter
9 than the length of absence for service for which the pay-
10 ments are due.

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

15 “(A) shall be computed at the rate the em-
16 ployee would have received but for the absence dur-
17 ing the period of service; or

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

24 “(4) Unless the plan provides otherwise—

1 “(A) no earnings shall be credited to an em-
2 ployee with respect to any contribution prior to such
3 contribution being made; and

4 “(B) any elective employer contributions, or any
5 forfeitures, during the period described in subsection
6 (a)(2)(B) shall not be allocated to persons reem-
7 ployed under this chapter.

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

17 “(d) No provision of this section shall apply to the
18 extent it—

19 “(1) requires any action to be taken which
20 would cause the plan, participant, or employer to
21 suffer adverse tax or other consequences under the
22 Internal Revenue Code of 1986; or

23 “(2) requires contributions to be returned, or
24 additional contributions to be made, with respect to
25 employees not reemployed under this chapter.

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

4 “§4321. **Assistance in obtaining reemployment or**
5 **other employment rights or benefits**

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

14 “(b)(1)(A) A person referred to in subparagraph (B)
15 may submit a complaint to the Secretary with respect to
16 the matters described in clause (ii) of such subparagraph.
17 Such complaint shall be submitted in accordance with sub-
18 section (c).

19 “(B) A person may submit a under subparagraph (A)
20 if the person claims—

21 “(i) to be entitled under this chapter to employ-
22 ment or reemployment rights or benefits with re-
23 spect to employment by an employer; and

24 “(ii) that the employer (including the Office of
25 Personnel Management, if the employer is the Fed-

1 eral Government) has failed or refused, or is about
2 to fail or refuse, to comply with the provisions of
3 this chapter.

4 “(2) The Secretary shall, upon request, provide tech-
5 nical assistance to a potential claimant with respect to a
6 complaint under this subsection, and to such claimant’s
7 employer.

8 “(c) A complaint submitted under subsection (b) shall
9 be in a form prescribed by the Secretary and shall in-
10 clude—

11 “(1) the name and address of the employer or
12 potential employer against whom the complaint is di-
13 rected; and

14 “(2) a summary of the allegations upon which
15 the complaint is based.

16 “(d) The Secretary shall investigate each complaint
17 submitted pursuant to subsection (b). If the Secretary de-
18 termines as a result of the investigation that the action
19 alleged in such complaint occurred, the Secretary shall
20 make reasonable efforts to ensure that the person or entity
21 named in the complaint complies with the provisions of
22 this chapter.

23 “(e) If the efforts of the Secretary with respect to
24 a complaint under subsection (d) are unsuccessful, the

1 Secretary shall notify the person who submitted the com-
2 plaint of—

3 “(1) the results of the Secretary’s investigation;
4 and

5 “(2) the complainant’s entitlement to proceed
6 under the enforcement of rights provisions provided
7 under section 4322 of this title (in the case of a per-
8 son submitting a complaint against a State or pri-
9 vate employer) or section 4323 of this title (in the
10 case of a person submitting a complaint against the
11 Federal Government).

12 “(f) This subchapter does not apply to any action re-
13 lating to benefits to be provided under the Thrift Savings
14 Plan under title 5.

15 **“§ 4322. Enforcement of rights with respect to a State**
16 **or private employer**

17 “(a)(1) A person who receives from the Secretary a
18 notification pursuant to section 4321(e) of this title of an
19 unsuccessful effort to resolve a complaint relating to a
20 State (as an employer) or a private employer may request
21 that the Secretary refer the complaint to the Attorney
22 General. If the Attorney General is reasonably satisfied
23 that the person on whose behalf the complaint is referred
24 is entitled to the rights or benefits sought, the Attorney
25 General may appear on behalf of, and act as attorney for,

1 the person on whose behalf the complaint is submitted and
2 commence an action for appropriate relief for such person
3 in an appropriate United States district court.

4 “(2)(A) A person referred to in subparagraph (B)
5 may commence an action for appropriate relief in an ap-
6 propriate United States district court.

7 “(B) A person entitled to commence an action for re-
8 lief with respect to a complaint under subparagraph (A)
9 is a person who—

10 “(i) has chosen not to apply to the Secretary
11 for assistance regarding the complaint under section
12 4321(c) of this title;

13 “(ii) has chosen not to request that the Sec-
14 retary refer the complaint to the Attorney General
15 under paragraph (1); or

16 “(iii) has been refused representation by the At-
17 torney General with respect to the complaint under
18 such paragraph.

19 “(b) In the case of an action against a State as an
20 employer, the appropriate district court is the court for
21 any district in which the State exercises any authority or
22 carries out any function. In the case of a private employer
23 the appropriate district court is the district court for any
24 district in which the private employer of the person main-
25 tains a place of business.

1 “(c)(1)(A) The district courts of the United States
2 shall have jurisdiction, upon the filing of a complaint, mo-
3 tion, petition, or other appropriate pleading by or on be-
4 half of the person entitled to a right or benefit under this
5 chapter—

6 “(i) to require the employer to comply with the
7 provisions of this chapter;

8 “(ii) to require the State or private employer,
9 as the case may be, to compensate the person for
10 any loss of wages or benefits suffered by reason of
11 such employer’s failure to comply with the provisions
12 of this chapter; and

13 “(iii) to require the employer to pay the person
14 an amount equal to the amount referred to in clause
15 (ii) as liquidated damages, if the court determines
16 that the employer’s failure to comply with the provi-
17 sions of this chapter was willful.

18 “(B) Any compensation under clauses (ii) and (iii)
19 of subparagraph (A) shall be in addition to, and shall not
20 diminish, any of the other rights and benefits provided for
21 in this chapter.

22 “(2)(A) No fees or court costs shall be charged or
23 taxed against any person claiming rights under this chap-
24 ter.

1 “(B) In any action or proceeding to enforce a provi-
2 sion of this chapter by a person under subsection (a)(2)
3 who obtained private counsel for such action or proceed-
4 ing, the court may award any such person who prevails
5 in such action or proceeding reasonable attorney fees, ex-
6 pert witness fees, and other litigation expenses.

7 “(3) The court may use its full equity powers, includ-
8 ing temporary or permanent injunctions and temporary
9 restraining orders, to vindicate fully the rights or benefits
10 of persons under this chapter.

11 “(4) An action under this chapter may be initiated
12 only by a person claiming rights or benefits under this
13 chapter, and not by an employer, prospective employer, or
14 other entity with obligations under this chapter.

15 “(5) In any such action, only a State and local gov-
16 ernment (as an employer), an employer, or a potential em-
17 ployer, as the case may be, shall be a necessary party re-
18 spondent.

19 “(6) No State statute of limitations shall apply to any
20 proceeding under this chapter.

21 “(7) A State shall be subject to the same remedies,
22 including prejudgment interest, as may be imposed upon
23 any private employer under this section.

1 **“§ 4323. Enforcement of rights with respect to Fed-**
2 **eral executive agencies**

3 “(a)(1) A person who receives from the Secretary a
4 notification pursuant to section 4321(e) of this title of an
5 unsuccessful effort to resolve a complaint relating to a
6 Federal executive agency may request that the Secretary
7 refer the complaint for litigation before the Merit Systems
8 Protection Board. The Secretary shall refer the complaint
9 to the Office of Special Counsel established by section
10 1211 of title 5.

11 “(2)(A) If the Special Counsel is reasonably satisfied
12 that the person on whose behalf a complaint is referred
13 under paragraph (1) is entitled to the rights or benefits
14 sought, the Special Counsel (upon the request of the per-
15 son submitting the complaint) may appear on behalf of,
16 and act as attorney for, the person and initiate an action
17 regarding such complaint before the Merit Systems Pro-
18 tection Board.

19 “(B) If the Special Counsel decides not to initiate an
20 action and represent a person before the Merit Systems
21 Protection Board under subparagraph (A), the Special
22 Counsel shall notify such person of that decision.

23 “(b)(1) A person referred to in paragraph (2) may
24 submit a complaint against a Federal executive agency
25 under this subchapter directly to the Merit Systems Pro-
26 tection Board. A person who seeks a hearing or adjudica-

1 tion by submitting such a complaint under this paragraph
2 may be represented at such hearing or adjudication in ac-
3 cordance with the rules of the Board.

4 “(2) A person entitled to submit a complaint to the
5 Merit Systems Protection Board under paragraph (1) is
6 a person who—

7 “(A) has chosen not to apply to the Secretary
8 for assistance regarding a complaint under section
9 4321(c) of this title;

10 “(B) has received a notification from the Sec-
11 retary under section 4321(e) of this title;

12 “(C) has chosen not to be represented before
13 the Board by the Special Counsel pursuant to sub-
14 section (a)(2)(A); or

15 “(D) has received a notification of a decision
16 from the Special Counsel under subsection
17 (a)(2)(B).

18 “(c)(1) The Merit Systems Protection Board shall
19 adjudicate any complaint brought before the Board pursu-
20 ant to subsection (a)(2)(A) or (b)(1).

21 “(2) If the Board determines that a Federal executive
22 agency has not complied with the provisions of this chap-
23 ter relating to the employment or reemployment of a per-
24 son by the agency, the Board shall enter an order requir-
25 ing the agency to comply with such provisions and to com-

1 pensate such person for any loss of wages or benefits suf-
2 fered by such person by reason of such lack of compliance.

3 “(3) Any compensation received by a person pursuant
4 to an order under paragraph (1) shall be in addition to
5 any other right or benefit provided for by this chapter and
6 shall not diminish any such right or benefit.

7 “(4) If the Board determines as a result of a hearing
8 or adjudication conducted pursuant a complaint submitted
9 by a person directly to the Board pursuant to subsection
10 (b)(1) that such person is entitled to an order referred
11 to in paragraph (2), the Board may, in its discretion,
12 award such person reasonable attorney fees, expert wit-
13 ness fees, and other litigation expenses.

14 “(d) A person adversely affected or aggrieved by a
15 final order or decision of the Merit Systems Protection
16 Board under subsection (c) may petition the United States
17 Court of Appeals for the Federal Circuit to review the
18 final order or decision. Such petition and review shall be
19 in accordance with the procedures set forth in section
20 7703 of title 5.

21 “(e) A person may be represented by the Special
22 Counsel in an action for review of a final order or decision
23 issued by the Merit Systems Protection Board pursuant
24 to subsection (c) that is brought pursuant to section 7703
25 of title 5 unless the person was not represented by the

1 Special Counsel before the Merit Systems Protection
2 Board regarding such order or decision.

3 **“§ 4324. Enforcement of rights with respect to certain**
4 **Federal agencies**

5 “(a) This section shall apply to any person who al-
6 leges that—

7 “(1) the reemployment of such person by an
8 agency referred to in section 4315(a) of this title
9 was not in accordance with the procedures for the
10 reemployment of such person prescribed under such
11 section; or

12 “(2) the failure of such agency to reemploy the
13 person under such section was wrongful.

14 “(b) Any person referred to in subsection (a) may
15 submit a claim relating to the allegation to the Inspector
16 General of the agency. The Inspector General shall inves-
17 tigate and resolve the claim pursuant to procedures pre-
18 scribed by the head of the agency.

19 “(c) The head of each agency referred to in section
20 4315(a) of this title shall prescribe procedures for the in-
21 vestigation and resolution of allegations submitted under
22 subsection (b). In prescribing procedures under this sub-
23 section, the head of the agency shall ensure, to the maxi-
24 mum extent practicable, that the procedures are similar
25 to the provisions relating to the investigation and resolu-

1 tion of a claim by the Secretary under section 4321(d)
2 of this title.

3 **“§ 4325. Conduct of investigation; subpoenas**

4 “(a) In carrying out any investigation under this
5 chapter, the Secretary’s duly authorized representatives
6 shall, at all reasonable times, have reasonable access to,
7 for purposes of examination, and the right to copy and
8 receive, any documents of any person or employer that the
9 Secretary considers relevant to the investigation.

10 “(b) In carrying out any investigation under this
11 chapter, the Secretary may require by subpoena the at-
12 tendance and testimony of witnesses and the production
13 of documents relating to any matter under investigation.
14 In case of disobedience of the subpoena or contumacy and
15 on request of the Secretary, the Attorney General may
16 apply to any district court of the United States in whose
17 jurisdiction such disobedience or contumacy occurs for an
18 order enforcing the subpoena.

19 “(c) Upon application, the district courts of the Unit-
20 ed States shall have jurisdiction to issue writs command-
21 ing any person or employer to comply with the subpoena
22 of the Secretary or to comply with any order of the Sec-
23 retary made pursuant to a lawful investigation under this
24 chapter and district courts shall have jurisdiction to pun-

1 ish failure to obey a subpoena or other lawful order of
2 the Secretary as a contempt of court.

3 “SUBCHAPTER IV—MISCELLANEOUS

4 **“§ 4331. Regulations**

5 “(a) The Secretary (in consultation with the Sec-
6 retary of Defense) may prescribe regulations implement-
7 ing the provisions of this chapter with respect to States
8 and local governments (as employers) and private employ-
9 ers.

10 “(b)(1) The Director of the Office of Personnel Man-
11 agement (in consultation with the Secretary and the Sec-
12 retary of Defense) may prescribe regulations implement-
13 ing the provisions of this chapter with regard to the appli-
14 cation of this chapter to Federal executive agencies (other
15 than the agencies referred to in paragraph (2)) as employ-
16 ers. Such regulations shall be consistent with the regula-
17 tions pertaining to the States as employers and private
18 employers.

19 “(2) The following entities may prescribe regulations
20 to carry out the activities of such entities under this chap-
21 ter:

22 “(A) The Merit Systems Protection Board.

23 “(B) The Office of Special Counsel.

24 “(C) The agencies referred to in section
25 2303(a)(2)(C)(ii) of title 5.

1 **“§ 4332. 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 employers under this chapter.”.

8 (b) TABLE OF CHAPTERS.—The tables of chapters
9 at the beginning of title 38, United States Code, and the
10 beginning of part III of such title are each amended by
11 striking out the item relating to chapter 43 and inserting
12 in lieu thereof the following:

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

13 (c) REPORT RELATING TO IMPLEMENTATION OF RE-
14 EMPLOYMENT RIGHTS PROVISIONS.—Not later than one
15 year after the date of the enactment of this Act, the Sec-
16 retary of Labor, the Attorney General of the United
17 States, and the Special Counsel referred to in section
18 4323(a)(1) of title 38, United States Code (as added by
19 subsection (a)), shall each submit a report to the Congress
20 relating to the implementation of chapter 43 of such title
21 (as added by such subsection).

1 **SEC. 3. EXEMPTION FROM MINIMUM SERVICE REQUIRE-**
2 **MENTS.**

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

5 (1) by striking out “or” at the end of subpara-
6 graph (E);

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

10 (3) by adding at the end thereof the following
11 new subparagraph:

12 “(G) to an entitlement to rights and benefits
13 under chapter 43 of this title.”.

14 **SEC. 4. REPEAL OF TITLE 5 PROVISIONS RELATING TO RE-**
15 **EMPLOYMENT RIGHTS OF RESERVISTS.**

16 (a) REPEAL.—Subchapter II of chapter 35 of title
17 5, United States Code, is repealed.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions at the beginning of such chapter is amended by strik-
20 ing out the items relating to subchapter II and section
21 3551.

22 **SEC. 5. REVISION OF FEDERAL CIVIL SERVICE RETIRE-**
23 **MENT BENEFIT PROGRAM FOR RESERVISTS.**

24 (a) REVISION IN CONTRIBUTIONS RELATING TO
25 MILITARY SERVICE.—Subsection (e)(1) of section 8422 of
26 title 5, United States Code, is amended by inserting after

1 the first sentence the following new sentence: “The
 2 amount of payment of an employee or Member under this
 3 paragraph for a period of military service may not exceed
 4 the amount that would have been deducted or withheld
 5 for a period of civilian service, if any, under subsection
 6 (a)(1) if the employee or Member had not performed the
 7 period of military service.”.

8 (b) TECHNICAL AMENDMENT.—Subsection
 9 (a)(2)(A)(ii) of such section as amended by striking out
 10 “1954” and inserting in lieu thereof “1986”.

11 (c) EFFECTIVE DATE.—The amendment made by
 12 subsection (a) shall take effect on August 1, 1990, and
 13 shall apply to periods of military service that begin on or
 14 after that date.

15 **SEC. 6. THRIFT SAVINGS PLAN.**

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

18 **“§ 8432b. Contributions of persons who perform mili-**
 19 **tary service**

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

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

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

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

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

7 “(A) the contributions under section 8432(a)
8 which would have been made, over the period begin-
9 ning on date of separation or commencement of
10 leave-without-pay status (as applicable) and ending
11 on the day before the date of restoration or reem-
12 ployment (as applicable); 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).

16 “(3) Contributions under this subsection—

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

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

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

1 “(4)(A) The Executive Director shall prescribe the
2 time, form, and manner in which an employee may speci-
3 fy—

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

8 “(ii) the period of time over which the employee
9 wishes to make contributions under this subsection.

10 “(B) The employing agency may place a maximum
11 limit on the period of time referred to in subparagraph
12 (A)(ii), which cannot be shorter than two times the period
13 referred to in paragraph (2)(B) and not longer than four
14 times such period.

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

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

21 “(2) disregarding any contributions then actu-
22 ally being made under section 8432(a) and any
23 agency contributions relating thereto.

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

4 “(1) 1 percent of such employee’s basic pay (as
5 determined under subsection (e)) for the period re-
6 ferred to in subsection (b)(2)(B); reduced by

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

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

19 “(f)(1) The employing agency shall be required to pay
20 lost earnings on contributions made pursuant to sub-
21 sections (c) and (d). Such earnings shall be calculated
22 retroactively to the date the contribution would have been
23 made had the employee not separated or entered leave-
24 without-pay status to perform military service.

1 “(2) Procedures for calculating and crediting the
2 earnings payable pursuant to paragraph (1) shall be pre-
3 scribed by the Executive Director.

4 “(g) Amounts paid under subsection (c), (d), or (f)
5 shall be paid—

6 “(1) by the agency to which the employee is re-
7 stored or in which such employee is reemployed;

8 “(2) from the same source as would be the case
9 under section 8432(e) with respect to sums required
10 under section 8432(c); and

11 “(3) within the time prescribed by the Execu-
12 tive Director.

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

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

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

22 “(2)(A) An employee to whom this section applies
23 may elect, for purposes of section 8433(d), or paragraph
24 (1) or (2) of section 8433(h), as the case may be, to have

1 such employee's separation (described in subsection
2 (a)(1)) treated as if it had never occurred.

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

7 “(i) The Executive Director shall prescribe regula-
8 tions to carry out this section.”.

9 (2) The table of sections at the beginning of chapter
10 84 of title 5, United States Code, is amended by inserting
11 after the item relating to section 8432a the following:

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

12 (b) PRESERVATION OF CERTAIN RIGHTS.—(1) Sec-
13 tion 8433(d) of title 5, United States Code, is amended
14 by striking “subsection (e).” and inserting “subsection (e),
15 unless an election under section 8432b(h)(2) is made to
16 treat such separation for purposes of this subsection as
17 if it had never occurred.”.

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

23 (c) ELECTION TO RESUME REGULAR CONTRIBU-
24 TIONS UPON RESTORATION OR REEMPLOYMENT.—Sec-

1 tion 8432 of title 5, United States Code, is amended by
2 adding at the end the following:

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

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

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

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

10 “(ii) would be so eligible but for having ei-
11 ther elected to terminate individual contribu-
12 tions to the Thrift Savings Fund within 2
13 months before commencing military service or
14 separated in order to perform military service.

15 “(2) The Executive Director shall prescribe regula-
16 tions to ensure that any employee to whom this subsection
17 applies shall, within a reasonable time after being restored
18 or reemployed (in the manner described in section
19 8432b(a)(2)), be afforded the opportunity to make, for
20 purposes of this section, any election which would be al-
21 lowable during a period described in subsection
22 (b)(1)(A).”.

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

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

5 “(A) any reference in such section to contribu-
6 tions under section 8432(a) shall be considered a
7 reference to employee contributions under this sec-
8 tion;

9 “(B) the contribution rate under section
10 8432b(b)(2)(A) shall be the maximum percentage al-
11 lowable under subsection (b)(2) of this section; and

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

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

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

18 (2) shall apply to any employee whose release
19 from military service, discharge from hospitalization,
20 or other similar event making the individual eligible
21 to seek restoration or reemployment under chapter
22 43 of title 38, United States Code (as added by sec-
23 tion 2(a)), occurs on or after August 2, 1990.

24 (f) RULES FOR APPLYING AMENDMENTS TO EM-
25 PLOYEES RESTORED OR REEMPLOYED BEFORE EFFEC-

1 TIVE DATE.—In the case of any employee (described in
2 subsection (e)(2)) who is restored or reemployed in a posi-
3 tion of employment (in the circumstances described in sec-
4 tion 8432b(a) of title 5, United States Code, as amended
5 by this section) before the date of enactment of this Act,
6 the amendments made by this section shall apply to such
7 employee, in accordance with their terms, subject to the
8 following:

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

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

12 (B) the first day following such employee's
13 reemployment or restoration on which such em-
14 ployee is or was eligible to make an election re-
15 lating to contributions to the Thrift Savings
16 Fund,

17 whichever occurs or occurred first.

18 (2) If the employee changed agencies during the
19 period between date of actual reemployment or res-
20 toration and the date of enactment of this Act, the
21 employing agency as of such date of enactment shall
22 be considered the reemploying or restoring agency.

23 (3)(A) For purposes of any computation under
24 section 8432b of such title, pay shall be determined
25 in accordance with subsection (e) of such section, ex-

1 cept that, with respect to the period described in
2 subparagraph (B), actual pay attributable to such
3 period shall be used.

4 (B) The period described in this subparagraph
5 is the period beginning on the first day of the first
6 applicable pay period beginning on or after the date
7 of the employee’s actual reemployment or restoration
8 and ending on the day before the date determined
9 under paragraph (1).

10 (4) The day before the date of restoration or re-
11 employment (as applicable) under section
12 8432b(b)(2)(A) of title 5, United States Code (as
13 added by subsection (a) shall be deemed to be the
14 date of reemployment or restoration determined
15 under paragraph (4) of this subsection.

16 **SEC. 7. CONFORMING AMENDMENTS.**

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

20 (b) TITLE 10.—Section 706(c)(1) of title 10, United
21 States Code, is amended by striking out “section 4321”
22 and inserting in lieu thereof “chapter 43”.

23 **SEC. 8. TECHNICAL AMENDMENT.**

24 (a) TECHNICAL AMENDMENT.—Section 9(d) of Pub-
25 lic Law 102–16 (105 Stat. 55) is amended by striking out

1 “Act” the first place it appears and inserting in lieu there-
2 of “section”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect as if included in Public
5 Law 102–16 to which such amendment relates.

6 **SEC. 9. TRANSITION RULES AND EFFECTIVE DATES.**

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

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

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

1 provided in paragraphs (1) and (2), to the reemployment
2 concerned.

3 (4) A person who initiates reemployment under chap-
4 ter 43 of title 38, United States Code, during or after the
5 60-day period beginning on the date of enactment of this
6 Act and whose reemployment is made in connection with
7 a period of service in the uniform services that was initi-
8 ated before the end of such period shall be deemed to have
9 satisfied the notification requirement of section
10 4312(a)(1) of title 38, United States Code, as provided
11 in the amendments made by this Act, if the person com-
12 plied with any applicable notice requirement under chapter
13 43, United States Code, as in effect on the day before
14 the date of enactment of this Act.

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

22 (c) INSURANCE.—(1) Except as provided in para-
23 graph (2), the provisions of section 4316(c) of title 38,
24 United States Code, as provided in the amendments made

1 by this Act, concerning insurance coverage shall become
2 effective on the date of enactment of this Act.

3 (2) A person on active duty on the date of enactment
4 of this Act, or a family member or personal representative
5 of such person, may, after the date of enactment of this
6 Act, elect to reinstate or continue insurance coverage as
7 provided in such section 4316. If such an election is made,
8 insurance coverage shall remain in effect for the remaining
9 portion of the 18-month period that began on the date
10 of such person's separation from civilian employment or
11 the period of the person's service in the uniformed service,
12 whichever is the period of lesser duration.

13 (d) DISABILITY.—(1) Section 4313(a)(3) of chapter
14 43 of title 38, United States Code, as provided in the
15 amendments made by this Act, shall apply to
16 reemployments initiated on or after August 1, 1990.

17 (2) Effective as of August 1, 1990, section 4307 of
18 title 38, United States Code (as in effect on the date of
19 enactment of this Act), is repealed, and the table of sec-
20 tions at the beginning of chapter 43 of such title (as in
21 effect on the date of enactment of this Act) is amended
22 by striking out the item relating to section 4307.

23 (e) EMPLOYEE PENSION BENEFIT PLAN.—Section
24 4317 of title 38, United States Code, as provided in the

1 amendments made by this Act, shall apply to reemploy-
 2 ment initiated on or after August 1, 1990.

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

9 (g) DEFINITION.—For the purposes of this section,
 10 the term “service in the uniformed services” shall have
 11 the meaning given such term in section 4303(13) of title
 12 38, United States Code, as provided in the amendments
 13 made by this Act.

○

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S 843 IS—3

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