

Public Law 90-485

AN ACT

To amend chapter 73 of title 10, United States Code, relating to the retired serviceman's family protection plan, and for other purposes.

August 13, 1968
[H. R. 12323]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 73 of title 10, United States Code is amended as follows:

(1) Section 1431(b) is amended to read as follows:

“(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after the date of enactment of this amendment is not effective if—

“(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination of the per centum of his disability;

“(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

“(3) his widow or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.”

(2) Section 1431(c) is amended to read as follows:

“(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.”

(3) The text of section 1434 is amended to read as follows:

“(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected

Armed Forces.
Retired members,
family protection
plan.
75 Stat. 810.
Infra.

70A Stat. 91.
10 USC 1201-
1221.

72 Stat. 1126.
38 USC 401-423.

70A Stat. 109.

Maximum and
minimum amounts;
beneficiaries.
70A Stat. 109;
75 Stat. 811.

70A Stat. 110;
75 Stat. 811.

by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 per centum nor less than 12½ per centum of his retired or retainer pay, in no case less than \$25. He may make the annuity payable—

“(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or remarries;

“(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

“(3) to, or on behalf of, the surviving spouse, and after the death or remarriage of that spouse, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

“(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 per centum nor less than 12½ per centum of his retired or retainer pay but in no case less than \$25.

“(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435, of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b) (4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

“(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provide for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a) (3) for payment to those of his surviving children who are not children of that spouse.”

(4) Section 1435 (2) (B) is amended to read as follows:

“(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;”

(5) Section 1435 is amended by adding the following flush sentences at the end:

“For the purposes of clause (2) (B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bona fide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.”

Post, p. 753.

70A Stat. 111.

Eligibility.

(6) Section 1436(b) is amended to read as follows:

“(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

“(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

“(2) to withdraw from participation in an annuity program under this title; or

“(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

“(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.”

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(7) Section 1437 is amended to read as follows:

“§ 1437. Payment of annuity

“(a) Except as provided in subsection (b) each annuity payable under this chapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends.

“(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth

Annuity reduction; withdrawal from program.
75 Stat. 811.
70A Stat. 111.

Ante, p. 751.

70A Stat. 110.

Ante, p. 752.

birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

“(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child’s eighteenth birthday occurs in the same or a preceding month.

“(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

“(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child’s eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month prior to the effective date of this subsection.”

Restriction.
75 Stat. 811.

(8) Section 1446(a)(2) is amended by striking out “18” and inserting in lieu thereof “19”.

70A Stat. 102;
80 Stat. 902.
80 Stat. 557.

SEC. 2. Chapter 67 of title 10, United States Code, is amended by adding to section 1331 the following new subsection:

“(e) Notwithstanding section 8301 of title 5, United States Code, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.”

Ante, p. 751.

Ante, p. 752.

SEC. 3. For members to whom section 1431 of title 10, United States Code, applies on the date of enactment of this Act, the provisions of section 1434(c) of that title, as amended by this Act, are effective immediately and automatically.

70A Stat. 108.
10 USC 1431-
1446.

SEC. 4. A retired member who elected an annuity under chapter 73 of title 10, United States Code, before the date of enactment of this Act, but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are \$25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed \$25. No amounts by which a member’s retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436(b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.

Ante, p. 753.

SEC. 5. Notwithstanding any other provision of this Act, elections in effect on the date of enactment will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.

Effective dates.

SEC. 6. Clause (1) and clause (6) of section 1, and sections 2, 3, and 4 of this Act are effective on the date of enactment. Remaining provisions of this Act are effective on the first day of the third calendar

month following the date of enactment. However, notwithstanding any other provision of this Act, any member to whom section 1431 of title 10, United States Code, applies on the date of enactment of this Act may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431 (b) or (c) of title 10, United States Code, as in effect on the day before the date of enactment of this Act.

Approved August 13, 1968.

Ante, p. 751.

Public Law 90-486

AN ACT

August 13, 1968
[S. 3865]

To clarify the status of National Guard technicians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Guard Technicians Act of 1968".

National Guard
Technicians Act
of 1968.

SEC. 2. Title 32, United States Code, is amended as follows:

70A Stat. 614.

(1) Section 709 is amended to read as follows:

"§ 709. Technicians: employment, use, status

"(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in—

"(1) the administration and training of the National Guard;
and

"(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

"(b) Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.

"(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

70A Stat. 604.

"(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

"(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

"(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

"(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be sepa-