

HR 36

102d CONGRESS

1st Session

**H. R. 36**

To amend titles 10, 14, and 37, United States Code, relating to the promotion, separation, and mandatory retirement of warrant officers of the armed forces, establish the grade of chief warrant officer, W-5, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**January 3, 1991**

Mr. BENNETT introduced the following bill; which was referred to the Committee on Armed Services

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**A BILL**

To amend titles 10, 14, and 37, United States Code, relating to the promotion, separation, and mandatory retirement of warrant officers of the armed forces, establish the grade of chief warrant officer, W-5, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SHORT TITLE**

SECTION 1. This Act shall be known as the `Warrant Officer Management Act of 1991'.

**REFERENCE TO TITLE 10, UNITED STATES CODE**

SEC. 2. Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of a section or other provision, the reference shall be considered to be made to a section or provision of title 10, United States Code.

**TITLE I--AMENDMENTS TO SUBTITLE A OF TITLE 10, UNITED STATES CODE--GENERAL MILITARY LAW**

**Part A--Permanent Grade of Chief Warrant Officer, W-5**

SEC. 101. Section 555 is amended--

(1) by inserting 'Chief warrant officer, W-5' under 'Warrant officer grade:' in subsection (a); and

(2) by adding at the end the following new subsection:

`(c) No appointment may be made in the regular warrant officer grade of chief warrant officer, W-5, if such appointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in a grade above chief warrant officer, W-4. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 566 of this title.'

SEC. 102. Section 1305(a) is amended--

(1) by striking 'A permanent regular' and inserting in lieu thereof '(1) Except as provided in paragraph (2), a regular'; and

(2) by inserting the following new paragraph at the end:

`(2) A regular Army warrant officer in the grade of chief warrant officer, W-5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after he completes that service, except as provided by section 8301 of title 5. A regular Army warrant officer in the grade of chief warrant officer, W-4, or a lesser grade shall be retired 60 days after he completes 24 years of active service as a warrant officer.'

## Part C--Promotion

SEC. 103. (a) Section 558 is amended--

(1) by amending subsection (a) to read as follows:

`(a) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene selection boards to recommend for promotion to the next higher permanent grade, warrant officers on the warrant officer active-duty list in each permanent grade from warrant officer, W-2, through chief warrant officer, W-4. Warrant officers, W-1, to be promoted to the permanent grade of chief warrant officer, W-2, shall be promoted in accordance with regulations prescribed by the Secretary concerned';

(2) by inserting after subsection (a) the following new subsections:

`(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in the regular grade above major or lieutenant commander. The Secretary concerned may, in his discretion, appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board.

`(c) The Secretary concerned may convene selection boards to recommend permanent warrant officers for continuation on active duty under section 564 and for retirement under section 568.

`(d) When reserve warrant officers of an armed force are to be considered by a selection board, the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned, in his discretion.';

(3) by redesignating subsections (b) and (c) as subsections (e) and (f) respectively; and

(4) by amending the heading to read as follows:

**`Sec. 558. Warrant officers: convening of selection boards'**

(b) The item relating to section 558 in the table of sections at the beginning of subchapter II of chapter 33 of title 10, United States Code is amended to read as follows:

`558. Warrant officers: convening of selection boards.'

SEC. 104. (a) Section 559 is amended to read as follows:

**`Sec. 559. Warrant officers: active duty lists**

`(a) Before convening a selection board under section 558, the Secretary concerned shall establish--

- `(1) a single list of all warrant officers (other than warrant officers described in section 566) who are on active duty for each armed force under his jurisdiction;
- `(2) competitive categories for promotion of warrant officers on the warrant officer active-duty list;
- `(3) a promotion zone for warrant officers on the warrant officer active-duty list serving in each grade and competitive category to be considered by the board; and
- `(4) the maximum number of warrant officers to be recommended for promotion from those serving in any grade or competitive category who are eligible for promotion.

`(b) A warrant officer's position on the warrant officer active-duty list shall be determined as follows:

- `(1) warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty;
- `(2) warrant officers serving in the same grade shall be carried in the order of their rank in that grade; and
- `(3) a warrant officer's position on the warrant officer active-duty list upon termination of a temporary appointment or an assignment in a grade other than a warrant or chief warrant officer reverts to the position on the list that the officer would have held had he not received that temporary appointment or assignment.'

(b) The table of sections at the beginning of subchapter II of chapter 33 of title 10, United States Code, is amended by adding after the item relating to section 558 the following item:

`559. Warrant officers: active-duty lists.'

SEC. 105. Chapter 33 of title 10, United States Code, is amended--

(1) by adding after section 559 the following section:

**`Sec. 559a. Warrant officers: recommendations for promotion by selection boards**

`(a) A selection board convened under section 558(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board, whom the board, giving due consideration to the needs of the armed force concerned for warrant

officers with particular skills, considers best qualified for promotion within each grade or grade and competitive category considered by the board.

`(b) The Secretary concerned shall establish the number of warrant officers the selection board may recommend for promotion from among warrant officers being considered from below the promotion zone within each grade or grade and competitive category. If the number determined under this subsection is fewer than one, the board may recommend on such warrant officer. The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 559 of this title to recommend for promotion.

`(c) A selection board convened under section 558(a) of this title may not recommend a warrant officer for promotion unless--

- `(1) the officer receives the recommendation of a majority of the members of the board; and
- `(2) a majority of the members of the board find that the officer is fully qualified for promotion.

`(d) Each time a selection board is convened under section 558(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

`(e) If a board is unable to select the number of warrant officers established by the Secretary because an insufficient number is determined to be fully qualified, only those officers who are found fully qualified for promotion shall be recommended for promotion.'; and

- (2) by adding after the item relating to section 559 in the table of sections at the beginning of subchapter II of chapter 33 of title 10, United States Code, the following new item:

`559a. Warrant officers: recommendations for promotion by selection boards.'

SEC. 106. Chapter 33 of title 10, United States Code, is amended--

- (1) by adding at the end thereof the following sections:

**`Sec. 566. Warrant officers: active-duty list exclusions**

`Warrant officers in the following categories are not subject to this chapter:

- `(1) Reserve warrant officers--
  - `(A) on active duty for training;
  - `(B) on active duty under section 672(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;
  - `(C) on active duty to pursue special work;
  - `(D) ordered to active duty under section 673b of this title; or
  - `(E) on full-time National Guard duty.
- `(2) Retired warrant officers on active duty.
- `(3) Students enrolled in the Army Physician's Assistant Program.
- `(4) Coast Guard reserve warrant officers on active duty other than pursuant to an agreement made under section 679 of this title.

**Sec. 567. Definitions**

In this chapter:

(1) The term 'promotion zone' means a promotion eligibility category consisting of officers on a warrant officer active-duty list in the same grade or the same grade and competitive category who--

(A) in grades below W-5 have neither (i) failed of selection for promotion the next higher grade, nor (ii) been removed from a list of warrant officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term 'warrant officers above the promotion zone' means a group of officers on a warrant officer active-duty list in the same grade or the same grade and competitive category who--

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term 'Warrant officers below the promotion zone' means a group of officers on the warrant officer active-duty list in the same grade or the same grade and competitive category who--

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.'; and

(2) by amending the table of sections at the beginning of subchapter II of chapter 33 of title 10, United States Code, by adding after the item relating to section 565 the following items:

566. Warrant officers: active duty list exclusions

567. Definitions.'

**SEC. 107. The text of section 560 is amended to read as follows:**

(a) The Secretary concerned shall furnish each selection board--

(1) the promotion zone for each warrant officer grade or grade and competitive category to be considered by the board;

(2) the maximum number of warrant officers that may be recommended for promotion from those serving in any grade or grade and competitive category to be considered; and

(3) the names and pertinent records (maintained in accordance with section 552a of title 5, unless the Secretary concerned determines there is reliable and relevant information concerning a warrant officer that is not so maintained, but in the interests of the government should be provided to a selection board) of all officers in each grade or grade and competitive category to be considered.

`(b) From each promotion zone for a grade or grade and competitive category, the selection board shall recommend for promotion to the next higher permanent warrant officer grade those whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

`(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of seniority on the warrant officer active-duty list.

`(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those chief warrant officers considered by it whose records and reports establish, in its opinion, their unfitness or unsatisfactory performance. A warrant officer whose name is so reported shall be retired, enlisted, or separated under section 1162, 1163, 1165, or 1166 of this title, or section 284 of title 14.

`(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.'.

SEC. 108. The text of section 561 is amended to read as follows:

`A warrant officer who has been considered by a selection board for promotion under section 560 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade, until he is retired, separated, or selected for promotion.'.

SEC. 109. Section 562 is amended by striking in subsection (a) `permanent regular warrant officer' and inserting in lieu thereof, `warrant officer on the warrant officer active-duty list'.

SEC. 110. Chapter 33 of title 10, United States Code, is amended--  
(1) by adding at the end the following new section:

**`Sec. 568. Warrant officers: selective retirement**

`(a) A regular warrant officer of the Army, Navy, Air Force, Marine Corps, or Coast Guard who holds a warrant officer grade above warrant officer, W-1, and whose name is not on a list of warrant officers recommended for promotion and is retirement eligible, may be considered for retirement by a selection board convened under section 558(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers which such a board may recommend for retirement.

`(b) A warrant officer who is recommended for retirement under this section and whose retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

`(c) The retirement of a warrant officer pursuant to this section shall be an involuntary retirement for purposes of any other provision of law.

`(d) The Secretary concerned shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary concerned submits a list of warrant officers to a selection board convened under section 558(c) of this title to consider warrant officers for selection for retirement under this section, such list shall include each warrant officer on the active-duty list in the same grade or same grade and competitive category whose position on the active-duty list is between that of the most junior warrant officer in that grade whose name is submitted to the board and that of the most senior warrant officer in that grade whose name is submitted to the board.'; and

(2) by amending the table of sections at the beginning of subchapter II of chapter 33 by adding after the item relating to section 567 the following item:

`568. Warrant officers: selective retirement.'.

SEC. 111. The text of section 563 is amended to read as follows:

`(a) A regular warrant officer who is promoted is appointed in the regular grade to which promoted and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

`(b) Promotion shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade or grade and competitive category have been promoted.'.

SEC. 112. Section 564 is amended--

(1) by striking 'a permanent regular warrant officer who has twice failed of selection for promotion to the next higher permanent regular warrant' and inserting in lieu thereof, 'a regular chief warrant officer, except a chief warrant officer, W-4, who has twice failed of selection for promotion to the next higher regular warrant' in subsection (a);

(2) by striking '60 days' each time it appears in subsection (a) and inserting in lieu thereof 'not later than the first day of the seventh calendar month beginning';

(3) by striking 'permanent' in clause (2) of subsection (a);

(4) by striking 'W-4' in subsection (a)(3)(B) and subsection (d) and inserting 'W-5' in lieu thereof; and

(5) by inserting after subsection (d) the following new subsection:

`(e)(1) A warrant officer subject to discharge or retirement in accordance with this section may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 558(c) of this title.

`(2) A warrant officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

`(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law--

- `(A) be discharged upon the expiration of his period of continued service; or
- `(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding clause (A), any warrant officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 1293 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

`(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be an involuntary retirement or discharge for purposes of any other provision of law.

`(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 558(c) of this title is subject to the approval of the Secretary concerned.

`(6) The Secretary of Defense and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.'

SEC. 113. The text of section 598 is amended to read as follows:

'The promotion of permanent reserve warrant officers not on the warrant officer active-duty list to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.'

SEC. 114. The text of section 602 is amended to read as follows:

'A warrant officer serving on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard may be given a temporary appointment to a higher warrant officer grade during time of war or national emergency, under such regulations as the Secretary concerned may prescribe.'

TITLE II--AMENDMENTS TO TITLE 37, UNITED STATES CODE, PAY AND ALLOWANCES FOR CHIEF WARRANT OFFICER, W-5

SEC. 201. Section 201(b) of title 37; United States Code, is amended by changing the table to read as follows:

**`Pay Grade:**

**Warrant Officer Grade:**

W-5

Chief Warrant Officer, W-5.

W-4

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Chief Warrant Officer, W-4.

W-3

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Chief Warrant Officer, W-3.

W-2

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Chief Warrant Officer, W-2.

W-1

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Warrant Officer, W-1.

SEC. 202. (a) A warrant officer of a uniformed service who holds the grade of Chief Warrant Officer, W-5, is entitled to pay and allowances at the monthly rates as follows:

BASIC PAY

(Omitted)

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BASIC ALLOWANCE FOR SUBSISTENCE

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(Omitted)

(b) The monthly rates of basic pay and allowances under this section shall be adjusted in the manner prescribed under section 1009 of title 37, United States Code.

SEC. 203. A warrant officer of a uniformed service who holds the grade of Chief Warrant Officer, W-5, and who qualifies for special or incentive pay under chapter 5 of title 37, United States Code, shall be entitled to receive such pay at the monthly rate designated for pay grade W-4.

### **TITLE III--EFFECTIVE DATES**

SEC. 301. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on September 30, 1991.

(b) The authority to prescribe regulations under the amendments made by this Act shall take effect upon enactment of the Act.

### **TITLE IV--TRANSITION PROVISIONS REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W-5**

SEC. 401. (a) Any regular warrant officer of the armed forces, other than the Coast Guard, who on the effective date of this Act is on active duty and--

- (1) is serving in a temporary grade below chief warrant officer, W-5, that is higher than his regular grade;
- (2) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W-5; or
- (3) is on a list of officers recommended for promotion to a regular grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 558 of title 10, United States Code, as amended by this Act, for promotion to the regular grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

(b) An officer referred to in clause (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 558 of title 10, United States Code, as amended by this Act, for promotion to the regular grade equivalent to the temporary grade in which he was serving on the effective date of this Act as if he were serving in his regular grade.

(c) Notwithstanding section 741(d) of title 10, United States Code, the date of rank of an officer referred to in subsection (a)(1) who is promoted to the grade in which he is serving on the effective date of this Act is the date of his temporary appointment in that grade.

(d) Coast Guard chief warrant officers who on the effective date of this Act are serving in temporary grades, or are on a list of officers recommended for promotion to a temporary grade, shall be promoted in accordance with regulations promulgated by the Secretary of the department in which the Coast Guard is operating within ninety days after enactment of the

Act.

(e) Coast Guard chief warrant officers who on the effective date of this Act are on a list of officers recommended for promotion to a higher permanent grade shall be considered to have been recommended by a board convened under section 558 of title 10, United States Code, as amended by this Act, for promotion to the regular grade.

#### **RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W-5**

SEC. 402. (a)(1) Except as provided in subsection (b), any reserve warrant officer of the armed forces who on the effective date of this Act is subject to placement on the warrant officer active-duty list of his armed force and--

(A) is serving in a temporary grade below chief warrant officer, W-5 that is higher than his reserve grade; or

(B) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W-5 that is the same as or higher than his reserve grade;

shall be considered to have been recommended by a board convened under section 598 of title 10, United States Code, for promotion to the reserve grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

(2) Notwithstanding section 741(d) of title 10, United States Code, the date of rank of a warrant officer referred to in paragraph (1)(A) who is promoted to the grade in which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

(b) A reserve warrant officer of the armed forces who on the effective date of this Act--

(1) is subject to placement on the active-duty list of his armed force;

(2) is serving on active duty in a temporary grade; and

(3) holds a reserve grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion his appointment to such grade shall be a temporary appointment.

#### **RIGHT OF REGULAR ARMY WARRANT OFFICERS TO COMPLETE YEARS OF SERVICE ALLOWED UNDER PRIOR LAW**

SEC. 403. (a) Subject to paragraph (b), a warrant officer of the Army who on the effective date of this Act--

(1) holds a regular grade of chief warrant officer; or

(2) is on a list of officers recommended for promotion to a regular grade of chief warrant officer;

may be retained on active duty until he completes 30 years of active service or 24 years of active warrant officer service, whichever is later, that could be credited to him under section 511 of the Career Compensation Act of 1949 (70 Stat. 114) (as in effect on the day before the effective date of this Act), and then be retired under the appropriate provision of this title on the first day of the month after the month in which he completes that service.

- (b) Paragraph (a) does not apply to a regular warrant officer who--
- (1) is sooner retired or separated under another provision of law;
  - (2) is promoted to the regular grade of chief warrant officer, W-5; or
  - (3) is continued on active duty under sections 558 and 564 of title 10, United States Code, as added by this Act.

#### **CONTINUATION OF TEMPORARY APPOINTMENTS OF NAVY AND MARINE CORPS WARRANT OFFICERS UNDER SECTION 5596 OF TITLE 10**

SEC. 404. Navy and Marine Corps warrant officers who, on the effective date of this Act, are subject to placement on the warrant officer active-duty list, and--

- (1) were appointed a temporary warrant officer under section 5596 of title 10, United States Code, and
- (2) have retained their permanent enlisted status,

shall, while continuing on active duty, retain such temporary status and grade. Such officers shall be considered for promotion under the provisions of this Act as if such temporary grade is a permanent grade. If such officers are recommended for promotion their appointment to such grade shall be a temporary appointment.

#### **TITLE V--TECHNICAL AND CONFORMING AMENDMENTS**

SEC. 501. Chapter 32 of title 10, United States Code, is amended--

- (1) in section 521(a), by striking `W-4' and inserting `W-5' in lieu thereof; and
- (2) in section 522, by striking `W-4' and inserting `W-5' in lieu thereof.

SEC. 502. Title 14, United States Code, is amended--

- (1) in section 41 by striking `chief warrant officers, W-4; chief warrant officers, W-3; chief warrant officers, W-2; cadets; warrant officers, W-1;' and inserting `chief warrant officers; cadets; warrant officers;' in lieu thereof; and
- (2) by repealing sections 212, 213, 214(b), and 214(c).

*END*