

fined in section 10143(a) of this title), without the consent of the members, to active duty for not more than 365 consecutive days.

(b) LIMITATIONS.—(1) Units may be ordered to active duty under this section only if—

(A) the manpower and associated costs of such active duty are specifically included and identified in the defense budget materials for the fiscal year or years in which such units are anticipated to be ordered to active duty; and

(B) the budget information on such costs includes a description of the mission for which such units are anticipated to be ordered to active duty and the anticipated length of time of the order of such units to active duty on an involuntary basis.

(2) Not more than 60,000 members of the reserve components of the armed forces may be on active duty under this section at any one time.

(c) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or total number of members in grade under this title or any other law.

(d) NOTICE TO CONGRESS.—Whenever the Secretary of a military department orders any unit of the Selected Reserve to active duty under subsection (a), such Secretary shall submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of such unit.

(e) TERMINATION OF DUTY.—Whenever any unit of the Selected Reserve is ordered to active duty under subsection (a), the service of all units so ordered to active duty may be terminated—

- (1) by order of the Secretary of the military department concerned; or
- (2) by law.

(f) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(g) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—In determining which units of the Selected Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

- (1) the length and nature of previous service, to assure such sharing of exposure to hazards as national security and military requirements will reasonably allow;
- (2) the frequency of assignments during service career;
- (3) family responsibilities; and
- (4) employment necessary to maintain the national health, safety, or interest.

(h) POLICIES AND PROCEDURES.—The Secretaries of the military departments shall prescribe policies and procedures to carry out this section, including on determinations with respect to orders to active duty under subsection (g). Such policies and procedures shall not go into effect until approved by the Secretary of Defense.

(i) DEFENSE BUDGET MATERIALS DEFINED.—In this section, the term “defense budget materials” has the meaning given that term in section 231(g)(2) of this title.

(Added Pub. L. 112–81, div. A, title V, §516(a)(1), Dec. 31, 2011, 125 Stat. 1395.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (f), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

§ 12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release from active duty of members of the reserve component ordered to active duty under the authority of section 12301, 12302, or 12304 of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(c) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 98–94, title X, §1021(a), Sept. 24, 1983, 97 Stat. 670, §673c; amended Pub. L. 98–525, title XIV, §1405(16), Oct. 19, 1984, 98 Stat. 2622; renumbered §12305 and amended Pub. L. 103–337, div. A, title XVI, §§1662(e)(2), 1675(c)(3), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 107–107, div. A, title V, §508(a), Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 added subsec. (c).
1994—Pub. L. 103–337, §1662(e)(2), renumbered section 673c of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, §1675(c)(3), substituted “12301, 12302, or 12304” for “672, 673, or 673b”.

1984—Subsec. (b)(1). Pub. L. 98–525 inserted “of this title” after “673b”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EX. ORD. NO. 12728. DELEGATING PRESIDENT'S AUTHORITY TO SUSPEND ANY PROVISION OF LAW RELATING TO PROMOTION, RETIREMENT, OR SEPARATION OF MEMBERS OF ARMED FORCES

Ex. Ord. No. 12728, Aug. 22, 1990, 55 F.R. 35029, as amended by Ex. Ord. No. 13286, § 38, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 673c [now 12305] of title 10 of the United States Code and section 301 of title 3 of the United States Code, I hereby order:

SECTION 1. The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by section 673c [now 12305] of title 10 of the United States Code (1) to suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces determined to be essential to the national security of the United States, and (2) to determine, for the purposes of said section, that members of the armed forces are essential to the national security of the United States.

SEC. 2. The authority delegated to the Secretary of Defense and the Secretary of Homeland Security by this order may be redelegated and further subdelegated to subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 3. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b).

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty under section 12301(a) of this title, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 674; Pub. L. 87-651, title I, § 130, Sept. 7, 1962, 76 Stat. 514; renumbered § 12306 and amended Pub. L. 103-337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(4), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 108-375, div. A, title V, § 514(d), Oct. 28, 2004, 118 Stat. 1883.)

HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
674(a)	50:926(a) (less 1st 28 words).	July 9, 1952, ch. 608, § 206 (less 1st 28 words of (a)), 66 Stat. 483.
674(b)	50:926(b).	

In subsection (b), the words “to serve” are substituted for the words “for the purpose of serving”. The words “there are not enough * * * that are” are substituted for the words “adequate numbers of * * * are not”. The words “(other than for training)” are inserted, since the words “active duty” were defined in the source statute cited above to exclude “active duty for training”.

1962 ACT

The change is made to conform section 674(a) more closely to the source law for that section, section 206(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 483). Section 206(a) of that Act defined the Standby Reserve in terms of units and members of the reserve components according to their liability to be ordered to active duty. It did not provide authority to order units and members of the Standby Reserve to active duty. This authority was provided by section 233(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 489), which is restated in section 672(a) of title 10. Since the present language of section 674(a) may be interpreted to provide independent authority to order units and members of the Standby Reserve to active duty, it is revised to make clear that this is not the case and that section 672 is the authority for that action.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375, § 514(d)(1), substituted “active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)” for “active duty (other than for training) only as provided in section 12301 of this title”.

Subsec. (b)(1). Pub. L. 108-375, § 514(d)(2)(A), substituted “under section 12301(a) of this title” for “(other than for training)”.

Subsec. (b)(2). Pub. L. 108-375, § 514(d)(2)(B), substituted “notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent” for “no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent”.

1994—Pub. L. 103-337, § 1662(e)(2), renumbered section 674 of this title as this section.

Subsec. (a). Pub. L. 103-337, § 1675(c)(4), substituted “12301” for “672”.

1962—Subsec. (a). Pub. L. 87-651 substituted “only as provided in section 672 of this title” for “only in time of war, of national emergency declared by Congress, or when otherwise authorized by law”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Retired Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service