

109TH CONGRESS  
1ST SESSION

# S. 624

To amend title 10, United States Code, to protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 15, 2005

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

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# A BILL

To amend title 10, United States Code, to protect the financial condition of members of the reserve components of the Armed Forces who are ordered to long-term active duty in support of a contingency operation, 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 “Patriot Penalty Elimi-  
5 nation Act of 2005”.

1 **SEC. 2. INCOME PRESERVATION PAY FOR RESERVES SERV-**  
2 **ING ON ACTIVE DUTY IN SUPPORT OF A CON-**  
3 **TINGENCY OPERATION.**

4 (a) AUTHORITY.—Chapter 1209 of title 10, United  
5 States Code, is amended by inserting after section 12316  
6 the following new section:

7 **“§ 12316a. Reserves: income preservation pay**

8 “(a) REQUIREMENT TO PAY.—The Secretary of the  
9 military department concerned shall pay income preserva-  
10 tion pay under this section to an eligible member of a re-  
11 serve component of the armed forces in connection with  
12 the member’s active-duty service as described in sub-  
13 section (b).

14 “(b) ELIGIBLE MEMBER.—A member is eligible for  
15 income preservation pay if—

16 “(1) the member is called or ordered to active  
17 duty (other than voluntarily) under a provision of  
18 law referred to in section 101(a)(13)(B) of this title;

19 “(2) pursuant to such call or order, the member  
20 serves on active duty outside the United States dur-  
21 ing at least 6 out of 12 consecutive months; and

22 “(3) with respect to such active-duty service,  
23 the amount of the member’s preservice earned in-  
24 come determined under subparagraph (A) of sub-  
25 section (c)(1) exceeds the amount of the member’s

1        military service income determined under subparagraph  
2        (B) of such subsection.

3        “(c) AMOUNT.—(1) Subject to paragraph (2), the  
4        amount payable under this section to a member in connec-  
5        tion with active-duty service is the amount equal to the  
6        excess (if any) of—

7                “(A) the amount computed by multiplying—

8                        “(i) the preservice average monthly earned  
9        income of the member, by

10                        “(ii) the total number of the member’s  
11        service months for such active-duty service, over

12                “(B) the amount computed by multiplying—

13                        “(i) the military service average monthly  
14        income of the member, by

15                        “(ii) the total number of months deter-  
16        mined under subparagraph (A)(ii).

17        “(2) The total amount of income preservation pay  
18        that is paid to a member under this section may not ex-  
19        ceed \$50,000.

20        “(d) PRESERVICE AVERAGE MONTHLY EARNED IN-  
21        COME.—For the purposes of this section, the preservice  
22        average monthly earned income of a member who serves  
23        on active duty as described in subsection (b) shall be com-  
24        puted by dividing 12 into the total amount of the mem-  
25        ber’s earned income for the 12 months immediately pre-

1 ceding the member's first service month of the period for  
2 which income preservation pay is to be paid to the member  
3 under this section.

4       “(e) MILITARY SERVICE AVERAGE MONTHLY IN-  
5 COME.—For the purposes of this section, the military serv-  
6 ice average monthly income of a member who serves on  
7 active duty as described in subsection (b) is the amount  
8 determined by dividing—

9           “(1) the sum of the total amount of the mem-  
10 ber's earned income (other than basic pay) and the  
11 total amount of the member's basic pay (under sec-  
12 tion 204 of title 37) for the member's service  
13 months for such active-duty service, by

14           “(2) the total number of such months.

15       “(f) TIME AND MANNER OF PAYMENT.—(1) Subject  
16 to paragraph (2), the total amount of income preservation  
17 pay that is payable under this section to a member in con-  
18 nection with service on active duty is due and payable,  
19 in one lump sum, not later than 30 days after the date  
20 on which the member is released from the active duty.

21           “(2) The Secretary concerned may make advance  
22 payment of income preservation pay in whole or in part  
23 under this section to a member, under such terms and  
24 conditions as the Secretary determines appropriate, if it  
25 is clear from the circumstances that it is likely that the

1 member's active-duty service will satisfy the requirements  
2 of subsection (b). In any case in which advance payment  
3 is made to a member whose period of such active-duty  
4 service does not satisfy such requirements, the Secretary  
5 concerned may waive recoupment of the advance payment  
6 if the Secretary determines that recoupment would be  
7 against equity and good conscience or would be contrary  
8 to the best interests of the United States.

9       “(g) DEFINITIONS.—In this section:

10       “(1) The term “earned income” has the mean-  
11 ing given such term in section 32(c)(2) of the Inter-  
12 nal Revenue Code of 1986.

13       “(2) The term ‘service month’, with respect to  
14 service of a member of a reserve component of the  
15 armed forces on active duty, means a month during  
16 any part of which the member serves on active duty.

17       “(h) TERMINATION OF AUTHORITY.—This section  
18 shall cease to be effective on the first day of the first  
19 month that begins on or after the date that is five years  
20 after the date of the enactment of the Patriot Penalty  
21 Elimination Act of 2005.”.

22       (b) RECHARACTERIZATION OF EXISTING SECTION ON  
23 PAYMENT OF CERTAIN RESERVES ON ACTIVE DUTY.—  
24 The heading of section 12316 of title 10, United States  
25 Code, is amended to read as follows:

1   **“§ 12316. Reserves: payment of other entitlement in-**  
2                   **stead of pay and allowances”.**

3                   (c) CLERICAL AMENDMENT.—The table of sections  
4   at the beginning of chapter 1209 of title 10, United States  
5   Code, is amended by striking the item relating to section  
6   12316 and inserting the following new items:

“12316. Reserves: payment of other entitlement instead of pay and allowances.  
“12316a. Reserves: income preservation pay.”.

7                   (d) EFFECTIVE DATE.—Section 12316a of title 10,  
8   United States Code (as added by subsection (a)), shall  
9   take effect as of January 1, 2003, and shall apply with  
10   respect to active-duty service that begins on or after such  
11   date.

12   **SEC. 3. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
13                   **CREDIT.**

14                   (a) IN GENERAL.—Subpart D of part IV of sub-  
15   chapter A of chapter 1 of the Internal Revenue Code of  
16   1986 (relating to business-related credits) is amended by  
17   inserting after section 45I the following new section:

18   **“SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE**  
19                   **CREDIT.**

20                   “(a) GENERAL RULE.—For purposes of section 38,  
21   the Ready Reserve-National Guard employee credit deter-  
22   mined under this section for any taxable year with respect  
23   to each Ready Reserve-National Guard employee of the

1 taxpayer is an amount equal to 50 percent of the lesser  
2 of—

3           “(1) the actual compensation amount with re-  
4 spect to such employee for such taxable year, or  
5           “(2) \$30,000.

6        “(b) DEFINITION OF ACTUAL COMPENSATION  
7 AMOUNT.—For purposes of this section, the term ‘actual  
8 compensation amount’ means the amount of compensation  
9 paid or incurred by a taxpayer with respect to a Ready  
10 Reserve-National Guard employee on any day when the  
11 employee was absent from employment for the purpose of  
12 performing qualified active duty.

13       “(c) LIMITATIONS.—No credit shall be allowed with  
14 respect to any day that a Ready Reserve-National Guard  
15 employee who performs qualified active duty was not  
16 scheduled to work (for reason other than to participate  
17 in qualified active duty).

18       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
19 poses of this section—

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

22            “(A) active duty outside the United States  
23           under an order or call for a period in excess of  
24           179 days or for an indefinite period, other than  
25           the training duty specified in section 10147 of

1 title 10, United States Code (relating to training  
2 requirements for the Ready Reserve), or  
3 section 502(a) of title 32, United States Code  
4 (relating to required drills and field exercises  
5 for the National Guard), in connection with  
6 which an employee is entitled to reemployment  
7 rights and other benefits or to a leave of absence  
8 from employment under chapter 43 of  
9 title 38, United States Code, and

11                   “(2) COMPENSATION.—The term ‘compensa-  
12                   tion’ means any remuneration for employment,  
13                   whether in cash or in kind, which is paid or incurred  
14                   by a taxpayer and which is deductible from the tax-  
15                   payer’s gross income under section 162(a)(1).

16                 “(3) READY RESERVE-NATIONAL GUARD EM-  
17                 PLOYEE.—The term ‘Ready Reserve-National Guard  
18                 employee’ means an employee who is a member of  
19                 the Ready Reserve of a reserve component of an  
20                 Armed Force of the United States as described in  
21                 sections 10142 and 10101 of title 10, United States  
22                 Code.

23       “(4) CERTAIN RULES TO APPLY.—Rules similar  
24       to the rules of section 52 shall apply.

1       “(e) TERMINATION.—This section shall not apply  
2 with respect to amounts paid or incurred in taxable years  
3 that begin more than 5 years after the date of enactment  
4 of the Patriot Penalty Elimination Act of 2005.”.

5       (b) CREDIT TO BE PART OF GENERAL BUSINESS  
6 CREDIT.—Subsection (b) of section 38 of the Internal  
7 Revenue Code of 1986 (relating to general business credit)  
8 is amended by striking “plus” at the end of paragraph  
9 (18), by striking the period at the end of paragraph (19)  
10 and inserting “, plus”, and by adding at the end the fol-  
11 lowing:

12       “(20) the Ready Reserve-National Guard em-  
13 ployee credit determined under section 45J(a).”.

14       (c) DENIAL OF DOUBLE BENEFIT.—Section 280C(a)  
15 of the Internal Revenue Code of 1986 (relating to rule  
16 for employment credits) is amended by inserting  
17 “45J(a),” after “45A(a),”.

18       (d) CONFORMING AMENDMENT.—The table of sec-  
19 tions for subpart D of part IV of subchapter A of chapter  
20 1 of the Internal Revenue Code of 1986 is amended by  
21 inserting after the item relating to section 45I the fol-  
22 lowing:

“Sec. 45J. Ready Reserve-National Guard employee credit.”.

23       (e) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to amounts paid or incurred after

1 December 31, 2004, in taxable years ending after such  
2 date.

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