

108TH CONGRESS  
1ST SESSION

# S. 593

To ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. DURBIN (for himself, Ms. MIKULSKI, Mr. LEAHY, Mr. SARBANES, Mr. BINGAMAN, Mr. LAUTENBERG, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To ensure that a Federal employee who takes leave without pay in order to perform service as a member of the uniformed services or member of the National Guard shall continue to receive pay in an amount which, when taken together with the pay and allowances such individual is receiving for such service, will be no less than the basic pay such individual would then be receiving if no interruption in employment had occurred.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reservists Pay Secu-  
3 rity Act of 2003”.

4 **SEC. 2. NONREDUCTION IN PAY WHILE FEDERAL EM-**  
5 **PLOYEE IS PERFORMING ACTIVE SERVICE IN**  
6 **THE UNIFORMED SERVICES OR NATIONAL**  
7 **GUARD.**

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

11 **“§ 5538. Nonreduction in pay while serving in the**  
12 **uniformed services or National Guard**

13 “(a) An employee who is absent from a position of  
14 employment with the Federal Government in order to per-  
15 form service in the uniformed services or the National  
16 Guard shall be entitled to receive, for each pay period de-  
17 scribed in subsection (b), an amount equal to the amount  
18 by which—

19 “(1) the amount of basic pay which would oth-  
20 erwise have been payable to such employee for such  
21 pay period if such employee’s civilian employment  
22 with the Government had not been interrupted by  
23 that service, exceeds (if at all)

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

1           “(A) is payable to such employee for that  
2           service; and

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

4           “(b)(1) Amounts under this section shall be payable  
5 with respect to each pay period (which would otherwise  
6 apply if the employee’s civilian employment had not been  
7 interrupted)—

8           “(A) during which such employee is entitled to  
9           reemployment rights under chapter 43 of title 38  
10          with respect to the position from which such em-  
11          ployee is absent (as referred to in subsection (a));  
12          and

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

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

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

23          “(B) shall include any period of time specified  
24          in section 4312(e) of title 38 within which an em-  
25          ployee may report or apply for employment or reem-

1       employment following completion of service in the uni-  
2       formed services or National Guard.

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

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

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

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

13       “(d) The Office of Personnel Management shall, in  
14       consultation with Secretary of Defense, prescribe any reg-  
15       ulations necessary to carry out the preceding provisions  
16       of this section.

17       “(e)(1) The head of each agency referred to in section  
18       2302(a)(2)(C)(ii) shall, in consultation with the Office,  
19       prescribe procedures to ensure that the rights under this  
20       section apply to the employees of such agency.

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

25       “(f) For purposes of this section—

1           “(1) the terms ‘employee’, ‘Federal Govern-  
2           ment’, and ‘uniformed services’ have the same re-  
3           spective meanings as given them in section 4303 of  
4           title 38;

5           “(2) the term ‘service in the uniformed services’  
6           has the meaning given that term in section 4303 of  
7           title 38 and includes duty performed by a member  
8           of the National Guard under section 502(f) of title  
9           32 at the direction of the Secretary of the Army or  
10          Secretary of the Air Force;

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

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

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

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

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply with respect to pay periods (as de-  
3 scribed in section 5538(b) of title 5, United States Code,  
4 as amended by this section) beginning on or after Sep-  
5 tember 11, 2001.

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