

ity. Such active service shall be counted in computing the years of active service of the officer for all other purposes.

(Added Pub. L. 104-106, div. A, title V, § 561(d)(3)(A), Feb. 10, 1996, 110 Stat. 322; amended Pub. L. 107-107, div. A, title X, § 1048(c)(13), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 111-84, div. A, title V, § 505, Oct. 28, 2009, 123 Stat. 2277; Pub. L. 113-291, div. A, title X, § 1071(e)(5), Dec. 19, 2014, 128 Stat. 3510.)

#### PRIOR PROVISIONS

A prior section 6328, acts Aug. 10, 1956, ch. 1041, 70A Stat. 396; Sept. 24, 1983, Pub. L. 98-94, title IX, § 923(c)(2), 97 Stat. 643, related to treatment of fractions of years of service in computing retired pay, prior to repeal by Pub. L. 99-348, title II, § 203(b)(5), July 1, 1986, 100 Stat. 696.

#### AMENDMENTS

2014—Subsec. (c). Pub. L. 113-291 substituted “on or after October 28, 2009,” for “on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2010”.

2009—Subsec. (c). Pub. L. 111-84 added subsec. (c).

2001—Subsec. (a). Pub. L. 107-107 substituted “February 10, 1996,” for “the date of the enactment of this section”.

#### EFFECTIVE DATE

Section effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 972 of this title.

### § 6329. Officers not to be retired for misconduct

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

#### HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code)                                   | Source (Statutes at Large)  |
|-----------------|--|---|
| 6329 .....      | 34 U.S.C. 385.<br>34 U.S.C. 626-1(a) (1st sentence). | R.S. 1456.<br>Aug. 7, 1947, ch. 512, § 314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68. |

The words “for which trial by court-martial would be appropriate” are substituted for the words “but he shall be brought to trial by court-martial for such misconduct”. The peremptory command in the source text is at variance with the theory of the Uniform Code of Military Justice and conflicts with the provisions of articles 30, 32, and 34. The substituted words are in accord with the interpretation placed on R.S. 1456 in *Denby v. Berry*, 263 U.S. 29, 36 (Nov. 12, 1923).

### § 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section.

(b) An enlisted member of the Regular Navy or the Navy Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Ma-

rine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay computed under section 6333 of this title.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(d)(1) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(2) In determining a member's eligibility for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)—

(A) a completed minority enlistment of the member is counted as four years of active service, if creditable to the member for such purpose before December 31, 1977; and

(B) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term, if creditable to the member for such purpose before December 31, 1977.

(3)(A) Subject to subparagraph (B), in determining a member's years of active service for the computation of retainer pay under subsection (c)—

(i) a completed minority enlistment of the member is counted as four years of active service; and

(ii) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(B) In the case of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section after December 30, 1977, service attributable under subparagraph (A) to time which, after December 31, 1977, is not actually served by the member may not be counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396; Pub. L. 85-583, § 1(2), (3), Aug. 1, 1958, 72 Stat. 480; Pub. L. 90-207, § 3(4), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, § 813(d)(5), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96-513, title V, § 513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98-94, title IX, § 923(c)(3), Sept. 24, 1983, 97 Stat. 643; Pub. L. 99-348, title II, § 203(b)(6), title III, § 305(a)(1), July 1, 1986, 100 Stat. 696, 704; Pub. L. 101-189, div. A, title VI, § 652(a)(5), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 109-163, div. A, title V, § 515(b)(1)(J), Jan. 6, 2006, 119 Stat. 3233.)