

108TH CONGRESS  
1ST SESSION

# **S. 1000**

To amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to provide TRICARE eligibility for members of the Selected Reserve of the Ready Reserve and their families; to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 6, 2003

Mr. GRAHAM of South Carolina (for himself, Mr. COLEMAN, Mr. ALLEN, Mr. MILLER, Mrs. CLINTON, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Finance

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## **A BILL**

To amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to provide TRICARE eligibility for members of the Selected Reserve of the Ready Reserve and their families; to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, 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 and  
5 Reserves Reform Act for the 21st Century”.

6 **SEC. 2. ELIGIBILITY FOR RETIRED PAY FOR NON-REGULAR**  
7 **SERVICE.**

8       (a) AGE AND SERVICE REQUIREMENTS.—Subsection  
9 (a) of section 12731 of title 10, United States Code, is  
10 amended to read as follows:

11       “(a)(1) Except as provided in subsection (c), a person  
12 is entitled, upon application, to retired pay computed  
13 under section 12739 of this title, if the person—

14               “(A) satisfies one of the combinations of re-  
15 quirements for minimum age and minimum number  
16 of years of service (computed under section 12732 of  
17 this title) that are specified in the table in para-  
18 graph (2);

19               “(B) performed the last six years of qualifying  
20 service while a member of any category named in  
21 section 12732(a)(1) of this title, but not while a  
22 member of a regular component, the Fleet Reserve,  
23 or the Fleet Marine Corps Reserve, except that in  
24 the case of a person who completed 20 years of serv-  
25 ice computed under section 12732 of this title before

1       October 5, 1994, the number of years of qualifying  
 2       service under this subparagraph shall be eight; and

3               “(C) is not entitled, under any other provision  
 4       of law, to retired pay from an armed force or re-  
 5       tainer pay as a member of the Fleet Reserve or the  
 6       Fleet Marine Corps Reserve.

7       “(2) The combinations of minimum age and min-  
 8       imum years of service required of a person under subpara-  
 9       graph (A) of paragraph (1) for entitlement to retired pay  
 10      as provided in such paragraph are as follows:

“Age, in years, is at least:	The minimum years of service required for that age is:
53 .....	34
54 .....	32
55 .....	30
56 .....	28
57 .....	26
58 .....	24
59 .....	22
60 .....	20.”.

11       (b) 20-YEAR LETTER.—Subsection (d) of such sec-  
 12      tion is amended by striking “the years of service required  
 13      for eligibility for retired pay under this chapter” in the  
 14      first sentence and inserting “20 years of service computed  
 15      under section 12732 of this title.”.

16       (c) EFFECTIVE DATE.—This section and the amend-  
 17      ments made by this subsection (a) shall take effect on the  
 18      first day of the first month beginning on or after the date  
 19      of the enactment of this Act and shall apply with respect

1 to retired pay payable for that month and subsequent  
2 months.

3 **SEC. 3. EXPANDED ELIGIBILITY OF READY RESERVISTS**  
4 **FOR TRICARE.**

5 (a) ELIGIBILITY.—Chapter 55 of title 10, United  
6 States Code, is amended by inserting after section 1097b  
7 the following new section:

8 **“§ 1097c. TRICARE program: Reserves not on active**  
9 **duty**

10 “(a) ELIGIBILITY.—A member of the Selected Re-  
11 serve of the Ready Reserve of the armed forces not other-  
12 wise eligible for enrollment in the TRICARE program  
13 under this chapter for the same benefits as a member of  
14 the armed forces eligible under section 1074(a) of this title  
15 may enroll for self or for self and family for the same ben-  
16 efits under this section.

17 “(b) PREMIUMS.—(1) An enlisted member of the  
18 armed forces enrolled in the TRICARE program under  
19 this section shall pay an annual premium of \$330 for self  
20 only coverage and \$560 for self and family coverage for  
21 which enrolled under this section.

22 “(2) An officer of the armed forces enrolled in the  
23 TRICARE program under this section shall pay an annual  
24 premium of \$380 for self only coverage and \$610 for self

1 and family coverage for which enrolled under this sec-  
2 tion.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 at the beginning of such chapter is amended by inserting  
5 after the item relating to section 1097b the following new  
6 item:

“1097c. Section 101 head.”.

7 **SEC. 4. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**  
8 **NENT PERSONNEL.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-  
10 chapter A of chapter 1 of the Internal Revenue Code of  
11 1986 (relating to business-related credits) is amended by  
12 adding at the end the following new section:

13 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

14 “(a) GENERAL RULE.—For purposes of section 38,  
15 the reserve component employment credit determined  
16 under this section is an amount equal to the sum of—

17 “(1) the employment credit with respect to all  
18 qualified employees of the taxpayer, plus

19 “(2) the self-employment credit of a qualified  
20 self-employed taxpayer.

21 “(b) EMPLOYMENT CREDIT.—For purposes of this  
22 section—

23 “(1) IN GENERAL.—The employment credit  
24 with respect to a qualified employee of the taxpayer

1 for any taxable year is equal to the excess, if any,  
2 of—

3 “(A) the qualified employee’s average daily  
4 qualified compensation for the taxable year,  
5 over

6 “(B) the average daily military pay and al-  
7 lowances received by the qualified employee  
8 during the taxable year,

9 while participating in qualified reserve component  
10 duty to the exclusion of the qualified employee’s nor-  
11 mal employment duties for the number of days the  
12 qualified employee participates in qualified reserve  
13 component duty during the taxable year, including  
14 time spent in a travel status. The employment cred-  
15 it, with respect to all qualified employees, is equal to  
16 the sum of the employment credits for each qualified  
17 employee under this subsection.

18 “(2) AVERAGE DAILY QUALIFIED COMPENSA-  
19 TION AND AVERAGE DAILY MILITARY PAY AND AL-  
20 LOWANCES.—As used with respect to a qualified em-  
21 ployee—

22 “(A) the term ‘average daily qualified com-  
23 pensation’ means the qualified compensation of  
24 the qualified employee for the taxable year di-  
25 vided by the difference between—

1 “(i) 365, and

2 “(ii) the number of days the qualified  
3 employee participates in qualified reserve  
4 component duty during the taxable year,  
5 including time spent in a travel status, and

6 “(B) the term ‘average daily military pay  
7 and allowances’ means—

8 “(i) the amount paid to the qualified  
9 employee during the taxable year as mili-  
10 tary pay and allowances on account of the  
11 qualified employee’s participation in quali-  
12 fied reserve component duty, divided by

13 “(ii) the total number of days the  
14 qualified employee participates in qualified  
15 reserve component duty, including time  
16 spent in travel status.

17 “(3) QUALIFIED COMPENSATION.—When used  
18 with respect to the compensation paid or that would  
19 have been paid to a qualified employee for any pe-  
20 riod during which the qualified employee participates  
21 in qualified reserve component duty, the term ‘quali-  
22 fied compensation’ means—

23 “(A) compensation which is normally con-  
24 tingent on the qualified employee’s presence for  
25 work and which would be deductible from the

1 taxpayer's gross income under section 162(a)(1)  
2 if the qualified employee were present and re-  
3 ceiving such compensation,

4 “(B) compensation which is not character-  
5 ized by the taxpayer as vacation or holiday pay,  
6 or as sick leave or pay, or as any other form  
7 of pay for a nonspecific leave of absence, and  
8 with respect to which the number of days the  
9 qualified employee participates in qualified re-  
10 serve component duty does not result in any re-  
11 duction in the amount of vacation time, sick  
12 leave, or other nonspecific leave previously cred-  
13 ited to or earned by the qualified employee, and

14 “(C) group health plan costs (if any) with  
15 respect to the qualified employee.

16 “(4) QUALIFIED EMPLOYEE.—The term ‘quali-  
17 fied employee’ means a person who—

18 “(A) has been an employee of the taxpayer  
19 for the 21-day period immediately preceding the  
20 period during which the employee participates  
21 in qualified reserve component duty, and

22 “(B) is a member of the Ready Reserve of  
23 a reserve component of an Armed Force of the  
24 United States as defined in sections 10142 and  
25 10101 of title 10, United States Code.

1 “(c) SELF-EMPLOYMENT CREDIT.—

2 “(1) IN GENERAL.—The self-employment credit  
3 of a qualified self-employed taxpayer for any taxable  
4 year is equal to the excess, if any, of—

5 “(A) the self-employed taxpayer’s average  
6 daily self-employment income for the taxable  
7 year over

8 “(B) the average daily military pay and al-  
9 lowances received by the taxpayer during the  
10 taxable year, while participating in qualified re-  
11 serve component duty to the exclusion of the  
12 taxpayer’s normal self-employment duties for  
13 the number of days the taxpayer participates in  
14 qualified reserve component duty during the  
15 taxable year, including time spent in a travel  
16 status.

17 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-  
18 COME AND AVERAGE DAILY MILITARY PAY AND AL-  
19 LOWANCES.—As used with respect to a self-em-  
20 ployed taxpayer—

21 “(A) the term ‘average daily self-employ-  
22 ment income’ means the self-employment in-  
23 come (as defined in section 1402) of the tax-  
24 payer for the taxable year plus the amount paid  
25 for insurance which constitutes medical care for

1 the taxpayer for such year (within the meaning  
2 of section 162(l)) divided by the difference be-  
3 tween—

4 “(i) 365, and

5 “(ii) the number of days the taxpayer  
6 participates in qualified reserve component  
7 duty during the taxable year, including  
8 time spent in a travel status, and

9 “(B) the term ‘average daily military pay  
10 and allowances’ means—

11 “(i) the amount paid to the taxpayer  
12 during the taxable year as military pay  
13 and allowances on account of the tax-  
14 payer’s participation in qualified reserve  
15 component duty, divided by

16 “(ii) the total number of days the tax-  
17 payer participates in qualified reserve com-  
18 ponent duty, including time spent in travel  
19 status.

20 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—

21 The term ‘qualified self-employed taxpayer’ means a  
22 taxpayer who—

23 “(A) has net earnings from self-employ-  
24 ment (as defined in section 1402) for the tax-  
25 able year, and

1           “(B) is a member of the Ready Reserve of  
2           a reserve component of an Armed Force of the  
3           United States.

4           “(d) CREDIT IN ADDITION TO DEDUCTION.—The  
5           employment credit provided in this section is in addition  
6           to any deduction otherwise allowable with respect to com-  
7           pensation actually paid to a qualified employee during any  
8           period the qualified employee participates in qualified re-  
9           serve component duty to the exclusion of normal employ-  
10          ment duties.

11          “(e) LIMITATIONS.—

12           “(1) MAXIMUM CREDIT.—

13           “(A) IN GENERAL.—The credit allowed by  
14           subsection (a) for the taxable year shall not ex-  
15           ceed \$25,000 with respect to each qualified em-  
16           ployee.

17           “(B) CONTROLLED GROUPS.—For pur-  
18           poses of applying the limitation in subpara-  
19           graph (A)—

20           “(i) all members of a controlled group  
21           shall be treated as one taxpayer, and

22           “(ii) such limitations shall be allo-  
23           cated among the members of such group in  
24           such manner as the Secretary may pre-  
25           scribe.

1 For purposes of this subparagraph, all persons  
2 treated as a single employer under subsection  
3 (a) or (b) of section 52 or subsection (m) or (o)  
4 of section 414 shall be treated as members of  
5 a controlled group.

6 “(2) DISALLOWANCE FOR FAILURE TO COMPLY  
7 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF  
8 MEMBERS OF THE RESERVE COMPONENTS OF THE  
9 ARMED FORCES OF THE UNITED STATES.—No credit  
10 shall be allowed under subsection (a) to a taxpayer  
11 for—

12 “(A) any taxable year in which the tax-  
13 payer is under a final order, judgment, or other  
14 process issued or required by a district court of  
15 the United States under section 4323 of title 38  
16 of the United States Code with respect to a vio-  
17 lation of chapter 43 of such title, and

18 “(B) the 2 succeeding taxable years.

19 “(3) DISALLOWANCE WITH RESPECT TO PER-  
20 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—  
21 No credit shall be allowed under subsection (a) to a  
22 taxpayer with respect to any period for which the  
23 person on whose behalf the credit would otherwise be  
24 allowable is called or ordered to active duty for any  
25 of the following types of duty:

1           “(A) active duty for training under any  
2           provision of title 10, United States Code,

3           “(B) training at encampments, maneuvers,  
4           outdoor target practice, or other exercises under  
5           chapter 5 of title 32, United States Code, or

6           “(C) full-time National Guard duty, as de-  
7           fined in section 101(d)(5) of title 10, United  
8           States Code.

9           “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

10           “(1) MILITARY PAY AND ALLOWANCES.—The  
11           term ‘military pay’ means pay as that term is de-  
12           fined in section 101(21) of title 37, United States  
13           Code, and the term ‘allowances’ means the allow-  
14           ances payable to a member of the Armed Forces of  
15           the United States under chapter 7 of that title.

16           “(2) QUALIFIED RESERVE COMPONENT  
17           DUTY.—The term ‘qualified reserve component duty’  
18           includes only active duty performed, as designated in  
19           the reservist’s military orders, in support of a con-  
20           tingency operation as defined in section 101(a)(13)  
21           of title 10, United States Code.

22           “(3) NORMAL EMPLOYMENT AND SELF-EM-  
23           PLOYMENT DUTIES.—A person shall be deemed to  
24           be participating in qualified reserve component duty  
25           to the exclusion of normal employment or self-em-

1       ployment duties if the person does not engage in or  
2       undertake any substantial activity related to the per-  
3       son’s normal employment or self-employment duties  
4       while participating in qualified reserve component  
5       duty unless in an authorized leave status or other  
6       authorized absence from military duties. If a person  
7       engages in or undertakes any substantial activity re-  
8       lated to the person’s normal employment or self-em-  
9       ployment duties at any time while participating in a  
10      period of qualified reserve component duty, unless  
11      during a period of authorized leave or other author-  
12      ized absence from military duties, the person shall  
13      be deemed to have engaged in or undertaken such  
14      activity for the entire period of qualified reserve  
15      component duty.

16           “(4) CERTAIN RULES TO APPLY.—Rules similar  
17      to the rules of subsections (c), (d), and (e) of section  
18      52 shall apply for purposes of this section.”.

19      (b) CONFORMING AMENDMENT.—Section 38(b) (re-  
20      lating to general business credit) is amended—

21           (1) by striking “plus” at the end of paragraph  
22      (14),

23           (2) by striking the period at the end of para-  
24      graph (15) and inserting “, plus”, and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(16) the reserve component employment credit  
4 determined under section 45G(a).”.

5           (c) CLERICAL AMENDMENT.—The table of sections  
6 for subpart D of part IV of subchapter A of chapter 1  
7 is amended by inserting after the item relating to section  
8 45F the following new item:

                  “Sec. 45G. Reserve component employment credit.”.

9           (d) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2002.

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