

special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1675(d)(4) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 1221—SEPARATION

Sec.	
12681.	Reserves: discharge authority.
12682.	Reserves: discharge upon becoming ordained minister of religion.
12683.	Reserve officers: limitation on involuntary separation.
12684.	Reserves: separation for absence without authority or sentence to imprisonment.
12685.	Reserves separated for cause: character of discharge.
12686.	Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687.	Reserves under confinement by sentence of court-martial: separation after six months confinement.

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-106, div. A, title V, §563(a)(2)(B), Feb. 10, 1996, 110 Stat. 325, added item 12687.

§ 12681. Reserves: discharge authority

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(Added Pub. L. 103-337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(a) of this title, prior to repeal by Pub. L. 103-337, §1662(i)(2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

AVAILABILITY OF TRANSITION ASSISTANCE ADVISORS TO ASSIST MEMBERS OF RESERVE COMPONENTS WHO SERVE ON ACTIVE DUTY FOR MORE THAN 180 CONSECUTIVE DAYS

Pub. L. 112-239, div. A, title V, §513, Jan. 2, 2013, 126 Stat. 1718, provided that:

“(a) **TRANSITION ASSISTANCE ADVISOR PROGRAM AUTHORIZED.**—The Chief of the National Guard Bureau may establish a program to provide professionals (to be known as Transition Assistance Advisors) in each State to serve as points of contact to assist eligible members of the reserve components in accessing benefits and health care furnished under laws administered by the Secretary of Defense and benefits and health care furnished under laws administered by the Secretary of Veterans Affairs.

“(b) **ELIGIBLE MEMBERS.**—To be eligible for assistance under this section, a member of a reserve component

must have served on active duty in the Armed Forces for a period of more than 180 consecutive days.

“(c) **DUTIES.**—The duties of a Transition Assistance Advisor include the following:

“(1) To assist with the creation and execution of an individual transition plan for an eligible member of a reserve component and dependents of the member for the reintegration of the member into civilian life.

“(2) To provide employment support services to the member and dependents of the member, including assistance with finding employment opportunities and identifying and obtaining assistance from programs within and outside of the Federal Government.

“(3) To provide information on relocation, health care, mental health care, and financial support services available to the member and dependents of the member from the Department of Defense, the Department of Veterans Affairs, and other Federal, State, and local agencies.

“(4) To provide information on educational support services available to the member, including Post-9/11 Educational Assistance under chapter 33 of title 38, United States Code.

“(d) **TRANSITION PLANS.**—The individual transition plan referred to in subsection (c)(1) created for an eligible member of a reserve component shall include at a minimum the following:

“(1) A plan for the transition of the member to civilian life, including with respect to employment, education, and health care.

“(2) A description of the transition services that the member and dependents of the member will need to achieve their transition objectives, including information on any forms that the member will need to fill out to be eligible for such services.

“(3) A point of contact for each agency or entity that can provide the transition services described in paragraph (2).

“(4) Such other information determined to be essential for the transition of the member, as determined by the Chief of the National Guard Bureau in consultation with the Secretary of Defense and the Secretary of Veterans Affairs.

“(e) **FUNDING.**—Funding for Transition Assistance Advisors for a fiscal year shall be derived from amounts authorized to be appropriated for operation and maintenance for the National Guard for that fiscal year.

“(f) **STATE DEFINED.**—In this section, the term ‘State’ means each of the several States of the United States, the District of Columbia, and any territory of the United States.”

IMPLEMENTATION OF AGREEMENT ON RESTRUCTURING OF ARMY NATIONAL GUARD AND ARMY RESERVE

Pub. L. 103-335, title VIII, §8129, Sept. 30, 1994, 108 Stat. 2652, provided that:

“(a) **FINDING.**—Congress finds that the implementation of the off-site agreement may result in the loss to the Armed Forces of military personnel who have significant military experience and expertise.

“(b) **REASSIGNMENT OF MEMBERS.**—(1) To the maximum extent practicable, the Secretary of the Army shall ensure that members of the Armed Forces who would otherwise be separated from service as a result of the deactivation of military units of the Army National Guard and the Army Reserve under the off-site agreement be reassigned instead to units that are not being deactivated.

“(2) The reassignment of a member under paragraph (1) shall not affect the grade or rank in grade of the member.

“(c) **REPORTS.**—Not later than April 15 and October 15 of each calendar year while the off-site agreement is in effect, the Secretary of the Army shall submit to the congressional defense committees a semi-annual report on the number of members of the Armed Forces who were reassigned under subsection (b)(1) during the preceding six months.

“(d) **DEFINITIONS.**—In this section:

“(1) The term ‘congressional defense committees’ means the Committees on Armed Services and the

Committees on Appropriations of the Senate and the House of Representatives.

“(2) The term ‘off-site agreement’ means the agreement on the restructuring of the Army National Guard and the Army Reserve.”

GUARD AND RESERVE TRANSITION INITIATIVES

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8050], Sept. 30, 1996, 110 Stat. 3009-71, 3009-99, provided that: “During the current fiscal year and hereafter, annual payments granted under the provisions of section 4416 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2714) [set out below] shall be made from appropriations in this Act [Pub. L. 104-208] which are available for the pay of reserve component personnel.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-61, title VIII, §8061, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103-335, title VIII, §8073, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103-139, title VIII, §8087, Nov. 11, 1993, 107 Stat. 1459.

Pub. L. 102-484, div. D, title XLIV, subtitle B, Oct. 23, 1992, 106 Stat. 2712, as amended by Pub. L. 103-35, title II, §202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103-160, div. A, title V, §561(f)(1)-(3), Nov. 30, 1993, 107 Stat. 1667, 1668; Pub. L. 103-337, div. A, title V, §518(a), (b), Oct. 5, 1994, 108 Stat. 2754; Pub. L. 104-106, div. A, title XV, §1501(d)(3), Feb. 10, 1996, 110 Stat. 500; Pub. L. 105-261, div. A, title V, §561(l), (m), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106-398, §1 [[div. A], title V, §571(l), (m)], Oct. 30, 2000, 114 Stat. 1654, 1654A-135; Pub. L. 107-107, div. A, title X, §1048(h)(2), Dec. 28, 2001, 115 Stat. 1229, provided that:

“SEC. 4411. FORCE REDUCTION TRANSITION PERIOD DEFINED.

“In this subtitle [subtitle B (§§ 4411-4422) of title XLIV of div. D of Pub. L. 102-484], the term ‘force reduction transition period’ means the period beginning on October 1, 1991, and ending on December 31, 2001.

“SEC. 4412. MEMBER OF SELECTED RESERVE DEFINED.

“In this subtitle, the term ‘member of the Selected Reserve’ means—

“(1) a member of a unit in the Selected Reserve of the Ready Reserve; and

“(2) a Reserve designated pursuant to section 268(b) [see 10143(a)] of title 10, United States Code, who is assigned to an authorized position the performance of the duties of which qualify the member for basic pay or compensation for inactive-duty training or both.

“SEC. 4413. RESTRICTION ON RESERVE FORCE REDUCTION.

“(a) IN GENERAL.—During the force reduction transition period, a member of the Selected Reserve may not be involuntarily discharged from a reserve component of the Armed Forces, or involuntarily transferred from the Selected Reserve, before the Secretary of Defense has prescribed and implemented regulations that govern the treatment of members of the Selected Reserve assigned to such units and members of the Selected Reserve that are being subjected to such actions and a copy of such regulations has been transmitted to the Committees on Armed Services of the Senate and House of Representatives.

“(b) SAVINGS PROVISION.—Subsection (a) shall not apply to actions completed before the date of the enactment of this Act [Oct. 23, 1992].

“SEC. 4414. TRANSITION PLAN REQUIREMENTS.

“(a) PURPOSE OF PLAN.—The purpose of the regulations referred to in section 4413 shall be to ensure that the members of the Selected Reserve are treated with fairness, with respect for their service to their country, and with attention to the adverse personal consequences of Selected Reserve unit inactivations, invol-

untary discharges of such members from the reserve components of the Armed Forces, and involuntary transfers of such members from the Selected Reserve.

“(b) SCOPE OF PLAN.—The regulations shall include—

“(1) such provisions as are necessary to implement the provisions of this subtitle and the amendments made by this subtitle; and

“(2) such other policies and procedures for the recruitment of personnel for service in the Selected Reserve of the Ready Reserve, and for the reassignment, retraining, separation, and retirement of members of the Selected Reserve, as are appropriate for satisfying the needs of the Selected Reserve together with the purpose set out in subsection (a).

“(c) MINIMUM REQUIREMENTS FOR PLAN.—The regulations shall include the following:

“(1) The giving of a priority for enrollment in, or reassignment to, Selected Reserve units not being inactivated to—

“(A) personnel being separated from active-duty or full-time National Guard duty; and

“(B) members of the Selected Reserve whose units are inactivated.

“(2) The giving of a priority to such personnel for transfer among the reserve components of the Armed Forces in order to facilitate reassignment to such units.

“(3) A requirement that the Secretaries of the military departments take diligent actions to ensure that members of the reserve components of the Armed Forces are informed in easily understandable terms of the rights and benefits conferred upon such personnel by this subtitle, by the amendments made by this subtitle, and by such regulations.

“(4) Such other protections, preferences, and benefits as the Secretary of Defense considers appropriate.

“(d) UNIFORM APPLICABILITY.—The regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps.

“SEC. 4415. INAPPLICABILITY TO CERTAIN DISCHARGES AND TRANSFERS.

“The protections, preferences, and benefits provided for in regulations prescribed in accordance with this subtitle do not apply with respect to a member of the Selected Reserve who is discharged from a reserve component of the Armed Forces or is transferred from the Selected Reserve to another category of the Ready Reserve, to the Standby Reserve, or to the Retired Reserve—

“(1) at the request of the member unless such request was made and approved under a provision of this subtitle or section 12731a of title 10, United States Code (as added by section 4417);

“(2) because the member no longer meets the qualifications for membership in the Selected Reserve set forth in any provision of law as in effect on the day before the date of the enactment of this Act [Oct. 23, 1992];

“(3) under adverse conditions, as characterized by the Secretary of the military department concerned; or

“(4) if the member—

“(A) is immediately eligible for retired pay based on military service under any provision of law;

“(B) is serving as a military technician, as defined in section 8401(30) of title 5, United States Code, and would be immediately eligible for an unreduced annuity under the provisions of subchapter III of chapter 83 of such title, relating to the Civil Service Retirement and Disability System, or the provisions of chapter 84 of such title, relating to the Federal Employees’ Retirement System; or

“(C) is eligible for separation pay under section 1174 of title 10, United States Code.

“SEC. 4416. FORCE REDUCTION PERIOD RETIREMENTS.

“(a) TEMPORARY SPECIAL AUTHORITY FOR ELIMINATION OF OFFICERS FROM ACTIVE STATUS.—(1) During the force

reduction transition period, the Secretary of the Army and the Secretary of the Air Force may, whenever the Secretary determines that such action is necessary, convene a board to recommend an appropriate number of officers in the reserve components of the Army or the Air Force, as the case may be, who (A) have met the age and service requirements specified in section 12731 of title 10, United States Code, for entitlement to retired pay for nonregular service except for not being at least 60 years of age, or (B) are immediately eligible for retired pay based on military service under any provision of law, for elimination from an active status.

“(2) An officer who is to be eliminated from an active status under this section, shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if the officer requests it, shall be so transferred. If the officer is not transferred to the Retired Reserve, the officer shall, in the discretion of the Secretary concerned, be transferred to the appropriate inactive status list or be discharged.

“(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may not be eliminated from an active status under this section without the consent of the Governor or other appropriate authority of the State or territory, Puerto Rico, or the District of Columbia, whichever is concerned.

“(b) TEMPORARY SPECIAL AUTHORITY.—During the force reduction transition period, the Secretary concerned may grant a member of the Selected Reserve under the age of 60 years the annual payments provided for under this section if—

“(1) as of October 1, 1991, that member has completed at least 20 years of service computed under section 1332 of title 10, United States Code, or after that date and before the end of the force reduction transition period, such member completes 20 years of service computed under that section or section 12732;

“(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) or 12731(a) of title 10, United States Code; and

“(3) the member applies for transfer to the Retired Reserve.

“(c) [Repealed. Pub. L. 103-160, div. A, title V, § 561(f)(2)(B), Nov. 30, 1993, 107 Stat. 1667.]

“(d) ANNUAL PAYMENT PERIOD.—An annual payment granted to a member under this section shall be paid for a period of years prescribed by the Secretary concerned, except that if the member attains 60 years of age during that period the entitlement to the annual payment shall terminate on the member's 60th birthday. A period prescribed for purposes of this subsection may not be less than one year nor more than five years.

“(e) COMPUTATION OF ANNUAL PAYMENT.—(1) The annual payment for a member shall be equal to the amount determined by multiplying the product of 12 and the applicable percent under paragraph (2) by the monthly basic pay to which the member would be entitled if the member were serving on active duty as of the date the member is transferred to the Retired Reserve.

“(2)(A) Subject to subparagraph (B) the percent applicable to a member for purposes of paragraph (1) is 5 percent plus 0.5 percent for each full year of service, computed under section 12732 of title 10, United States Code, that a member has completed in excess of 20 years before transfer to the Retired Reserve.

“(B) The maximum percent applicable under this paragraph is 10 percent.

“(3) In the case of a member who will attain 60 years of age during the 12-month period following the date on which an annual payment is due, the payment shall be paid on a prorated basis of one-twelfth of the annual payment for each full month between the date on which the payment is due and the date on which the member attains age 60.

“(f) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary concerned may limit the applicability of this section to any category of per-

sonnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

“(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

“(g) NONDUPLICATION OF BENEFITS.—A member transferred to the Retired Reserve under the authority of section 12731a of title 10, United States Code (as added by section 4417), may not be paid annual payments under this section.

“(h) FUNDING.—To the extent provided in appropriations Acts, payments under this section in a fiscal year shall be made out of amounts available to the Department of Defense for that fiscal year for the pay of reserve component personnel.

“SEC. 4417. RETIREMENT WITH 15 YEARS OF SERVICE.

“(a) AUTHORITY.—[Enacted section 1331a [now 12731a] of this title.]

“(b) CLERICAL AMENDMENT.—[Amended analysis of chapter 67 [now 1223] of this title.]

“SEC. 4418. SEPARATION PAY.

“(a) ELIGIBILITY.—Subject to section 4415, a member of the Selected Reserve who, after completing at least 6 years of service computed under section 12732 of title 10, United States Code, and before completing 15 years of service computed under that section, is involuntarily discharged from a reserve component of the Armed Forces or is involuntarily transferred from the Selected Reserve during the force reduction transition period is entitled to separation pay.

“(b) AMOUNT OF SEPARATION PAY.—(1) The amount of separation pay which may be paid to a person under this section is 15 percent of the product of—

“(A) the years of service credited to that person under section 12733 of title 10, United States Code; and

“(B) 62 times the daily equivalent of the monthly basic pay to which the person would have been entitled had the person been serving on active duty at the time of the person's discharge or transfer.

“(2) In the case of a person who receives separation pay under this section and who later receives basic pay, compensation for inactive duty training, or retired pay under any provision of law, such basic pay, compensation, or retired pay, as the case may be, shall be reduced by 75 percent until the total amount withheld through such reduction equals the total amount of the separation pay received by that person under this section.

“(c) RELATIONSHIP TO OTHER SERVICE-RELATED PAY.—Subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section.

“(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

“SEC. 4419. WAIVER OF CONTINUED SERVICE REQUIREMENT FOR CERTAIN RESERVISTS FOR MONTGOMERY GI BILL BENEFITS.

“(a) CHAPTER 106.—[Amended section 2133(b)(1) [now 16133(b)(1)] of this title.]

“(b) CHAPTER 30.—[Amended section 3012(b)(1)(B) of Title 38, Veterans' Benefits.]

“SEC. 4420. COMMISSARY AND EXCHANGE PRIVILEGES.

“The Secretary of Defense shall prescribe regulations to authorize a person who involuntarily ceases to be a member of the Selected Reserve during the force reduction transition period to continue to use commissary and exchange stores in the same manner as a member

of the Selected Reserve for a period of two years beginning on the later of—

“(1) the date on which that person ceases to be a member of the Selected Reserve; or

“(2) the date of the enactment of this Act [Oct. 23, 1992].

“SEC. 4421. APPLICABILITY AND TERMINATION OF BENEFITS.

“(a) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may limit the applicability of a benefit provided under sections 4418 through 4420 to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

“(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

“(b) INAPPLICABILITY TO CERTAIN SEPARATIONS AND REASSIGNMENTS.—Sections 4418 through 4420 do not apply with respect to personnel who cease to be members of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned.

“(c) TERMINATION OF BENEFITS.—The eligibility of a member of a reserve component of the Armed Forces (after having involuntarily ceased to be a member of the Selected Reserve) to receive benefits and privileges under sections 4418 through 4420 terminates upon the involuntary separation of such member from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned.

“SEC. 4422. READJUSTMENT BENEFITS FOR CERTAIN VOLUNTARILY SEPARATED MEMBERS OF THE RESERVE COMPONENTS.

“(a) SPECIAL SEPARATION BENEFITS.—[Amended section 1174a of this title.]

“(b) VOLUNTARY SEPARATION INCENTIVE.—[Amended section 1175 of this title.]”

[Section 518(c) of Pub. L. 103-337 provided that: “The amendments made by this section [amending section 4416 of Pub. L. 102-484, set out above] shall apply only to payments to a member of the Armed Forces under subsection (b) of section 4416 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102-484) that are granted by the Secretary of Defense to that member after the date of the enactment of this Act [Oct. 5, 1994].”]

§ 12682. Reserves: discharge upon becoming ordained minister of religion

Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(b) of this title, prior to repeal by Pub. L. 103-337, § 1662(i)(2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12683. Reserve officers: limitation on involuntary separation

(a) An officer of a reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except—

(1) under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or

(2) by the approved sentence of a court-martial.

(b) Subsection (a) does not apply to any of the following:

(1) A separation under section 12684, 14901, or 14907 of this title.

(2) A dismissal under section 1161(a) of this title.

(3) A transfer under section 12213, 12214, 14514, or 14515 of this title.

(4) A separation of an officer who is in an inactive status in the Standby Reserve and who is not qualified for transfer to the Retired Reserve or is qualified for transfer to the Retired Reserve and does not apply for such a transfer.

(Added Pub. L. 103-337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997; amended Pub. L. 105-85, div. A, title V, § 516, Nov. 18, 1997, 111 Stat. 1733; Pub. L. 105-261, div. A, title X, § 1069(a)(8), Oct. 17, 1998, 112 Stat. 2136.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(a) of this title, prior to repeal by Pub. L. 103-337, § 1662(i)(2).

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105-261 substituted a period for “; or” at end.

1997—Subsec. (b). Pub. L. 105-85, § 516(a)(1), substituted “apply to any of the following:” for “apply—” in introductory provisions.

Subsec. (b)(1). Pub. L. 105-85, § 516(b)(1), (2), substituted “A” for “to a” and “title.” for “title;”.

Subsec. (b)(2). Pub. L. 105-85, § 516(b)(3), which directed substitution of a period for “; and” at end of par. (2), could not be executed because “; and” did not appear in par. (2).

Pub. L. 105-85, § 516(b)(1), substituted “A” for “to a”.

Subsec. (b)(3). Pub. L. 105-85, § 516(b)(1), substituted “A” for “to a”.

Subsec. (b)(4). Pub. L. 105-85, § 516(a)(2), added par. (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12684. Reserves: separation for absence without authority or sentence to imprisonment

The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve—

(1) who has been absent without authority for at least three months;

(2) who may be separated under section 12687 of this title by reason of a sentence to confinement adjudged by a court-martial; or

(3) who is sentenced to confinement in a Federal or State penitentiary or correctional