

[CHAPTER 320]

AN ACT

Authorizing the temporary appointment or advancement of certain personnel of the Navy and Marine Corps, and for other purposes.

July 24, 1941
[H. R. 4473]
[Public Law 188]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That except as otherwise specified herein the authority granted by this Act shall be exercised only in time of war or national emergency determined by the President.

Navy and Marine Corps, temporary appointments.

SEC. 2. (a) As used in this Act, the words "temporarily appointed" shall be interpreted to mean also "temporarily promoted" or "temporarily advanced in rank", as the case may be.

"Temporarily appointed."

(b) The following personnel may be temporarily appointed to ranks or grades in the Regular Navy or Marine Corps, not above lieutenant in the Navy and captain in the Marine Corps:

Classes eligible.

(1) Commissioned warrant officers of the Regular Navy and Marine Corps.

(2) Warrant officers of the Regular Navy and Marine Corps.

(3) First-class petty officers and above in the Regular Navy and platoon or staff sergeants and above in the Regular Marine Corps, including enlisted men of those grades on the retired list on active duty.

(4) Enlisted men of the Fleet Reserve and the Fleet Marine Corps Reserve on active duty in the grades herein specified for enlisted men of the Regular Navy or Marine Corps.

Advancement of active-list officers.

SEC. 3. Officers on the active list of the Regular Navy or Marine Corps in commissioned ranks, including those appointed under the authority of section 2 of this Act, may be temporarily appointed to higher ranks or grades in the Regular Navy or Marine Corps, and the provisions of paragraph 9 of section 1 of the Act approved June 10, 1922 (42 Stat. 626; U. S. C., title 37, sec. 2), shall be applicable to all officers eligible for consideration for appointment or advancement pursuant to the provisions of this Act, not only during the existence of a state of war formally recognized by Congress, but also during a national emergency determined by the President.

Pay during war or emergency.

SEC. 4. (a) Commissioned or warrant officers on the retired list of the Navy or Marine Corps may, while on active duty, be temporarily appointed to higher ranks or grades on the retired list. Any officer so appointed shall, while on active duty, be entitled to the same pay and allowances as officers of like grade or rank with equivalent service on the active list.

Retired officers on active duty.
Post, p. 800.

(b) In the computation of the retired pay of officers heretofore or hereafter retired with pay at the rate of 2½ per centum of the active-duty pay received by them at the time of retirement multiplied by the number of years of service for which entitled to credit in the computation of their pay on the active list, not to exceed a total of 75 per centum of said active-duty pay, active duty performed by such retired officers subsequent to the date of their retirement shall be counted for the purpose of computing percentage increases in their retired pay. These increases shall be at the rate of 2½ per centum for each year of active duty and a fractional year of six months or more shall be considered a full year in computing the number of years: *Provided*, That the increased retired pay of such retired officers shall in no case exceed 75 per centum of the active-duty pay as authorized by existing law: *Provided further*, That no back pay or allowances shall accrue by reason of the passage of this Act.

Retired pay, computation.

Provisos. Limitation.

No back pay.

Determination of number.

SEC. 5. The temporary appointments under the authority of this Act shall be in such numbers as the President may determine that the needs of the service require and in such manner and under such regulations as he may prescribe.

Senate approval of certain appointments.

SEC. 6. Temporary appointments under the authority of this Act shall, if they are to the rank or grade of rear admiral in the Navy or general officer in the Marine Corps, be made by and with the advice and consent of the Senate; if to lower ranks or grades, they may be made by the President alone.

Permanent status of those temporarily appointed, etc.

SEC. 7. (a) The permanent, probationary, or acting appointments of those persons temporarily appointed in accordance with the provisions of this Act shall not be vacated by reason of such temporary appointments, such persons shall not be prejudiced thereby in regard to promotion, advancement, or appointment in accordance with laws relating to the Regular Navy or Marine Corps, and their rights, benefits, privileges, and gratuities shall not be lost or abridged in any respect whatever by their acceptance of commissions or warrants hereunder: *Provided*, That except as otherwise provided herein no person who shall accept a commission or warrant under sections 2 and 3 of this Act shall, while serving thereunder, be entitled to pay or allowances except as provided by law for the position temporarily occupied: *Provided further*, That no person temporarily appointed under the authority of this Act shall suffer any reduction in pay and allowances to which he would have been entitled had he not been so temporarily appointed.

Provisos.
Pay and allowances.

Temporary appointees to suffer no loss.

Uniform gratuity, enlisted men.

(b) Enlisted men shall, upon being initially appointed as provided by section 2 of this Act, be paid the sum of \$250 as a uniform gratuity.

Retirement benefits for designated classes.

SEC. 8. (a) An officer or enlisted man of the active list of the Regular Navy or Marine Corps, or an enlisted man of the Fleet Reserve or Fleet Marine Corps Reserve, who incurs physical disability while serving under a temporary appointment in a higher rank, shall be retired in such higher rank with retired pay at the rate of 75 per centum of the active-duty pay to which he was entitled while serving in that rank.

(b) An officer or enlisted man of the retired list of the Regular Navy or Marine Corps who was placed thereon for reasons other than physical disability shall, if he incurs physical disability while serving under a temporary appointment in a higher rank, be advanced on the retired list to such higher rank with retired pay at the rate of 75 per centum of the active duty pay to which he was entitled while serving in that rank.

(c) An officer of the retired list of the Regular Navy or Marine Corps who was placed thereon by reason of physical disability shall, if he incurs physical disability while serving under a temporary appointment in a higher rank, subject to the provisions of subsection (e) hereof, be advanced on the retired list to such higher rank with retired pay at the rate of 75 per centum of the active-duty pay to which he was entitled while serving in that rank.

(d) An officer of the retired list of the Regular Navy or Marine Corps who was placed thereon for reasons other than physical disability shall, if he incurs physical disability while serving on active duty in the same rank as that held by him on the retired list and if not otherwise entitled thereto, receive 75 per centum of the active-duty pay to which he was entitled while serving in that rank.

Conditions and degree of disability.

(e) The benefits of this section shall apply only to an individual who incurs physical disability in line of duty in time of war or national emergency. In the case of those officers to whom subsection (c) hereof is applicable retirement in the next higher rank shall

be effected upon a finding by a naval retiring board that the disability was incident to the service while on active duty in the higher rank and upon a rating by such board, in accordance with regulations prescribed by the Secretary of the Navy, at not less than 30 per centum permanent disability. In all other cases officers shall be retired in accordance with existing law providing for the retirement of officers.

(f) The jurisdiction of naval retiring boards is hereby extended as may be necessary in the administration of this section, and their proceedings shall be conducted in all respects as provided by existing law and regulations except as may be necessary to adapt the same to cases provided for in this section.

(g) The provisions of this section shall not apply in any case unless the proceedings of the naval retiring board shall be commenced within six months from the termination of the temporary appointment or release from active duty of the individual concerned which ever may occur earlier.

SEC. 9. Commissioned officers appointed under the authority of section 2 of this Act shall not be counted in any computation to determine the authorized number of officers in any grade. Commissioned officers of the Regular Navy and Marine Corps temporarily appointed to higher ranks or grades therein under the authority of section 3 of this Act shall be counted only in their permanent ranks or grades in such computation.

SEC. 10. Personnel appointed or advanced under the authority of this Act may be continued in their temporary status during such period as the President may determine, but not longer than six months after the termination of war or national emergency. Upon the termination of their temporary status such personnel shall, unless otherwise provided herein, revert to their permanent grades, ranks, or ratings, but upon being subsequently retired or in the case of retired officers returned to an inactive status, they shall, on condition that their performance of duty under such temporary appointments has been satisfactory, be placed on the retired list, or advanced thereon as the case may be, with the highest rank held by them while on active duty: *Provided*, That except where specific provision is made otherwise, their retired pay shall be based on the pay of the rank or rating held at the time of retirement: *Provided further*, That nothing in this Act shall entitle such personnel, when recalled to active duty, to any other rank or rating than that in which they were serving at the time of retirement.

SEC. 11. The provisions of this Act, except as may be necessary to adapt the same thereto shall apply to—

(a) Personnel of the Naval Reserve (except the Fleet Reserve) and the Marine Corps Reserve (except the Fleet Marine Corps Reserve) in like manner and to the same extent and with the same relative conditions in all respects as are provided for personnel of the Regular Navy and Marine Corps, but this shall not be construed to authorize the temporary appointment of the personnel thereof to ranks or grades in the Regular Navy or Marine Corps.

(b) Personnel of the Coast Guard in relationship to the Coast Guard in the same manner and to the same extent as they apply to personnel of the Navy in relationship to the Navy: *Provided*, That temporary appointments may be made to such rank and grade in the Coast Guard, not above captain, as correspond to the rank and grade that may be attained, either permanently or temporarily, by line officers of the Regular Navy of the same length of total commissioned service.

Approved, July 24, 1941.

Naval retiring boards, jurisdiction.

Time limitation.

Authorized number in grade.
Temporary appointments not counted.

Continuance in temporary status during emergency.

Return to permanent status.

Provisos.
Retired pay.

Rank.

Applicability of provisions.

Naval and Marine Corps Reserve.

Exception.

Coast Guard.

Proviso.

[CHAPTER 325]

AN ACT

July 29, 1941
[S. 1110]
[Public Law 189]

To amend section 1118 of the Revised Statutes, as amended, to eliminate the prohibition against enlistment in the military service of the United States of any person convicted of a felony.

Enlistments, Army.
10 U. S. C. § 622.

Deserters and persons convicted of felonies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1118, Revised Statutes, be, and the same is hereby, amended by omitting the period at the end thereof, by substituting therefor a colon, and by adding after the colon the following: "*Provided, however,* That with relation to deserters and persons convicted of felonies the Secretary of War may, by regulations or otherwise, authorize exceptions in special meritorious cases."

Approved, July 29, 1941.

[CHAPTER 326]

JOINT RESOLUTION

July 29, 1941
[S. J. Res. 88]
[Public Law 190]

To strengthen the common defense by suspending section 24b of the National Defense Act and authorizing a more expeditious procedure to vitalize the active list of the Army.

Act to strengthen national defense.
6 F. R. 2617.
41 Stat. 773.
10 U. S. C. § 571.

Removal of certain Army officers.
6 F. R. 2617.

Provisos.
Officers affected.

Action upon board's recommendation.

Hearing allowed.

Honorable discharge.

Retirement.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That during the national emergency announced by the President on May 27, 1941, section 24b of the National Defense Act, as amended, is hereby suspended.

SEC. 2. That during the time of the national emergency announced by the President on May 27, 1941, the Secretary of War, for such causes and under such regulations as he may prescribe, may remove any officer from the active list of the Regular Army: *Provided,* That such removal be made from among officers whose performance of duty, or general efficiency, compared with other officers of the same grade and length of service, is such as to warrant such action, or whose retention on the active list is not justified for other good and sufficient reasons appearing to the satisfaction of the Secretary of War: *Provided further,* That each officer so removed from the active list shall have been recommended for removal by a board of not less than five general officers convened for this purpose by the Secretary of War: *Provided further,* That such officer is allowed a hearing before said board. The action of the Secretary of War in removing an officer from the active list shall be final and conclusive. Officers removed from the active list who have less than seven completed years of commissioned service at the time of removal shall be honorably discharged. Officers removed from the active list who have seven or more completed years of commissioned service at the time of removal shall be retired with retirement pay computed as follows: Any officer so retired who has over thirty years' service or any officer so retired who served in any capacity as a member of the military or naval forces of the United States prior to November 12, 1918, shall be retired with annual pay equal to 75 per centum of his active duty annual pay at the time of his retirement; any other officer so retired shall be retired with annual pay equal to 2½ per centum of his active duty annual pay at the time of his retirement, multiplied by a number equal to the number of complete years of his service counted for pay purposes under existing laws not in excess of thirty years. All officers retired under the provisions of this section shall be placed on the unlimited retired list.

Approved, July 29, 1941.