

**§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status**

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, §1004; Pub. L. 86-603, §1(1), July 7, 1960, 74 Stat. 357; Pub. L. 103-160, div. A, title V, §519, Nov. 30, 1993, 107 Stat. 1651; renumbered §12644 and amended Pub. L. 103-337, div. A, title XVI, §§1661(a)(4), 1662(h)(2), (4)(B), Oct. 5, 1994, 108 Stat. 2980, 2996, 2997.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1004(a) .....	50:949.	July 9, 1952, ch. 608,
1004(b) .....	50:950 (last sentence).	§§225, 226, 66 Stat. 488.
1004(c) .....	50:950 (less last sentence).	

In subsection (a), the words “Each \* \* \* who is not on active duty” are substituted for the words “when not on active duty all”. The words “examined as to his physical fitness” are substituted for the words “given physical examinations”. The words “be required to” are omitted as surplusage. The words “execute and” are inserted for clarity.

In subsection (c), the words “under his jurisdiction” are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), (4)(B), renumbered section 1004 of this title as this section and substituted “Members physically not qualified for active duty: discharge or transfer to retired status” for “Physical examination” as section catchline.

Pub. L. 103-337, §1661(a)(4), struck out “(c)” before “Except as otherwise provided” and struck out subsecs. (a) and (b) which read as follows:

“(a) Each member of the Ready Reserve who is not on active duty shall—

“(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

“(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

“(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.”

1993—Subsec. (a)(1). Pub. L. 103-160 substituted “five years” for “four years”.

1960—Subsec. (a). Pub. L. 86-603 limited the requirement for a physical examination every four years, and for the annual execution of a certificate of physical condition, to the Ready Reserve, and also required each Reserve in an active status, or on an inactive status list, who is not on active duty to execute and submit annually a certificate of physical condition.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L.

103-337, set out as an Effective Date note under section 10001 of this title.

**§ 12645. Commissioned officers: retention until completion of required service**

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 843, 1407, 1409, or 1411 of this title or chapter 21<sup>1</sup> of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer;

(2) an officer on the active-duty list or a reserve active-status list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy;

(3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy; or

(4) an officer whose discharge or transfer from an active status is required by law.

(Added Pub. L. 85-861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1444, §1005; amended Pub. L. 93-586, §2, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 98-525, title V, §528(a), Oct. 19, 1984, 98 Stat. 2525; renumbered §12645 and amended Pub. L. 103-337, div. A, title XVI, §§1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018; Pub. L. 104-106, div. A, title XV, §1501(a)(4), Feb. 10, 1996, 110 Stat. 495; Pub. L. 104-201, div. A, title V, §544(b), Sept. 23, 1996, 110 Stat. 2523; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1005 .....	50:1181(1) (as applicable to 50: 1194). 50:1194.	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §204), 204, 68 Stat. 1149, 1151.

The word “subsequently” is omitted as surplusage.

REFERENCES IN TEXT

Chapter 21 of title 14, referred to in text, was comprised of sections 701 to 713 and 720 to 746, prior to the renumbering of such sections as sections 3701 to 3714 and 3731 to 3757, respectively, of title 14 by Pub. L. 115-282, title I, §118(b), Dec. 4, 2018, 132 Stat. 4233. After renumbering, such sections now comprise chapter 37 (designated as chapter “1” in chapter analysis) of title 14.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 substituted “under chapter 843,” for “under chapter 573,”.

<sup>1</sup> See References in Text note below.