

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
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| | 5 U.S.C. 2281. | Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 10", 75 Stat. 646. |

The words "and section 3282 of Title 18" are omitted as unnecessary.

In paragraph (1)(A), the words "an employee as defined by section 2105 of this title" are coextensive with and substituted for "an officer or employee in or under the legislative, executive, or judicial branch of the Government of the United States".

In paragraph (1)(B), the reference to "Resident Commissioner" is omitted as included in "Member of Congress" in view of the definition of "Member of Congress" in section 2106.

In paragraph (1)(C), the words "uniformed service" are coextensive with and substituted for "armed forces, the Coast and Geodetic Survey, or the Public Health Service" in view of the definition of "uniformed services" in section 2101.

In paragraph (3), the words "uniformed service" are coextensive with and substituted for "armed forces, the Coast and Geodetic Survey, and the Public Health Service" in view of the definition of "uniformed services" in section 2101.

The definition of "armed forces" in former section 2281(4) is omitted as unnecessary in view of the definition of "armed forces" in section 2101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in par. (2), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Sections 228b, 228c(e), 228c-1, and 228e of title 45, referred to in par. (2), are references to sections 2, 3(e), 4, and 5 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified to subchapter IV (section 231 et seq.) of chapter 9 of Title 45, Railroads.

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

AMENDMENTS

1991—Pars. (2)(A), (3)(A). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

§ 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—

(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;

(B) chapter 105 (relating to sabotage) of title 18;

(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;

(D) section 10(b)(2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954;

(E) section 16(a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or

(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—

(A) article 104 (aiding the enemy), article 103a (espionage), or article 106 (spies) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or

(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—

(A) in falsely denying the commission of an act which constitutes an offense within the purview of—

- (i) a statute named by paragraph (1) of this subsection; or
- (ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2) (A) of this subsection;

(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or

(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testimony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

- (1) An offense within the purview of—
 - (A) section 2272 (violation of specific sections) or 2273 (violation of sections generally) of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;
 - (B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or
 - (C) section 783 (conspiracy and communication or receipt of classified information) of title 50 or section 601 of the National Security Act of 1947 (50 U.S.C. 421)¹ (relating to intelligence identities).
- (2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.
- (3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.
- (4) Subornation of perjury committed in connection with the false denial of another indi-

vidual as specified by paragraph (3) of this subsection.

(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—

(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;

(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

(C) that such conviction occurred after the date of enactment of this subsection.

(2) Any certification made pursuant to this subsection shall be subject to review by the United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs² (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 559; Pub. L. 92-128, §2(b), Sept. 25, 1971, 85 Stat. 348; Pub. L. 99-569, title VI, §603, Oct. 27, 1986, 100 Stat. 3204; Pub. L. 103-337, div. A, title VI, §639(a), Oct. 5, 1994, 108 Stat. 2791; Pub. L. 103-359, title VIII, §805, Oct. 14, 1994, 108 Stat. 3441; Pub. L. 115-91, div. A, title X, §1081(c)(3), Dec. 12, 2017, 131 Stat. 1599.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
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| | 5 U.S.C. 2282. | Sept. 26, 1961, Pub. L. 87-299, §1 "Sec. 1", 75 Stat. 640. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

REFERENCES IN TEXT

Pars. (2), (3) and (4) of subsec. (b) of section 10 of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954, referred to in subsec. (b)(1)(D),

¹ See References in Text note below.

² So in original. Probably should be "subparagraph".

are covered by sections 2274, 2275 and 2276, respectively, of Title 42, The Public Health and Welfare.

Subsecs. (a) and (b) of section 16 of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, referred to in subsec. (b)(1)(E), are covered by sections 2272 and 2273, respectively, of Title 42.

Articles 104, 106, and 106a of the Uniform Code of Military Justice, referred to in subsec. (b)(2)(A), are sections 904, 906, and 906a, respectively, of Title 10, Armed Forces. The Uniform Code of Military Justice, in its entirety, is set out in section 801 et seq. of Title 10.

The National Security Act of 1947, referred to in subsec. (c)(1)(C), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§3001 et seq.) of Title 50. Section 601 of the Act is now classified to section 3121 of Title 50. For complete classification of this Act to the Code, see Tables.

The date of enactment of this subsection, referred to in subsec. (d)(1)(C), is the date of enactment of Pub. L. 103-359, which was approved Oct. 14, 1994.

AMENDMENTS

2017—Subsec. (b)(2)(A). Pub. L. 115-91 substituted “article 103a (espionage), or article 106 (spies)” for “article 106 (spies), or article 106a (espionage)”.

1994—Subsec. (b)(2)(A). Pub. L. 103-337 substituted “, article 106 (spies), or article 106a (espionage)” for “or article 106 (spies)”.

Subsec. (d). Pub. L. 103-359 added subsec. (d).

1986—Subsec. (c)(1)(C). Pub. L. 99-569 inserted provisions relating to section 601 of the National Security Act of 1947.

1971—Subsec. (c)(1)(C). Pub. L. 92-128 struck out “, 822 (conspiracy or evasion of apprehension during internal security emergency), or 823 (aiding evasion or apprehension during internal security emergency)” after “classified information”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 effective immediately after the amendments made by div. E (§§5001-5542) of Pub. L. 114-328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note) [amendments effective Jan. 1, 2019], see section 1081(c)(4) of Pub. L. 115-91, set out as a note under section 801 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 639(b) of Pub. L. 103-337 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply to persons convicted of espionage under section 906a of title 10, United States Code (article 106a of the Uniform Code of Military Justice), on or after the date of the enactment of this Act.”

§ 8313. Absence from the United States to avoid prosecution

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice—

(A) after July 31, 1956, for an offense named by section 8312(b) of this title; or

(B) after September 26, 1961, for an offense named by section 8312(c) of this title; and

(2) willfully remains outside the United States, or its territories and possessions including the Commonwealth of Puerto Rico, for more than 1 year with knowledge of the indictment or charges, as the case may be.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the end of the 1-year period and continues until—

(1) a nolle prosequi to the entire indictment is entered on the record or the charges are dismissed by competent authority;

(2) the individual returns and thereafter the indictment or charges is or are dismissed; or

(3) after trial by court or court-martial, the accused is found not guilty of the offense or offenses.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 561.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| | 5 U.S.C. 2283a. | Sept. 26, 1961, Pub. L. 87-299, §1, “Sec. 3”, 75 Stat. 643. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§801 et seq.) of Title 10, Armed Forces.

Statutory Notes and Related Subsidiaries

SUSPENSION OF PAYMENT OF RETIRED PAY OF MEMBERS WHO ARE ABSENT FROM UNITED STATES TO AVOID PROSECUTION

Pub. L. 104-201, div. A, title VI, §633, Sept. 23, 1996, 110 Stat. 2550, provided that:

“(a) DEVELOPMENT OF PROCEDURES FOR SUSPENSION.—The Secretary of Defense shall develop uniform procedures under which the Secretary of a military department may suspend the payment of the retired pay of a member or former member of the Armed Forces during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability. The procedures shall address the types of criminal offenses and civil proceedings for which the procedures may be used, including the offenses specified in section 8312 of title 5, United States Code, and the manner by which a member, upon the return of the member to the United States, may obtain retired pay withheld during the member’s absence.

“(b) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress a report describing the procedures developed under subsection (a). The report shall include recommendations regarding changes to existing provisions of law (including section 8313 of title 5, United States Code) that the Secretary determines are necessary to fully implement the procedures.

“(c) RETIRED PAY DEFINED.—For purposes of this section, the term ‘retired pay’ means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service.

“(d) EFFECTIVE DATE.—The uniform procedures required by subsection (a) shall be developed not later than 30 days after the date of the enactment of this Act [Sept. 23, 1996].”