

108TH CONGRESS  
1ST SESSION

# S. 442

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2003

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

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## 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 2003”.

1 **SEC. 2. NONREDUCTION IN PAY WHILE FEDERAL EM-**  
2 **PLOYEE IS PERFORMING ACTIVE SERVICE IN**  
3 **THE UNIFORMED SERVICES.**

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

7 **“§ 5538. Nonreduction in pay while serving in the**  
8 **uniformed services**

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

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

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

21 “(A) is payable to such employee for that  
22 service; and

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

24 “(b)(1) Amounts under this section shall be payable  
25 with respect to each pay period (which would otherwise

1 apply if the employee’s civilian employment had not been  
2 interrupted)—

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

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

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

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

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

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

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

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

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

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

12          “(e)(1) The head of each agency referred to in section  
13          2302(a)(2)(C)(ii) shall, in consultation with the Office,  
14          prescribe procedures to ensure that the rights under this  
15          section apply to the employees of such agency.

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

20          “(f) For purposes of this section—

21                 “(1) the terms ‘employee’, ‘Federal Govern-  
22                 ment’, and ‘uniformed services’ have the same re-  
23                 spective meanings as given in section 4303 of title  
24                 38;

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

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

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

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

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

20          (c) EFFECTIVE DATE.—The amendments made by  
21          this section shall apply with respect to pay periods (as de-  
22          scribed in section 5538(b) of title 5, United States Code,  
23          as added by this section) beginning on or after September  
24          11, 2001.

1 **SEC. 3. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
 2 **CREDIT ADDED TO GENERAL BUSINESS**  
 3 **CREDIT.**

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

9 **“SEC. 45G. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
 10 **CREDIT.**

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

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

23 “(c) LIMITATIONS.—

24 “(1) MAXIMUM PERIOD FOR CREDIT PER EM-  
 25 PLOYEE.—The maximum period with respect to  
 26 which the credit may be allowed with respect to any

1 Ready Reserve-National Guard employee shall not  
 2 exceed the 12-month period beginning on the first  
 3 day such credit is so allowed with respect to such  
 4 employee.

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

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

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

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

25 “(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:

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:

“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 the date of the enactment of this Act.

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