

107TH CONGRESS
2D SESSION

S. 3088

To provide pay protection for members of the Reserve and the National Guard, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 9, 2002

Ms. LANDRIEU introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide pay protection for members of the Reserve and the National Guard, 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 “Reservists and Guards-
5 men Pay Protection Act of 2002”.

1 **SEC. 2. NONREDUCTION IN PAY WHILE FEDERAL EM-**
2 **EMPLOYEE IS PERFORMING ACTIVE SERVICE IN**
3 **THE UNIFORMED SERVICES OR NATIONAL**
4 **GUARD.**

5 (a) IN GENERAL.—Subchapter IV of chapter 55 of
6 title 5, United States Code, is amended by adding at the
7 end the following:

8 **“§ 5538. Nonreduction in pay while serving in the**
9 **uniformed services or National Guard**

10 “(a) An employee who is absent from a position of
11 employment with the Federal Government in order to per-
12 form service in the uniformed services or the National
13 Guard shall be entitled to receive, for each pay period de-
14 scribed in subsection (b), an amount equal to the amount
15 by which—

16 “(1) the amount of basic pay which would oth-
17 erwise have been payable to such employee for such
18 pay period if such employee’s civilian employment
19 with the Government had not been interrupted by
20 that service, exceeds (if at all)

21 “(2) the amount of pay and allowances which
22 (as determined under subsection (d))—

23 “(A) is payable to such employee for that
24 service; and

25 “(B) is allocable to such pay period.

1 “(b)(1) Amounts under this section shall be payable
2 with respect to each pay period (which would otherwise
3 apply if the employee’s civilian employment had not been
4 interrupted)—

5 “(A) during which such employee is entitled to
6 reemployment rights under chapter 43 of title 38
7 with respect to the position from which such em-
8 ployee is absent (as referred to in subsection (a));
9 and

10 “(B) for which such employee does not other-
11 wise receive basic pay (including by taking any an-
12 nual, military, or other paid leave) to which such
13 employee is entitled by virtue of such employee’s ci-
14 vilian employment with the Government.

15 “(2) For purposes of this section, the period during
16 which an employee is entitled to reemployment rights
17 under chapter 43 of title 38—

18 “(A) shall be determined disregarding the provi-
19 sions of section 4312(d) of title 38; and

20 “(B) shall include any period of time specified
21 in section 4312(e) of title 38 within which an em-
22 ployee may report or apply for employment or reem-
23 ployment following completion of service in the uni-
24 formed services or National Guard.

1 “(c) Any amount payable under this section to an em-
2 ployee shall be paid—

3 “(1) by such employee’s employing agency;

4 “(2) from the appropriation or fund which
5 would be used to pay the employee if such employee
6 were in a pay status; and

7 “(3) to the extent practicable, at the same time
8 and in the same manner as would basic pay if such
9 employee’s civilian employment had not been inter-
10 rupted.

11 “(d) The Office of Personnel Management shall, in
12 consultation with Secretary of Defense, prescribe any reg-
13 ulations necessary to carry out the preceding provisions
14 of this section.

15 “(e)(1) The head of each agency referred to in section
16 2302(a)(2)(C)(ii) shall, in consultation with the Office,
17 prescribe procedures to ensure that the rights under this
18 section apply to the employees of such agency.

19 “(2) The Administrator of the Federal Aviation Ad-
20 ministration shall, in consultation with the Office, pre-
21 scribe procedures to ensure that the rights under this sec-
22 tion apply to the employees of that agency.

23 “(f) For purposes of this section—

24 “(1) the terms ‘employee’, ‘Federal Govern-
25 ment’, and ‘uniformed services’ have the same re-

1 spective meanings as given them in section 4303 of
2 title 38;

3 “(2) the term ‘service in the uniformed services’
4 has the meaning given that term in section 4303 of
5 title 38 and includes duty performed by a member
6 of the National Guard under section 502(f) of title
7 32 at the direction of the Secretary of the Army or
8 Secretary of the Air Force;

9 “(3) the term ‘employing agency’, as used with
10 respect to an employee entitled to any payments
11 under this section, means the agency or other entity
12 of the Government (including an agency referred to
13 in section 2302(a)(2)(C)(ii)) with respect to which
14 such employee has reemployment rights under chap-
15 ter 43 of title 38; and

16 “(4) the term ‘basic pay’ includes any amount
17 payable under section 5304.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 55 of title 5, United States Code, is amended
20 by inserting after the item relating to section 5537 the
21 following:

 “5538. Nonreduction in pay while serving in the uniformed services or National
 Guard.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply with respect to pay periods (as de-
24 scribed in section 5538(b) of title 5, United States Code,

1 as amended by this section) beginning on or after Sep-
 2 tember 11, 2001.

3 **SEC. 3. READY RESERVE-NATIONAL GUARD EMPLOYEE**
 4 **CREDIT ADDED TO GENERAL BUSINESS**
 5 **CREDIT.**

6 (a) READY RESERVE-NATIONAL GUARD CREDIT.—
 7 Subpart D of part IV of subchapter A of chapter 1 of
 8 the Internal Revenue Code of 1986 (relating to business-
 9 related credits) is amended by adding at the end the fol-
 10 lowing new section:

11 **“SEC. 45G. READY RESERVE-NATIONAL GUARD EMPLOYEE**
 12 **CREDIT.**

13 “(a) GENERAL RULE.—For purposes of section 38,
 14 the Ready Reserve-National Guard employee credit deter-
 15 mined under this section for the taxable year is an amount
 16 equal to 50 percent of the actual compensation amount
 17 for the taxable year.

18 “(b) DEFINITION OF ACTUAL COMPENSATION
 19 AMOUNT.—For purposes of this section, the term ‘actual
 20 compensation amount’ means the amount of compensation
 21 paid or incurred by an employer with respect to a Ready
 22 Reserve-National Guard employee on any day during a
 23 taxable year when the employee was absent from employ-
 24 ment for the purpose of performing qualified active duty.

25 “(c) LIMITATIONS.—

1 “(1) MAXIMUM TIME.—The maximum period of
2 time in which the credit may be used shall not ex-
3 ceed 12 months.

4 “(2) DAYS OTHER THAN WORK DAYS.—No
5 credit shall be allowed with respect to a Ready Re-
6 serve-National Guard employee who performs quali-
7 fied active duty on any day on which the employee
8 was not scheduled to work (for reason other than to
9 participate in qualified active duty).

10 “(d) DEFINITIONS.—For purposes of this section—

11 “(1) QUALIFIED ACTIVE DUTY.—The term
12 ‘qualified active duty’ means—

13 “(A) active duty, other than the training
14 duty specified in section 10147 of title 10,
15 United States Code (relating to training re-
16 quirements for the Ready Reserve), or section
17 502(a) of title 32, United States Code (relating
18 to required drills and field exercises for the Na-
19 tional Guard), in connection with which an em-
20 ployee is entitled to reemployment rights and
21 other benefits or to a leave of absence from em-
22 ployment under chapter 43 of title 38, United
23 States Code, and

24 “(B) hospitalization incident to such duty.

1 “(2) COMPENSATION.—The term ‘compensa-
2 tion’ means any remuneration for employment,
3 whether in cash or in kind, which is paid or incurred
4 by a taxpayer and which is deductible from the tax-
5 payer’s gross income under section 162(a)(1).

6 “(3) READY RESERVE-NATIONAL GUARD EM-
7 PLOYEE.—The term ‘Ready Reserve-National Guard
8 employee’ means an employee who is a member of
9 the Ready Reserve or of the National Guard.

10 “(4) NATIONAL GUARD.—The term ‘National
11 Guard’ has the meaning given such term by section
12 101(c)(1) of title 10, United States Code.

13 “(5) READY RESERVE.—The term ‘Ready Re-
14 serve’ has the meaning given such term by section
15 10142 of title 10, United States Code.”.

16 (b) CREDIT TO BE PART OF GENERAL BUSINESS
17 CREDIT.—Subsection (b) of section 38 of such Code (re-
18 lating to general business credit) is amended by striking
19 “plus” at the end of paragraph (14), by striking the period
20 at the end of paragraph (15) and inserting “, plus”, and
21 by adding at the end the following new paragraph:

22 “(16) the Ready Reserve-National Guard em-
23 ployee credit determined under section 45G(a).”.

24 (c) CONFORMING AMENDMENT.—The table of sec-
25 tions for subpart D of part IV of subchapter A of chapter

1 1 of the Internal Revenue Code of 1986 is amended by
2 inserting after the item relating to section 45F the fol-
3 lowing new item:

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

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2001.

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