

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-

rated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

"(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

"(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

"(5) a right of appeal which may exist with respect to clause (1), (2), (3), or (4) shall not extend beyond the adjutant general of the jurisdiction concerned; and

"(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

"(f) Sections 2108, 3502, 7511, and 7512 of title 5, United States Code, do not apply to any person employed under this section.

"(g) (1) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

"(A) prescribe the hours of duties;

"(B) fix the rates of basic compensation; and

"(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5, United States Code.

"(2) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5, United States Code, or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

"(h) In no event shall the number of technicians employed under this section at any one time exceed 42,500."

(2) The analysis of chapter 7 is amended by striking out the following item:

"709. Caretakers and clerks."

and inserting in place thereof the following item:

"709. Technicians: employment, use, status."

(3) Section 715(a) is amended by striking out "caused by a person employed under section 709 of this title acting within the scope of his employment;"

SEC. 3. (a) A claim accrued under section 715 of title 32, United States Code, before the effective date of this Act by reason of the act or omission of a person employed under section 709 of title 32, United States Code, may, if otherwise allowable, be settled and paid under section 715 of title 32, United States Code.

80 Stat. 410-
528; 81 Stat. 196.

80 Stat. 486,
515; 81 Stat. 200,
641.

Compensatory
time.

80 Stat. 485;
81 Stat. 200.

Numerical limi-
tation.

74 Stat. 878.

Claims, savings
provision.

(b) Except as provided in this Act and in the amendments made by this Act, and notwithstanding any law, rule, regulation, or decision to the contrary, the positions of persons employed under section 709 of title 32, United States Code, existing on the day before the effective date of this Act, and the persons holding those positions on that day, shall, on and after that effective date, be considered to be positions in and employees of the Department of the Army or the Department of the Air Force, as the case may be, and employees of the United States to the same extent as other positions in and employees of the Department of the Army or the Department of the Air Force. Such positions shall be outside the competitive service, if, as a condition of employment, the persons employed therein were, on the day before the effective date of this Act, required to be members of the Army National Guard or the Air National Guard.

Technicians,
conversion to
Federal employee
status.

(c) All service under section 709 of title 32, United States Code, or prior corresponding provision of law, performed before the effective date of this Act shall be included and credited in the determination of length of service for the purposes of leave, Federal employees death and disability compensation, group life and health insurance, severance pay, tenure, and status. This subsection shall apply only in the case of persons who perform service under section 709 of title 32, United States Code, on or after the effective date of this Act.

Past service,
credit.

(d) Annual leave and sick leave to which a technician was entitled on the day before the conversion of his position, as provided in subsection (b) of this section, shall be credited to him in his new position.

Leave credit.

SEC. 4. Section 2105 (a) of title 5, United States Code, is amended—

80 Stat. 409.

- (1) by striking out "or" at the end of clause (1) (D) ;
- (2) by adding "or" at the end of clause (1) (E) ; and
- (3) by adding the following new subclause (F) at the end of clause (1) :

"(F) the adjutants general designated by the Secretary concerned under section 709(c) of title 32, United States Code;"

Ante, p. 755.

SEC. 5. (a) Section 8332(b) of title 5, United States Code, is amended—

Civil service
retirement.
80 Stat. 567.

- (1) by striking out "and" at the end of clause (4) ;
- (2) by striking out the period at the end of clause (5) and inserting in place thereof "; and"; and
- (3) by adding the following new clause :
- "(6) employment under section 709 of title 32, United States Code or any prior corresponding provision of law."; and
- (4) by adding at the end thereof the following :

"Service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32, United States Code, on or after the effective date of the National Guard Technicians Act of 1968."

(b) Section 8334(c) of title 5, United States Code, is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this subsection, the deposit with respect to a period of service referred to in section 8332(b) (6) which was performed prior to the effective date of the National Guard Technicians Act of 1968 shall be an amount equal to 55 per centum of a deposit computed in accordance with such provisions."

80 Stat. 570.

(c) Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection :

80 Stat. 574.

"(1) In determining service for the purpose of computing an annuity under each paragraph of this section, 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b) (6) which was performed prior to the effective date of the National Guard Technicians Act of 1968 shall be disregarded."

(d) Clause (4) of subsection (a) of this section and subsections (b) and (c) of this section do not apply to any person employed prior to the effective date of this Act under section 709 of title 32, United States Code, whose employment under that section was covered by subchapter III of chapter 83 of title 5, United States Code.

80 Stat. 564.

5 USC 8331-

8348.

State retirement
system, election.

SEC. 6. (a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act, is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act, not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act; or

(2) is on active duty under section 265, 3015, 3033, 3496, 8033 or 8496 of title 10, United States Code, on the effective date of this Act;

70A Stat. 11,
159, 491.

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

Ante, p. 755.

(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled.

79 Stat. 396;
81 Stat. 836, 837.

80 Stat. 569.

Ante, p. 757.

SEC. 7. The fourth sentence of section 218(b)(5) of the Social Security Act, as amended (42 U.S.C. 418(b)(5)), is amended to read as follows: "Persons employed under section 709 of title 32, United States Code, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this Act, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group."

Social security
payments.
64 Stat. 514;
68 Stat. 1059.

SEC. 8. (a) Except as provided in section 709(g) of title 32, United States Code, the Secretary concerned shall fix the rate of basic compensation of positions existing on the date of enactment of this Act in accordance with the General Schedule set forth in section 5332, or under the appropriate prevailing rate schedule in accordance with section 5341 of title 5, United States Code, as applicable. In fixing such rate—

Compensation
rates, conversion.
Ante, p. 756.

80 Stat. 471;
81 Stat. 220;
Post, p. 997.

(1) If the technician is receiving a rate of basic compensation which is less than the minimum rate of the appropriate grade of the General Schedule, or which is less than the minimum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, his basic compensation shall be increased to that minimum rate.

(2) If the technician is receiving a rate of basic compensation which is equal to a rate of the appropriate grade of the General Schedule, or which is equal to a rate of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at that rate of the General Schedule, or at that rate under the prevailing rate schedule, as applicable.

(3) If the technician is receiving a rate of basic compensation which is between two rates of the appropriate grade of the General Schedule, or which is between two rates of the appropriate grade or compensation level under the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall receive basic compensation at the higher of those two rates under the General Schedule or appropriate prevailing rate schedule, as applicable.

(4) If the technician is receiving a rate of basic compensation which is in excess of the maximum rate of the appropriate grade of the General Schedule, or which is in excess of the maximum rate of the appropriate grade or compensation level of the appropriate prevailing rate schedule, as applicable, in which his position is placed, he shall continue to receive basic compensation without change in rate until—

(A) he leaves that position, or

(B) he is entitled to receive basic compensation at a higher rate,

but, when any such position becomes vacant, the rate of basic compensation of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

(b) The conversion of positions and employees to appropriate grades of the General Schedule set forth in section 5332 of title 5, United States Code, and the initial adjustment of rates of basic compensation of those positions and technicians, provided for by this Act,

80 Stat. 471.

shall not be considered to be transfers or promotions within the meaning of section 5334(b) of title 5, United States Code, and the regulations issued thereunder.

(c) Each technician on the effective date of this Act whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, who prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section, has earned, but has not been credited with, an increase in that rate, shall be granted credit for such increase before his rate of basic compensation is initially adjusted under that subsection.

(d) Each technician on the effective date of this Act whose position is converted to the General Schedule set forth in section 5332 of title 5, United States Code, or to the appropriate prevailing rate schedule, as applicable, shall be granted credit, for purposes of his first step increase under the General Schedule or prevailing rate schedule, for all satisfactory service performed by him since his last increase in compensation prior to the initial adjustment of his rate of basic compensation under subsection (a) of this section.

(e) An increase in rate of basic compensation by reason of the enactment of subsection (a) of this section shall not be considered to be an equivalent increase with respect to step increases for technicians whose positions are converted to the General Schedule set forth in section 5332 of title 5, United States Code, or the appropriate prevailing rate schedule under authority of this section.

SEC. 9. Title 10, United States Code, is amended as follows:

(1) Sections 3848(c) and 3851(c) are each amended to read as follows:

“(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Army may authorize the retention in an active status until age 60 of any officer of the Army National Guard of the United States who would otherwise be removed from an active status under this section and who—

“(1) is assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

“(2) is employed as a technician under section 709 of title 32, United States Code, in a position for which Army National Guard membership is prescribed by the Secretary.”

(2) Sections 8848 and 8851 are each amended by adding the following new subsection:

“(c) Notwithstanding subsections (a) and (b) of this section, the Secretary of the Air Force may authorize the retention in an active status until age 60 of any officer of the Air National Guard of the United States who would otherwise be removed from an active status under this section and who is employed as a technician under section 709 of title 32, United States Code, in a position for which Air National Guard membership is prescribed by the Secretary.”

SEC. 10. Regulations prescribed by the Secretary of the Army and Secretary of the Air Force under this Act shall be approved by the Secretary of Defense and shall, so far as practicable, be uniform.

SEC. 11. This Act becomes effective January 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after January 1, 1969.

Approved August 13, 1968.

Army National
Guard.
72 Stat. 1485,
1486.

Air National
Guard.
72 Stat. 1537;
74 Stat. 279, 280.

Regulations.

Effective date.