

109TH CONGRESS
1ST SESSION

H. R. 1565

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2005

Ms. HOOLEY (for herself, Mr. MCGOVERN, Mr. BISHOP of New York, Mr. PALLONE, Mr. DEFAZIO, Mr. OWENS, Mr. OLVER, Mr. TOWNS, Mr. KIND, Mr. SCOTT of Georgia, Mr. GRIJALVA, Mrs. DAVIS of California, Mr. BLUMENAUER, Mr. CARDOZA, Mr. KILDEE, Ms. KILPATRICK of Michigan, Mr. ROSS, Mr. PAYNE, Mr. HOLDEN, Mr. SMITH of Washington, Mr. STUPAK, Mr. LANTOS, Mr. RUPPERSBERGER, Mr. BROWN of Ohio, Mr. PASTOR, Mr. LARSEN of Washington, Mrs. CAPPs, Mr. OBERSTAR, Mr. JACKSON of Illinois, Mr. CHANDLER, Mrs. JONES of Ohio, and Mr. CASE) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Energy and Commerce, Education and the Workforce, Ways and Means, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance the benefits and protections for members of the reserve components of the Armed Forces who are called or ordered to extended active duty, 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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Guard and Reserve Bill of Rights Act of 2005”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Periods of deployments of Reserves overseas.
- Sec. 3. Correction of military pay issues affecting reserve component personnel.
- Sec. 4. TRICARE for reserve component personnel.
- Sec. 5. Child care for children of members of Armed Forces on active duty for
Operation Enduring Freedom or Operation Iraqi Freedom.
- Sec. 6. USERRA implementing regulations.
- Sec. 7. Expansion of eligibility requirements to permit the aggregation of peri-
ods of active duty service over a period of 5 years to qualify
for educational assistance for reserve component members sup-
porting contingency operations and certain other operations.
- Sec. 8. Reduction from 60 to 55 of age for receipt of military retired pay for
nonregular service.
- Sec. 9. Deputy Under Secretary of Defense for Personnel and Readiness (Re-
serve Affairs).
- Sec. 10. Support for State National Guard reintegration offices.

6 **SEC. 2. PERIODS OF DEPLOYMENTS OF RESERVES OVER-**
7 **SEAS.**

8 (a) UNITED STATES CENTRAL COMMAND DEPLOY-
9 MENTS.—

10 (1) LIMITATION.—During a period when there
11 is in effect a policy of assigning units or members
12 of one or more of the active components of the
13 Armed Forces to duty in the area of responsibility
14 of the United States Central Command for a speci-
15 fied period of time of not less than one year, the
16 Secretary of Defense shall provide that the length of
17 such an assignment in the case of members of the
18 reserve components of the Armed Forces may not

1 exceed the length of such period for the cor-
2 responding active component reduced by the period
3 of time between the date of entry of the reserve com-
4 ponent members onto active duty and the date of the
5 deployment of such members for such assignment.

6 (2) TRANSITION.—Paragraph (1) applies to
7 members of reserve components assigned to duty in
8 the area of responsibility of the United States Cen-
9 tral Command on or after the date of the enactment
10 of this Act and to such members assigned to such
11 duty before such date who as of the date of the en-
12 actment of this Act have more than 90 days remain-
13 ing in such assignment.

14 (b) COMMUNICATION OF LENGTHS OF DEPLOYMENT
15 PERIODS TO RESERVES IN OPERATION IRAQI FREE-
16 DOM.—

17 (1) REQUIREMENT FOR REPORT.—Not later
18 than December 31, 2005, the Secretary of Defense
19 shall submit to the Committees on Armed Services
20 of the Senate and the House of Representatives a
21 report on Department of Defense policies governing
22 the length of deployment periods applicable to mem-
23 bers of reserve components of the Armed Forces in
24 connection with Operation Iraqi Freedom, and on
25 the communication between the Department of De-

1 fense and reserve component personnel and their
2 families regarding the length of the deployment peri-
3 ods.

4 (2) CONSULTATION REQUIREMENT.—In pre-
5 paring the report under this section the Secretary
6 shall consult with the Chairman and other members
7 of the Joint Chiefs of Staff and with such other offi-
8 cials as the Secretary considers appropriate.

9 (3) CONTENT.—The report under this para-
10 graph shall contain a discussion of the matters de-
11 scribed in paragraph (1), including the following
12 matters:

13 (A) The process by which the Department
14 of Defense determined its policy regarding the
15 length of deployment periods.

16 (B) The reason that no such policy was in
17 place before Operation Iraqi Freedom began.

18 (C) A comparison of the policy during Op-
19 eration Iraqi Freedom with Department of De-
20 fense deployment policies that applied to pre-
21 vious contingency operations.

22 (D) The timeliness of the process for noti-
23 fying reserve component units for activation.

1 (E) The process for communicating with
2 activated reserve component members and their
3 families about demobilization schedules.

4 (F) The family support programs provided
5 by the National Guard and other reserve com-
6 ponents for families of activated Reserves.

7 (G) An assessment of lessons learned
8 about how the increased operations tempo of
9 the National Guard and other reserve compo-
10 nents can be expected to affect readiness, re-
11 cruitment and retention, civilian employers of
12 Reserves, and equipment and supply resources
13 of the National Guard and the other reserve
14 components.

15 (4) MATTERS FOR PARTICULAR EMPHASIS.—In
16 the discussion of the matters included in the report
17 under this subsection, the Secretary of Defense shall
18 place particular emphasis on—

19 (A) lessons learned, including deficiencies
20 identified; and

21 (B) near-term and long-term corrective ac-
22 tions to address the identified deficiencies.

23 (5) FORM OF REPORT.—The report shall be
24 submitted in unclassified form, but may include a
25 classified annex.

1 **SEC. 3. CORRECTION OF MILITARY PAY ISSUES AFFECTING**
2 **RESERVE COMPONENT PERSONNEL.**

3 (a) SENIOR-LEVEL ACTION ON REPORT REC-
4 OMMENDATIONS.—The Secretary of the Army shall des-
5 ignate a senior level official of the Department of the
6 Army to implement the recommendations for executive ac-
7 tion set forth in the reports of the Comptroller General
8 entitled “Military Pay, Army National Guard Personnel
9 Mobilized to Active Duty Experienced Significant Pay
10 Problems”, dated November 2003, and “Military Pay,
11 Army Reserve Soldiers Mobilized to Active Duty Experi-
12 enced Significant Pay Problems”, dated August 2004,
13 which have not been implemented by the date of the enact-
14 ment of this Act.

15 (b) SUPERVISION.—The official designated under
16 subsection (a) shall report directly to, and be subject to
17 the direction of, the Under Secretary of Defense (Comp-
18 troller) regarding performance of the duties that the offi-
19 cial is designated to carry out under such subsection.

20 (c) TERMINATION.—The designation under sub-
21 section (a) shall terminate on the date on which the Under
22 Secretary of Defense (Comptroller) certifies to Congress
23 that all of the recommendations for executive action con-
24 tained in the reports referred to in such subsection have
25 been implemented.

1 **SEC. 4. TRICARE FOR RESERVE COMPONENT PERSONNEL.**

2 (a) EXPANDED ELIGIBILITY OF READY RESERVE
3 MEMBERS UNDER TRICARE PROGRAM.—

4 (1) UNCONDITIONAL ELIGIBILITY.—Subsection
5 (a) of section 1076b of title 10, United States Code,
6 is amended by striking “is eligible, subject to sub-
7 section (h), to enroll in TRICARE” and all that fol-
8 lows through “an employer-sponsored health benefits
9 plan” and inserting “, except for a member who is
10 enrolled or is eligible to enroll in a health benefits
11 plan under chapter 89 of title 5, is eligible to enroll
12 in TRICARE, subject to subsection (h)”.

13 (2) PERMANENT AUTHORITY.—Subsection (l) of
14 such section is repealed.

15 (3) CONFORMING REPEAL OF OBSOLETE PROVI-
16 SIONS.—Such section is further amended—

17 (A) by striking subsections (i) and (j); and
18 (B) by redesignating subsection (k) as sub-
19 section (i).

20 (b) CONTINUATION OF NON-TRICARE HEALTH
21 BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES
22 CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DE-
23 PENDENTS.—

24 (1) REQUIRED CONTINUATION.—

25 (A) REQUIREMENT.—Chapter 55 of title
26 10, United States Code, is amended by insert-

1 ing after section 1078a the following new sec-
2 tion:

3 **“§ 1078b. Continuation of non-TRICARE health bene-**
4 **fits plan coverage for dependents of cer-**
5 **tain Reserves called or ordered to active**
6 **duty**

7 “(a) PAYMENT OF PREMIUMS.—The Secretary con-
8 cerned shall pay the applicable premium to continue in
9 force any qualified health benefits plan coverage for the
10 members of the family of an eligible reserve component
11 member for the benefits coverage continuation period if
12 timely elected by the member in accordance with regula-
13 tions prescribed under subsection (j).

14 “(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A
15 member of a reserve component is eligible for payment of
16 the applicable premium for continuation of qualified
17 health benefits plan coverage under subsection (a) while
18 serving on active duty pursuant to a call or order issued
19 under a provision of law referred to in section
20 101(a)(13)(B) of this title during a war or national emer-
21 gency declared by the President or Congress.

22 “(2) For the purposes of this section, the members
23 of the family of an eligible reserve component member in-
24 clude only the member’s dependents described in subpara-
25 graphs (A), (D), and (I) of section 1072(2) of this title.

1 “(c) QUALIFIED HEALTH BENEFITS PLAN COV-
2 ERAGE.—For the purposes of this section, health benefits
3 plan coverage for the members of the family of a reserve
4 component member called or ordered to active duty is
5 qualified health benefits plan coverage if—

6 “(1) the coverage was in force on the date on
7 which the Secretary notified the reserve component
8 member that issuance of the call or order was pend-
9 ing or, if no such notification was provided, the date
10 of the call or order;

11 “(2) on such date, the coverage applied to the
12 reserve component member and members of the fam-
13 ily of the reserve component member; and

14 “(3) the coverage has not lapsed.

15 “(d) APPLICABLE PREMIUM.—The applicable pre-
16 mium payable under this section for continuation of health
17 benefits plan coverage for the family members of a reserve
18 component member is the amount of the premium payable
19 by the member for the coverage of the family members.

20 “(e) MAXIMUM AMOUNT.—The total amount that the
21 Department of Defense may pay for the applicable pre-
22 mium of a health benefits plan for the family members
23 of a reserve component member under this section in a
24 fiscal year may not exceed the amount determined by mul-
25 tiplying—

1 “(1) the sum of one plus the number of the
2 family members covered by the health benefits plan,
3 by

4 “(2) the per capita cost of providing TRICARE
5 coverage and benefits for dependents under this
6 chapter for such fiscal year, as determined by the
7 Secretary of Defense.

8 “(f) BENEFITS COVERAGE CONTINUATION PE-
9 RIOD.—The benefits coverage continuation period under
10 this section for qualified health benefits plan coverage for
11 the family members of an eligible reserve component mem-
12 ber called or ordered to active duty is the period that—

13 “(1) begins on the date of the call or order; and

14 “(2) ends on the earlier of—

15 “(A) the date on which the reserve compo-
16 nent member’s eligibility for transitional health
17 care under section 1145(a) of this title termi-
18 nates under paragraph (3) of such section; or

19 “(B) the date on which the reserve compo-
20 nent member elects to terminate the continued
21 qualified health benefits plan coverage of the
22 member’s family members.

23 “(g) EXTENSION OF PERIOD OF COBRA COV-
24 ERAGE.—Notwithstanding any other provision of law—

1 “(1) any period of coverage under a COBRA
2 continuation provision (as defined in section
3 9832(d)(1) of the Internal Revenue Code of 1986)
4 for an eligible reserve component member under this
5 section shall be deemed to be equal to the benefits
6 coverage continuation period for such member under
7 this section; and

8 “(2) with respect to the election of any period
9 of coverage under a COBRA continuation provision
10 (as so defined), rules similar to the rules under sec-
11 tion 4980B(f)(5)(C) of such Code shall apply.

12 “(h) NONDUPLICATION OF BENEFITS.—A member of
13 the family of a reserve component member who is eligible
14 for benefits under qualified health benefits plan coverage
15 paid on behalf of the reserve component member by the
16 Secretary concerned under this section is not eligible for
17 benefits under the TRICARE program during a period of
18 the coverage for which so paid.

19 “(i) REVOCABILITY OF ELECTION.—A reserve com-
20 ponent member who makes an election under subsection
21 (a) may revoke the election. Upon such a revocation, the
22 member’s family members shall become eligible for bene-
23 fits under the TRICARE program as provided for under
24 this chapter.

1 “(j) REGULATIONS.—The Secretary of Defense shall
2 prescribe regulations for carrying out this section. The
3 regulations shall include such requirements for making an
4 election of payment of applicable premiums as the Sec-
5 retary considers appropriate.”.

6 (B) CLERICAL AMENDMENT.—The table of
7 sections at the beginning of such chapter is
8 amended by inserting after the item relating to
9 section 1078a the following new item:

“1078b. Continuation of non-TRICARE health benefits plan coverage for de-
pendents of certain Reserves called or ordered to active duty.”.

10 (2) APPLICABILITY.—Section 1078b of title 10,
11 United States Code (as added by paragraph (1)),
12 shall apply with respect to calls or orders of mem-
13 bers of reserve components of the Armed Forces to
14 active duty as described in subsection (b) of such
15 section, that are issued by the Secretary of a mili-
16 tary department before, on, or after the date of the
17 enactment of this Act, but only with respect to
18 qualified health benefits plan coverage (as described
19 in subsection (c) of such section) that is in effect on
20 or after the date of the enactment of this Act.

1 **SEC. 5. CHILD CARE FOR CHILDREN OF MEMBERS OF**
2 **ARMED FORCES ON ACTIVE DUTY FOR OPER-**
3 **ATION ENDURING FREEDOM OR OPERATION**
4 **IRAQI FREEDOM.**

5 (a) CHILD CARE FOR CHILDREN WITHOUT ACCESS
6 TO MILITARY CHILD CARE.—

7 (1) AUTHORITY.—In any case in which the chil-
8 dren of a covered member of the Armed Forces are
9 geographically dispersed and do not have practical
10 access to a military child development center, the
11 Secretary of Defense may, to the extent funds are
12 available for such purpose, provide such funds as are
13 necessary permit the member's family to secure ac-
14 cess for such children to State licensed child care
15 and development programs and activities in the pri-
16 vate sector that are similar in scope and quality to
17 the child care and development programs and activi-
18 ties the Secretary would otherwise provide access to
19 under subchapter II of chapter 88 of title 10, United
20 States Code, and other applicable provisions of law.

21 (2) PROCEDURES.—Funds may be provided
22 under paragraph (1) in accordance with the provi-
23 sions of section 1798 of title 10, United States
24 Code, or by such other mechanism as the Secretary
25 considers appropriate.

1 (3) PRIORITIES.—The Secretary shall prescribe
2 in regulations priorities for the allocation of funds
3 for the provision of access to child care under para-
4 graph (1) in circumstances where funds are inad-
5 equately to provide all children described in that para-
6 graph with access to child care as described in that
7 paragraph.

8 (b) PRESERVATION OF SERVICES AND PROGRAMS.—
9 The Secretary shall provide for the attendance and partici-
10 pation of children in military child development centers
11 and child care and development programs and activities
12 under subsection (a) in a manner that preserves the scope
13 and quality of child care and development programs and
14 activities otherwise provided by the Secretary.

15 (c) FUNDING.—Amounts otherwise available to the
16 Department of Defense and the military departments
17 under this Act may be available for purposes of providing
18 access to child care under subsection (a).

19 (d) DEFINITIONS.—In this section:

20 (1) COVERED MEMBER OF THE ARMED
21 FORCES.—The term “covered member of the Armed
22 Forces” means a member of the Armed Forces on
23 active duty, including a member of the Reserves who
24 is called or ordered to active duty under a provision
25 of law referred to in section 101(a)(13)(B) of title

1 10, United States Code, for Operation Enduring
2 Freedom or Operation Iraqi Freedom.

3 (2) MILITARY CHILD DEVELOPMENT CENTER.—

4 The term “military child development center” has
5 the meaning given such term in section 1800(1) of
6 title 10, United States Code.

7 **SEC. 6. USERRA IMPLEMENTING REGULATIONS.**

8 (a) REQUIREMENT FOR REGULATIONS.—Subsections
9 (a) and (b)(1) of section 4331 of title 38, United States
10 Code, are amended by striking “may prescribe” and in-
11 serting “shall prescribe”.

12 (b) CLARIFICATION OF RIGHT TO MERIT PAY IN-
13 CREASES.—The regulations prescribed for the implemen-
14 tation of chapter 43 of title 38, United States Code, under
15 section 4331 of such title shall include regulations that
16 clarify that the entitlement of persons returning to em-
17 ployment under such chapter to receive pay increases
18 under merit pay systems of employers may not be denied
19 on the basis of lack of work performance evaluations for
20 periods of absence for active duty in the uniformed serv-
21 ices.

1 **SEC. 7. EXPANSION OF ELIGIBILITY REQUIREMENTS TO**
2 **PERMIT THE AGGREGATION OF PERIODS OF**
3 **ACTIVE DUTY SERVICE OVER A PERIOD OF 5**
4 **YEARS TO QUALIFY FOR EDUCATIONAL AS-**
5 **SISTANCE FOR RESERVE COMPONENT MEM-**
6 **BERS SUPPORTING CONTINGENCY OPER-**
7 **ATIONS AND CERTAIN OTHER OPERATIONS.**

8 (a) **ELIMINATION OF REQUIREMENT FOR CONSECU-**
9 **TIVE DAYS OF SERVICE.**—Subsection (c)(4) of section
10 16162 of title 10, United States Code, is amended—

11 (1) in subparagraph (A), by striking “for 90
12 consecutive days but less than one continuous year;”
13 and inserting “for a cumulative period of 90 days
14 but less than one year during any 5-year period;”;

15 (2) in subparagraph (B), by striking “one con-
16 tinuous year but less than two continuous years;”
17 and inserting “for a cumulative period of one year
18 but less than two years during any 5-year period;”;
19 and

20 (3) in subparagraph (C), by striking “two con-
21 tinuous years or more.” and inserting “for a cumu-
22 lative period of two years or more during any 5-year
23 period.”.

24 (b) **CONFORMING AMENDMENT.**—Section 16163 of
25 such title is amended—

1 (1) in paragraphs (1) and (2) of subsection (a),
2 by striking “consecutive” each place it appears; and
3 (2) in subsection (b), by striking “consecutive”.

4 **SEC. 8. REDUCTION FROM 60 TO 55 OF AGE FOR RECEIPT**
5 **OF MILITARY RETIRED PAY FOR NONREG-**
6 **ULAR SERVICE.**

7 (a) REDUCTION IN AGE.—Section 12731(a)(1) of
8 title 10, United States Code, is amended by striking “at
9 least 60 years of age” and inserting “at least 55 years
10 of age”.

11 (b) APPLICATION TO EXISTING PROVISIONS OF LAW
12 OR POLICY.—With respect to any provision of law, or of
13 any policy, regulation, or directive of the executive branch,
14 that refers to a member or former member of the uni-
15 formed services as being eligible for, or entitled to, retired
16 pay under chapter 1223 of title 10, United States Code,
17 but for the fact that the member or former member is
18 under 60 years of age, such provision shall be carried out
19 with respect to that member or former member by sub-
20 stituting for the reference to being 60 years of age a ref-
21 erence to the age in effect for qualification for such retired
22 pay under section 12731(a) of title 10, United States
23 Code, as amended by subsection (a).

24 (c) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect on the first day of the first

1 month beginning on or after the date of the enactment
2 of this Act and shall apply to retired pay payable for that
3 month and subsequent months.

4 **SEC. 9. DEPUTY UNDER SECRETARY OF DEFENSE FOR PER-**
5 **SONNEL AND READINESS (RESERVE AF-**
6 **FAIRS).**

7 (a) ESTABLISHMENT OF POSITION.—

8 (1) POSITION AND DUTIES.—Chapter 4 of title
9 10, United States Code, is amended by inserting
10 after section 136a the following new section:

11 **“§ 136b. Deputy Under Secretary of Defense for Per-**
12 **sonnel and Readiness (Reserve Affairs)**

13 “(a) There is a Deputy Under Secretary of Defense
14 for Personnel and Readiness (Reserve Affairs), appointed
15 from civilian life by the President, by and with the advice
16 and consent of the Senate.

17 “(b) The Deputy Under Secretary of Defense for Per-
18 sonnel and Readiness (Reserve Affairs) shall have as his
19 principal duty the overall supervision of reserve component
20 affairs of the Department of Defense.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of such chapter is amended
23 by inserting after the item relating to section 136a
24 the following new item:

“136b. Deputy Under Secretary of Defense for Personnel and Readiness (Re-
serve Affairs).”.

1 (b) EXECUTIVE LEVEL IV.—Section 5315 of title 5,
2 United States Code, is amended by inserting after “Dep-
3 uty Under Secretary of Defense for Personnel and Readi-
4 ness.” the following:
5 “Deputy Under Secretary of Defense for Personnel and
6 Readiness (Reserve Affairs).”.

7 (c) ELIMINATION OF POSITION OF ASSISTANT SEC-
8 RETARY OF DEFENSE FOR RESERVE AFFAIRS.—

9 (1) REPEAL OF REQUIREMENT FOR POSI-
10 TION.—Subsection (b) of section 138 of title 10,
11 United States Code, is amended by striking para-
12 graph (2).

13 (2) REDUCTION IN TOTAL NUMBER OF ASSIST-
14 ANT SECRETARIES OF DEFENSE.—

15 (A) AUTHORIZED NUMBER.—Subsection
16 (a) of such section is amended by striking
17 “nine” and inserting “eight”.

18 (B) CONFORMING AMENDMENT.—Section
19 5315 of title 5, United States Code, is amended
20 by striking “(9)” after “Assistant Secretaries of
21 Defense” and inserting “(8)”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 subsection (c) shall take effect on the date on which a
24 person is first appointed as Deputy Under Secretary of
25 Defense for Personnel and Readiness (Reserve Affairs).

1 **SEC. 10. SUPPORT FOR STATE NATIONAL GUARD RE-**
2 **INTEGRATION OFFICES.**

3 Section 107 of title 32, United States Code, is
4 amended by adding at the end the following new sub-
5 section:

6 “(d) Under such regulations as the Secretary of De-
7 fense may prescribe, appropriations for the National
8 Guard are available for support by the Department of De-
9 fense of the establishment and operation by the National
10 Guard of offices to assist members of the National Guard
11 being released from active duty or full-time National
12 Guard duty of a period of more than 30 days in read-
13 justing to civilian life.”.

○