

AMENDMENT TO RULES COMMITTEE PRINT
118-36
OFFERED BY MR. AUSTIN SCOTT OF GEORGIA

Add at the end of title XI of division A the following:

1 **SEC. ____ . MILITARY TECHNICIAN MODERNIZATION.**

2 (a) IN GENERAL.—Section 709 of title 32, United
3 States Code, is amended to read as follows:

4 **“§ 709. Military technicians (dual status): employ-**
5 **ment, use, status**

6 “(a) Under regulations prescribed in accordance with
7 section 10503(9) of title 10, persons may be appointed,
8 employed, administered, detailed, assigned, and disciplined
9 by the adjutants general as military technicians (dual sta-
10 tus) in—

11 “(1) the organizing, administering, instructing,
12 or training of Army National Guard or Air National
13 Guard units or personnel to meet Federal readiness
14 standards set by the Secretary of the Army or the
15 Secretary of the Air Force;

16 “(2) the maintenance and repair of supplies
17 issued to the National Guard or the armed forces;
18 and

1 “(3) the performance of the following additional
2 duties to the extent that the performance of those
3 duties does not interfere with the performance of the
4 duties described by paragraphs (1) and (2):

5 “(A) Support of any operation or mission
6 undertaken by the technician’s unit at the re-
7 quest of the President or the Secretary of De-
8 fense.

9 “(B) Support of Federal training oper-
10 ations or Federal training missions assigned in
11 whole or in part to the technician’s unit.

12 “(C) Instructing or training in the United
13 States or the Commonwealth of Puerto Rico or
14 possessions of the United States of—

15 “(i) active-duty members of the armed
16 forces;

17 “(ii) members of foreign military
18 forces (under the same authorities and re-
19 strictions applicable to active-duty mem-
20 bers providing such instruction or train-
21 ing);

22 “(iii) Department of Defense con-
23 tractor personnel; or

24 “(iv) Department of Defense civilian
25 employees.

1 “(b) A person employed under this section must meet
2 each of the following requirements:

3 “(1) Be a military technician (dual status) as
4 defined in section 10216(a) of title 10.

5 “(2) Be a member of the Service component of
6 the National Guard of the State, Commonwealth,
7 Territory, or District in which the person is serving
8 as a military technician (dual status).

9 “(3) Hold the military grade specified by the
10 Chief of the National Guard Bureau for the military
11 technician (dual status) position.

12 “(4) While performing duties as a military tech-
13 nician (dual status) wear the military uniform ap-
14 propriate for the member’s grade and component of
15 the armed forces, conform to military grooming
16 standards, display proper military customs and cour-
17 tesies, and refrain from conduct that is prejudicial
18 to the efficiency of the service or military good order
19 and discipline.

20 “(c) A military technician (dual status) employed
21 under this subsection is an employee of the National
22 Guard and an employee of the United States. Notwith-
23 standing paragraphs (2) and (4) of section 101(c) of title
24 10, any act or omission by a military technician (dual-
25 status) performing duty under this subsection or any

1 member performing duties under sections 502 and 503 of
2 this title, including the use of force in defense of Federal
3 property taken pursuant to regulations prescribed by the
4 Chief, National Guard Bureau, shall be considered an act
5 by an employee of the United States Government under
6 section 2671 of title 28.

7 “(d)(1) The military aspects of military technician
8 (dual status) employment and service are paramount over
9 all other aspects of employment.

10 “(2) Notwithstanding any other provision of law, a
11 military technician (dual status) who is involuntarily sepa-
12 rated from the National Guard or ceases to hold the mili-
13 tary grade specified for that position shall be promptly re-
14 moved from technician employment by the adjutant gen-
15 eral of the jurisdiction concerned. A technician who is in-
16 voluntarily separated from technician employment under
17 this paragraph, not as a result of misconduct or personal
18 failure to maintain military fitness for duty standards and
19 is certified in writing by the adjutant general as not pend-
20 ing investigation nor awaiting action for misconduct, shall,
21 at the election of the technician concerned, be granted
22 highest priority consideration then available for priority
23 placement under Federal law.

24 “(3) Notwithstanding any other provision of law, a
25 military technician (dual status) who fails to meet the

1 military security standards established for a member of
2 a reserve component may be removed from employment
3 as a technician and concurrently discharged from the Na-
4 tional Guard by the adjutant general of the jurisdiction
5 concerned.

6 “(4) A military technician (dual status) may, at any
7 time, be separated from technician employment for cause
8 by the adjutant general of the jurisdiction concerned. For
9 cause includes conduct, committed at any time, that is
10 prejudicial to the efficiency of the service or military good
11 order and discipline.

12 “(5)(A) All personnel actions, discipline, or condi-
13 tions of employment, including adverse actions pertaining
14 to a military technician (dual status) shall be accom-
15 plished by the adjutant general of the jurisdiction con-
16 cerned in accordance with the authorities and conditions
17 set forth in section 10508(b)(3) of title 10.

18 “(B) A right of appeal by a military technician (dual-
19 status), which may exist with respect to actions, including
20 separations, based upon laws or regulations relating to
21 military membership as a member of the National Guard
22 of the jurisdiction concerned or relating to service as a
23 member of the reserve component of the Army or Air
24 Force, shall not extend beyond the adjutant general con-
25 cerned.

1 “(C) Notwithstanding any other provision of law, no
2 appeal, complaint, grievance, claim, or action arising
3 under the provisions of sections 2302, 7511, 7512, and
4 7513 of title 5; section 717 of the Civil Rights Act of 1991
5 (42 U.S.C. 2000e–16); or sections 7116 or 7121 of title
6 5; or under any other provision of law, shall extend to ac-
7 tivity occurring while the member is in a military pay sta-
8 tus or to actions, including separations, based upon laws
9 or regulations relating to military membership as a mem-
10 ber of the National Guard of the jurisdiction concerned
11 or relating to service as a reserve of the Army or Air
12 Force, or pertaining to actions undertaken under para-
13 graph (2) or (3).

14 “(6) A technician shall be notified in writing of the
15 termination of the technician’s employment as a techni-
16 cian and, unless the technician is serving under a tem-
17 porary appointment, is serving in a trial or probationary
18 period, or has voluntarily ceased to be a member of the
19 National Guard when such membership is a condition of
20 employment, such notification shall be given at least 30
21 days before the termination date of such employment.

22 “(7) Any administratively imposed civilian hiring con-
23 trols or restrictions, including personnel ceilings, hiring
24 freezes, administrative furloughs, grade restrictions, or re-
25 ductions shall not apply to military technicians (dual sta-

1 tus) unless such hiring controls are determined by the
2 Chief of the National Guard Bureau to be a direct result
3 of a reduction in military force structure. For the purposes
4 of a furlough due to a lapse in appropriations, technicians
5 shall be treated as uniformed members of the armed
6 forces.

7 “(e) Except as provided in subsection (d), sections
8 3502, 7511, and 7512 of title 5 do not apply to a person
9 employed under this section. Sections 2108, 4303, and
10 5102 of title 5; the Age Discrimination in Employment
11 Act of 1967 (29 U.S.C. 621-634); the Rehabilitation Act
12 of 1973 (29 U.S.C. 701-796l); and section 1076d(a)(2)
13 of title 10 do not apply to a person employed under this
14 section. A person employed under this section who is per-
15 forming Active Guard and Reserve duty (as that term is
16 defined in section 101(d)(6) of title 10) may not use civil-
17 ian employee leave under sections 6307 or 6323(a)(1) of
18 title 5 during such duty.

19 “(f) Notwithstanding sections 5544(a) and 6101(a)
20 of title 5 or any other provision of law, the Chief of the
21 National Guard Bureau shall establish the hours of duties
22 for military technicians (dual status). Notwithstanding
23 sections 5542 and 5543 of title 5 or any other provision
24 of law, technicians shall be granted an amount of compen-
25 satory time off from their scheduled tour of duty equal

1 to the amount of any time spent by them in irregular or
2 overtime work, and shall not be entitled to compensation
3 for such work.

4 “(g) The Chief of the National Guard Bureau may
5 not prescribe for purposes of eligibility for Federal rec-
6 ognition under section 301 of this title a qualification ap-
7 plicable to technicians employed under subsection (a) that
8 is not applicable pursuant to that section to the other
9 members of the National Guard in the same grade,
10 branch, position, and type of unit or organization involved.

11 “(h) Notwithstanding the provisions of section
12 14506, 14507, or 14508 of title 10, the Chief of the Na-
13 tional Guard Bureau may, at the request of the adjutant
14 general of the jurisdiction concerned, and with the officer’s
15 consent, retain on the reserve active-status list an officer
16 in the grade of major, lieutenant colonel, colonel, or briga-
17 dier general who is a reserve officer of the Army or Air
18 Force and who, as a condition of continued employment
19 as a National Guard military technician (dual status) is
20 required to maintain membership in a Selected Reserve
21 unit or organization.

22 “(i) In this section:

23 “(1) The term ‘military pay status’ means a pe-
24 riod of military service under titles 10, 32, or State
25 Active Duty, with respect to which the amount of

1 pay payable to a technician for that service is based
2 on rates of military pay provided for under title 37
3 or State law.

4 “(2) The term ‘fitness for duty in the reserve
5 components’ refers only to military-unique require-
6 ments that attend to requirements for military serv-
7 ice as a member of the Army National Guard or Air
8 National Guard or as a reserve of the Army or Air
9 Force or service on active duty, that are established
10 by the Secretary of the Army or the Secretary of the
11 Air Force and that pertain to requirements of law
12 or policy relating to military membership as a mem-
13 ber of the National Guard of the jurisdiction con-
14 cerned.

15 “(j) For purposes of any administrative complaint,
16 grievance, claim, or action arising from, or relating to,
17 such a personnel action or condition of employment:

18 “(1) The adjutant general of the jurisdiction
19 concerned shall be considered the head of the agency
20 and the National Guard of the jurisdiction con-
21 cerned shall be considered the employing agency of
22 the individual and the sole defendant or respondent
23 in any administrative action.

24 “(2) The National Guard of the jurisdiction
25 concerned shall defend any administrative appeal,

1 complaint, grievance, claim, or action, and shall
2 promptly implement all aspects of any final adminis-
3 trative or judicial order, judgment, or decision that
4 does not involve or concern any military aspect of
5 the performance of technician duties under this sec-
6 tion.

7 “(3) In any civil action or proceeding brought
8 in any court arising from an action under this sec-
9 tion, the United States shall be the sole defendant
10 or respondent.

11 “(4) The Attorney General of the United States
12 shall defend the United States in actions arising
13 under this section.

14 “(5) Any settlement, judgment, or costs arising
15 from an action described in paragraph (1), (2), or
16 (3) shall be paid from appropriated funds allocated
17 to the National Guard of the jurisdiction concerned.

18 “(k) Nothing in this section shall reduce, limit, or
19 eliminate, in any manner, any right or benefit, including
20 any procedural right, provided by chapter 43 of title 38.”.

21 (b) CLERICAL AMENDMENT.—The item relating to
22 section 709 in the table of sections for chapter 7 of title
23 32, United States Code, is amended to read as follows:

“709. Military Technicians (dual status): employment, use, status.”.

