

In the Senate of the United States,

October 11, 2004.

Resolved, That the bill from the House of Representatives (H.R. 1779) entitled “An Act to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Guardsmen and Reserv-*

3 *ists Financial Relief Act of 2004”.*

1 **SEC. 2. PENALTY-FREE WITHDRAWALS FROM RETIREMENT**
 2 **PLANS FOR INDIVIDUALS CALLED TO ACTIVE**
 3 **DUTY FOR AT LEAST 179 DAYS.**

4 (a) *IN GENERAL.*—Paragraph (2) of section 72(t) of
 5 the Internal Revenue Code of 1986 (relating to 10-percent
 6 additional tax on early distributions from qualified retire-
 7 ment plans) is amended by adding at the end the following
 8 new subparagraph:

9 “(G) *DISTRIBUTIONS FROM RETIREMENT*
 10 *PLANS TO INDIVIDUALS CALLED TO ACTIVE*
 11 *DUTY.*—

12 “(i) *IN GENERAL.*—Any qualified re-
 13 servist distribution.

14 “(ii) *QUALIFIED RESERVIST DISTRIBUTION.*—For purposes of this subparagraph,
 15 the term ‘qualified reservist distribution’
 16 means any distribution to an individual
 17 if—
 18

19 “(I) such distribution is from any
 20 qualified retirement plan (as defined
 21 in section 4974(c)),

22 “(II) such individual was (by rea-
 23 son of being a member of a reserve
 24 component (as defined in section 101
 25 of title 37, United States Code)), or-
 26 dered or called to active duty for a pe-

1 *riod in excess of 179 days or for an in-*
2 *definite period, and*

3 *“(III) such distribution is made*
4 *during the period beginning on the*
5 *date of such order or call and ending*
6 *at the close of the active duty period.*

7 *“(iii) APPLICATION OF SUBPARA-*
8 *GRAPH.—This subparagraph applies to in-*
9 *dividuals ordered or called to active duty*
10 *after September 11, 2001, and before Sep-*
11 *tember 12, 2005.”.*

12 *(b) EFFECTIVE DATE.—The amendment made by this*
13 *section shall apply to distributions after September 11,*
14 *2001.*

15 **SEC. 3. INCOME TAX WITHHOLDING ON DIFFERENTIAL**
16 **WAGE PAYMENTS.**

17 *(a) IN GENERAL.—Section 3401 of the Internal Rev-*
18 *enue Code of 1986 (relating to definitions) is amended by*
19 *adding at the end the following new subsection:*

20 *“(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE*
21 *DUTY MEMBERS OF THE UNIFORMED SERVICES.—*

22 *“(1) IN GENERAL.—For purposes of subsection*
23 *(a), any differential wage payment shall be treated as*
24 *a payment of wages by the employer to the employee.*

1 “(2) *DIFFERENTIAL WAGE PAYMENT.*—For pur-
2 poses of paragraph (1), the term ‘differential wage
3 payment’ means any payment which—

4 “(A) is made by an employer to an indi-
5 vidual with respect to any period during which
6 the individual is performing service in the uni-
7 formed services while on active duty for a period
8 of more than 30 days, and

9 “(B) represents all or a portion of the wages
10 the individual would have received from the em-
11 ployer if the individual were performing service
12 for the employer.”.

13 (b) *EFFECTIVE DATE.*—The amendment made by this
14 section shall apply to remuneration paid after December
15 31, 2004.

16 **SEC. 4. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS**
17 **FOR RETIREMENT PLAN PURPOSES.**

18 (a) *PENSION PLANS.*—

19 (1) *IN GENERAL.*—Section 414(u) of the Internal
20 Revenue Code of 1986 (relating to special rules relat-
21 ing to veterans’ reemployment rights under
22 USERRA) is amended by adding at the end the fol-
23 lowing new paragraph:

24 “(11) *TREATMENT OF DIFFERENTIAL WAGE PAY-*
25 *MENTS.*—

1 “(A) *IN GENERAL.*—*Except as provided in*
2 *this paragraph, for purposes of applying this*
3 *title to a retirement plan to which this sub-*
4 *section applies—*

5 “(i) *an individual receiving a differen-*
6 *tial wage payment shall be treated as an*
7 *employee of the employer making the pay-*
8 *ment,*

9 “(ii) *the differential wage payment*
10 *shall be treated as compensation, and*

11 “(iii) *the plan shall not be treated as*
12 *failing to meet the requirements of any pro-*
13 *vision described in paragraph (1)(C) by*
14 *reason of any contribution which is based*
15 *on the differential wage payment.*

16 “(B) *SPECIAL RULE FOR DISTRIBUTIONS.*—

17 “(i) *IN GENERAL.*—*Notwithstanding*
18 *subparagraph (A)(i), for purposes of section*
19 *401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii),*
20 *403(b)(11)(A), or 457(d)(1)(A)(ii), an indi-*
21 *vidual shall be treated as having been sev-*
22 *ered from employment during any period*
23 *the individual is performing service in the*
24 *uniformed services described in section*
25 *3401(i)(2)(A).*

1 “(ii) *LIMITATION.*—*If an individual*
2 *elects to receive a distribution by reason of*
3 *clause (i), the plan shall provide that the*
4 *individual may not make an elective defer-*
5 *ral or employee contribution during the 6-*
6 *month period beginning on the date of the*
7 *distribution.*

8 “(C) *NONDISCRIMINATION REQUIREMENT.*—
9 *Subparagraph (A)(iii) shall apply only if all*
10 *employees of an employer performing service in*
11 *the uniformed services described in section*
12 *3401(i)(2)(A) are entitled to receive differential*
13 *wage payments on reasonably equivalent terms*
14 *and, if eligible to participate in a retirement*
15 *plan maintained by the employer, to make con-*
16 *tributions based on the payments. For purposes*
17 *of applying this subparagraph, the provisions of*
18 *paragraphs (3), (4), and (5), of section 410(b)*
19 *shall apply.*

20 “(D) *DIFFERENTIAL WAGE PAYMENT.*—*For*
21 *purposes of this paragraph, the term ‘differential*
22 *wage payment’ has the meaning given such term*
23 *by section 3401(i)(2).”.*

24 “(2) *CONFORMING AMENDMENT.*—*The heading for*
25 *section 414(u) of such Code is amended by inserting*

1 “AND TO DIFFERENTIAL WAGE PAYMENTS TO MEM-
2 BERS ON ACTIVE DUTY” after “USERRA”.

3 (b) *DIFFERENTIAL WAGE PAYMENTS TREATED AS*
4 *COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—*
5 *Section 219(f)(1) of the Internal Revenue Code of 1986 (de-*
6 *fining compensation) is amended by adding at the end the*
7 *following new sentence: “The term ‘compensation’ includes*
8 *any differential wage payment (as defined in section*
9 *3401(i)(2)).”.*

10 (c) *EFFECTIVE DATE.—The amendments made by this*
11 *section shall apply to plan years beginning after December*
12 *31, 2004.*

13 (d) *PROVISIONS RELATING TO PLAN AMENDMENTS.—*

14 (1) *IN GENERAL.—If this subsection applies to*
15 *any plan or annuity contract amendment—*

16 (A) *such plan or contract shall be treated as*
17 *being operated in accordance with the terms of*
18 *the plan or contract during the period described*
19 *in paragraph (2)(B)(i), and*

20 (B) *except as provided by the Secretary of*
21 *the Treasury, such plan shall not fail to meet the*
22 *requirements of the Internal Revenue Code of*
23 *1986 or the Employee Retirement Income Secu-*
24 *rity Act of 1974 by reason of such amendment.*

1 (2) *AMENDMENTS TO WHICH SECTION AP-*
2 *PLIES.—*

3 (A) *IN GENERAL.—This subsection shall*
4 *apply to any amendment to any plan or annu-*
5 *ity contract which is made—*

6 (i) *pursuant to any amendment made*
7 *by this section, and*

8 (ii) *on or before the last day of the first*
9 *plan year beginning on or after January 1,*
10 *2007.*

11 (B) *CONDITIONS.—This subsection shall not*
12 *apply to any plan or annuity contract amend-*
13 *ment unless—*

14 (i) *during the period beginning on the*
15 *date the amendment described in subpara-*
16 *graph (A)(i) takes effect and ending on the*
17 *date described in subparagraph (A)(ii) (or,*
18 *if earlier, the date the plan or contract*
19 *amendment is adopted), the plan or con-*
20 *tract is operated as if such plan or contract*
21 *amendment were in effect; and*

22 (ii) *such plan or contract amendment*
23 *applies retroactively for such period.*

1 **SEC. 5. READY RESERVE-NATIONAL GUARD EMPLOYEE**
2 **CREDIT AND READY RESERVE-NATIONAL**
3 **GUARD REPLACEMENT EMPLOYEE CREDIT.**

4 *(a) READY RESERVE-NATIONAL GUARD CREDIT.—*

5 *(1) IN GENERAL.—Subpart D of part IV of sub-*
6 *chapter A of chapter 1 of the Internal Revenue Code*
7 *of 1986 (relating to business-related credits) is*
8 *amended by inserting after section 45I the following*
9 *new section:*

10 **“SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE**
11 **CREDIT.**

12 *“(a) GENERAL RULE.—For purposes of section 38, in*
13 *the case of an eligible taxpayer, the Ready Reserve-National*
14 *Guard employee credit determined under this section for*
15 *any taxable year with respect to each Ready Reserve-Na-*
16 *tional Guard employee of such taxpayer is an amount equal*
17 *to 50 percent of the lesser of—*

18 *“(1) the actual compensation amount with re-*
19 *spect to such employee for such taxable year, or*

20 *“(2) \$30,000.*

21 *“(b) DEFINITION OF ACTUAL COMPENSATION*
22 *AMOUNT.—For purposes of this section, the term ‘actual*
23 *compensation amount’ means the amount of compensation*
24 *paid or incurred by an eligible taxpayer with respect to*
25 *a Ready Reserve-National Guard employee on any day*

1 *when the employee was absent from employment for the*
 2 *purpose of performing qualified active duty.*

3 “(c) *LIMITATIONS.*—*No credit shall be allowed with re-*
 4 *spect to any day that a Ready Reserve-National Guard em-*
 5 *ployee who performs qualified active duty was not scheduled*
 6 *to work (for reason other than to participate in qualified*
 7 *active duty).*

8 “(d) *DEFINITIONS AND SPECIAL RULES.*—*For pur-*
 9 *poses of this section—*

10 “(1) *ELIGIBLE TAXPAYER.*—

11 “(A) *IN GENERAL.*—*The term ‘eligible tax-*
 12 *payer’ means a small business employer.*

13 “(B) *SMALL BUSINESS EMPLOYER.*—

14 “(i) *IN GENERAL.*—*The term ‘small*
 15 *business employer’ means, with respect to*
 16 *any taxable year, any employer who em-*
 17 *ployed an average of 50 or fewer employees*
 18 *on business days during such taxable year.*

19 “(ii) *CONTROLLED GROUPS.*—*For pur-*
 20 *poses of clause (i), all persons treated as a*
 21 *single employer under subsection (b), (c),*
 22 *(m), or (o) of section 414 shall be treated as*
 23 *a single employer.*

24 “(2) *QUALIFIED ACTIVE DUTY.*—*The term ‘quali-*
 25 *fied active duty’ means—*

1 “(A) *active duty under an order or call for*
2 *a period in excess of 179 days or for an indefi-*
3 *nite period, other than the training duty speci-*
4 *fied in section 10147 of title 10, United States*
5 *Code (relating to training requirements for the*
6 *Ready Reserve), or section 502(a) of title 32,*
7 *United States Code (relating to required drills*
8 *and field exercises for the National Guard), in*
9 *connection with which an employee is entitled to*
10 *reemployment rights and other benefits or to a*
11 *leave of absence from employment under chapter*
12 *43 of title 38, United States Code, and*

13 “(B) *hospitalization incident to such duty.*

14 “(3) *COMPENSATION.*—*The term ‘compensation’*
15 *means any remuneration for employment, whether in*
16 *cash or in kind, which is paid or incurred by a tax-*
17 *payer and which is deductible from the taxpayer’s*
18 *gross income under section 162(a)(1).*

19 “(4) *READY RESERVE-NATIONAL GUARD EM-*
20 *PLOYEE.*—*The term ‘Ready Reserve-National Guard*
21 *employee’ means an employee who is a member of the*
22 *Ready Reserve of a reserve component of an Armed*
23 *Force of the United States as described in sections*
24 *10142 and 10101 of title 10, United States Code.*

1 “(5) *CERTAIN RULES TO APPLY.*—*Rules similar*
2 *to the rules of section 52 shall apply.*

3 “(e) *TERMINATION.*—*This section shall not apply*
4 *to any amount paid or incurred after December 31,*
5 *2005.”.*

6 (2) *CREDIT TO BE PART OF GENERAL BUSINESS*
7 *CREDIT.*—*Subsection (b) of section 38 of the Internal*
8 *Revenue Code of 1986 (relating to general business*
9 *credit) is amended by striking “plus” at the end of*
10 *paragraph (18), by striking the period at the end of*
11 *paragraph (19) and inserting “, plus”, and by add-*
12 *ing at the end the following:*

13 “(20) *the Ready Reserve-National Guard em-*
14 *ployee credit determined under section 45J(a).”.*

15 (3) *DENIAL OF DOUBLE BENEFIT.*—*Section*
16 *280C(a) of the Internal Revenue Code of 1986 (relat-*
17 *ing to rule for employment credits) is amended by in-*
18 *serting “45J(a),” after “45A(a),”.*

19 (4) *CONFORMING AMENDMENT.*—*The table of sec-*
20 *tions for subpart D of part IV of subchapter A of*
21 *chapter 1 of the Internal Revenue Code of 1986 is*
22 *amended by inserting after the item relating to sec-*
23 *tion 45I the following:*

 “*Sec. 45J. Ready Reserve-National Guard employee credit.*”.

24 (5) *EFFECTIVE DATE.*—*The amendments made*
25 *by this subsection shall apply to amounts paid or in-*

1 *curred after September 30, 2004, in taxable years*
2 *ending after such date.*

3 *(b) READY RESERVE-NATIONAL GUARD REPLACEMENT*
4 *EMPLOYEE CREDIT.—*

5 *(1) IN GENERAL.—Paragraph (1) of section*
6 *51(d) of the Internal Revenue Code of 1986 (relating*
7 *to members of targeted groups) is amended by strik-*
8 *ing “or” at the end of subparagraph (G), by striking*
9 *the period at the end of subparagraph (H) and insert-*
10 *ing “, or” and by adding at the end the following new*
11 *subparagraph:*

12 *“(I) a qualified replacement employee.”.*

13 *(2) QUALIFIED REPLACEMENT EMPLOYEE.—Sec-*
14 *tion 51(d) of the Internal Revenue Code of 1986 is*
15 *amended by redesignating paragraphs (10), (11), and*
16 *(12) as paragraphs (11), (12), and (13), respectively,*
17 *and by inserting after paragraph (9) the following*
18 *new paragraph:*

19 *“(10) QUALIFIED REPLACEMENT EMPLOYEE.—*

20 *“(A) IN GENERAL.—The term ‘qualified re-*
21 *placement employee’ means an individual who is*
22 *certified by the designated local agency as being*
23 *hired by an eligible taxpayer to replace a Ready*
24 *Reserve-National Guard employee of such tax-*
25 *payer, but only with respect to the period during*

1 *which such Ready Reserve-National Guard em-*
2 *ployee participates in qualified active duty, in-*
3 *cluding time spent in travel status.*

4 “(B) *GENERAL DEFINITIONS AND SPECIAL*
5 *RULES.—For purposes of this paragraph—*

6 “(i) *ELIGIBLE TAXPAYER.—The term*
7 *‘eligible taxpayer’ means a small business*
8 *employer.*

9 “(ii) *SMALL BUSINESS EMPLOYER.—*

10 “(I) *IN GENERAL.—The term*
11 *‘small business employer’ means, with*
12 *respect to any taxable year, any em-*
13 *ployer who employed an average of 50*
14 *or fewer employees on business days*
15 *during such taxable year.*

16 “(II) *CONTROLLED GROUPS.—For*
17 *purposes of subclause (I), all persons*
18 *treated as a single employer under sub-*
19 *section (b), (c), (m), or (o) of section*
20 *414 shall be treated as a single em-*
21 *ployer.*

22 “(iii) *READY RESERVE-NATIONAL*
23 *GUARD EMPLOYEE.—The term ‘Ready Re-*
24 *serve-National Guard employee’ has the*

1 *meaning given such term by section*
2 *45J(d)(3).*

3 “(iv) *QUALIFIED ACTIVE DUTY.*—*The*
4 *term ‘qualified active duty’ has the meaning*
5 *given such term by section 45J(d)(1).*

6 “(C) *DISALLOWANCE FOR FAILURE TO COM-*
7 *PLY WITH EMPLOYMENT OR REEMPLOYMENT*
8 *RIGHTS OF MEMBERS OF THE RESERVE COMPO-*
9 *NENTS OF THE ARMED FORCES OF THE UNITED*
10 *STATES.*—*No credit shall be allowed under sub-*
11 *section (a) by reason of paragraph (1)(I) to a*
12 *taxpayer for—*

13 “(i) *any taxable year, beginning after*
14 *the date of the enactment of this section, in*
15 *which the taxpayer is under a final order,*
16 *judgment, or other process issued or re-*
17 *quired by a district court of the United*
18 *States under section 4323 of title 38 of the*
19 *United States Code with respect to a viola-*
20 *tion of chapter 43 of such title, and*

21 “(ii) *the 2 succeeding taxable years.*”.

22 “(3) *EFFECTIVE DATE.*—*The amendments made*
23 *by this subsection shall apply to amounts paid or in-*
24 *curring to an individual who begins work for the em-*
25 *ployer after September 30, 2004.*

1 (c) *STUDY BY GAO.*—

2 (1) *IN GENERAL.*—*The Comptroller General of*
3 *the United States shall study the following:*

4 (A) *What, if any, problems exist in recruit-*
5 *ing individuals for a reserve component of an*
6 *Armed Force of the United States.*

7 (B) *What, if any, problems exist as the re-*
8 *sult of providing differential wage payments (as*
9 *defined in section 3401(i)(2) of the Internal Rev-*
10 *enue Code of 1986 (as added by this Act)) to in-*
11 *dividuals described in subparagraph (A) in the*
12 *recruitment and retention of individuals as reg-*
13 *ular members of the Armed Forces of the United*
14 *States.*

15 (C) *Whether the credit allowed under section*
16 *45J of the Internal Revenue Code of 1986 (as*
17 *added by this section) is an effective incentive for*
18 *the hiring and retention of employees who are*
19 *individuals described in subparagraph (A) and*
20 *whether there exists any compliance problems in*
21 *the administration of such credit.*

22 (2) *REPORT.*—*The Comptroller General of the*
23 *United States shall report on the results of the study*
24 *required under paragraph (1) to the Committee of Fi-*
25 *nance of the Senate and the Committee on Ways and*

1 *Means of the House of Representatives before July 1,*
 2 *2005.*

3 **SEC. 6. PENALTY FREE WITHDRAWALS FROM RETIREMENT**
 4 **PLANS FOR VICTIMS OF FEDERALLY DE-**
 5 **CLARED NATURAL DISASTERS.**

6 *(a) IN GENERAL.—Paragraph (2) of section 72(t) of*
 7 *the Internal Revenue Code of 1986 (relating to 10-percent*
 8 *additional tax on early distributions from qualified retire-*
 9 *ment plans), as amended by this Act, is amended by adding*
 10 *at the end the following new subparagraph:*

11 “(H) *DISTRIBUTIONS FROM RETIREMENT*
 12 *PLANS TO VICTIMS OF FEDERALLY DECLARED*
 13 *NATURAL DISASTERS.—*

14 “(i) *IN GENERAL.—Any qualified dis-*
 15 *aster-relief distribution.*

16 “(ii) *QUALIFIED DISASTER-RELIEF*
 17 *DISTRIBUTION.—For purposes of this sub-*
 18 *paragraph, the term ‘qualified disaster-re-*
 19 *lief distribution’ means any distribution to*
 20 *an individual who has sustained a loss in*
 21 *excess of \$100 as a result of a major dis-*
 22 *aster declared under the Robert T. Stafford*
 23 *Disaster Relief and Emergency Assistance*
 24 *Act—*

1 “(I) if such distribution is made
2 from any qualified retirement plan (as
3 defined in section 4974(c)) during the
4 1-year period beginning on the date
5 such declaration is made, and

6 “(II) to the extent such distribu-
7 tion does not exceed the amount of such
8 loss and is not compensated for by in-
9 surance or otherwise.

10 For purposes of subclause (II), the amount
11 of any loss shall be determined using the
12 greater of the fair market value of the prop-
13 erty on the day before the date of such dis-
14 aster or the adjusted basis of the property as
15 provided in section 1011, less any com-
16 pensation for such loss that the individual
17 has received as of the date of such distribu-
18 tion and any compensation for such loss
19 that the individual expects to receive, based
20 on a reasonable estimate. Any difference be-
21 tween the amount of compensation that an
22 individual expects to receive on the basis of
23 such an estimate and actually receives shall
24 not be included in the individual’s gross in-
25 come.”.

1 (b) *EXEMPTION OF DISTRIBUTIONS FROM WITH-*
 2 *HOLDING.*—Paragraph (4) of section 402(c) of the Internal
 3 *Revenue Code of 1986 (relating to eligible rollover distribu-*
 4 *tion) is amended by striking “and” at the end of subpara-*
 5 *graph (B), by striking the period at the end of subpara-*
 6 *graph (C) and inserting “, and”, and by inserting at the*
 7 *end the following new subparagraph:*

8 “(D) any qualified disaster-relief distribu-
 9 tion (within the meaning of section
 10 72(t)(2)(H)).”.

11 (c) *CONFORMING AMENDMENTS.*—

12 (1) Section 401(k)(2)(B)(i) of the Internal Rev-
 13 *enue Code of 1986 is amended by striking “or” at the*
 14 *end of subclause (III), by striking “and” at the end*
 15 *of subclause (IV) and inserting “or”, and by inserting*
 16 *after subclause (IV) the following new subclause:*

17 “(V) the date on which a period
 18 referred to in section 72(t)(2)(H)(i)(I)
 19 begins (but only to the extent provided
 20 in section 72(t)(2)(H)), and”.

21 (2) Section 403(b)(7)(A)(ii) of such Code is
 22 *amended by inserting “sustains a loss as a result of*
 23 *a major disaster declared under the Robert T. Staf-*
 24 *ford Disaster Relief and Emergency Assistance Act*

1 *(but only to the extent provided in section*
2 *72(t)(2)(H)),” before “or”.*

3 *(3) Section 403(b)(11) of such Code is amended*
4 *by striking “or” at the end of subparagraph (A), by*
5 *striking the period at the end of subparagraph (B)*
6 *and inserting “, or”, and by inserting after subpara-*
7 *graph (B) the following new subparagraph:*

8 *“(C) for distributions to which section*
9 *72(t)(2)(H) applies.”.*

10 *(d) EFFECTIVE DATE.—The amendments made by this*
11 *section shall apply to distributions received in taxable years*
12 *beginning after December 31, 2003.*

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

H. R. 1779

AMENDMENT