

110TH CONGRESS
2D SESSION

S. 2874

To amend titles 5, 10, 37, and 38, United States Code, to ensure the fair treatment of a member of the Armed Forces who is discharged from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early discharge of a member who is the only surviving child in a family in which the father or mother, or one or more siblings, served in the Armed Forces and, because of hazards incident to such service, was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently disabled, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2008

Mrs. FEINSTEIN (for herself, Mr. CHAMBLISS, Mr. KENNEDY, Mr. SCHUMER, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend titles 5, 10, 37, and 38, United States Code, to ensure the fair treatment of a member of the Armed Forces who is discharged from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early discharge of a member who is the only surviving child in a family in which the father or mother, or one or more siblings, served in the Armed Forces and, because of hazards incident to such service, was killed, died as a result of wounds, accident, or disease, is in a captured or

missing in action status, or is permanently disabled, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Hubbard Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Continued payment of bonuses and similar benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 3. Availability of separation pay for members of the Armed Forces with less than six years of active service who receive sole survivorship discharge.
- Sec. 4. Transitional health care for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 5. Transitional commissary and exchange benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 6. Veterans benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 7. Unemployment compensation for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 8. Preference-eligible status for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 9. Effective date.

8 **SEC. 2. CONTINUED PAYMENT OF BONUSES AND SIMILAR**
 9 **BENEFITS FOR MEMBERS OF THE ARMED**
 10 **FORCES WHO RECEIVE SOLE SURVIVORSHIP**
 11 **DISCHARGE.**

12 (a) **EFFECT OF SOLE SURVIVORSHIP DISCHARGE.**—
 13 Section 303a(e) of title 37, United States Code, is amend-
 14 ed—

1 (1) in paragraph (1), by striking “A member”
2 and inserting “(A) Except as provided in paragraph
3 (2), a member”;

4 (2) by redesignating paragraph (2) as subpara-
5 graph (B) of paragraph (1).

6 (3) by inserting after paragraph (1), as so
7 amended, the following new paragraph (2):

8 “(2)(A) If a member of the uniformed services re-
9 ceives a sole survivorship discharge, the Secretary con-
10 cerned—

11 “(i) shall not require repayment by the member
12 of the unearned portion of any bonus, incentive pay,
13 or similar benefit previously paid to the member;
14 and

15 “(ii) may grant an exception to the requirement
16 to terminate the payment of any unpaid amounts of
17 a bonus, incentive pay, or similar benefit if the Sec-
18 retary concerned determines that termination of the
19 payment of the unpaid amounts would be contrary
20 to a personnel policy or management objective,
21 would be against equity and good conscience, or
22 would be contrary to the best interests of the United
23 States.

24 “(B) In this paragraph, the term ‘sole survivorship
25 discharge’ means the separation of a member from the

1 Armed Forces, at the request of the member, pursuant
2 to the Department of Defense policy permitting the early
3 separation of a member who is the only surviving child
4 in a family in which—

5 “(i) the father or mother or one or more sib-
6 lings—

7 “(I) served in the Armed Forces; and

8 “(II) was killed, died as a result of
9 wounds, accident, or disease, is in a captured or
10 missing in action status, or is permanently 100
11 percent disabled or hospitalized on a continuing
12 basis (and is not employed gainfully because of
13 the disability or hospitalization); and

14 “(ii) the death, status, or disability did not re-
15 sult from the intentional misconduct or willful ne-
16 glect of the parent or sibling and was not incurred
17 during a period of unauthorized absence.”.

18 (b) SENSE OF CONGRESS.—In light of the extraor-
19 dinary discretion granted to the Secretary of a military
20 department by statute and policy to continue to pay the
21 unpaid amounts of a bonus, incentive pay, or similar ben-
22 efit otherwise due to a member of the Armed Forces under
23 the jurisdiction of the Secretary who receives a sole survi-
24 vorship discharge, it is the sense of Congress that the Sec-
25 retaries of the military departments should aggressively

1 use such discretion to the benefit of members receiving
2 a sole survivorship discharge.

3 **SEC. 3. AVAILABILITY OF SEPARATION PAY FOR MEMBERS**
4 **OF THE ARMED FORCES WITH LESS THAN SIX**
5 **YEARS OF ACTIVE SERVICE WHO RECEIVE**
6 **SOLE SURVIVORSHIP DISCHARGE.**

7 Section 1174 of title 10, United States Code, is
8 amended—

9 (1) by redesignating subsection (i) as subsection
10 (j); and

11 (2) by inserting after subsection (h) the fol-
12 lowing new subsection:

13 “(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE
14 SURVIVORSHIP DISCHARGE.—(1) A member of the Armed
15 Forces who receives a sole survivorship discharge shall be
16 entitled to separation pay under this section even though
17 the member has completed less than six years of active
18 service immediately before that discharge. Subsection (e)
19 shall not apply to a member who receives a sole survivor-
20 ship discharge.

21 “(2) The amount of the separation pay to be paid
22 to a member pursuant to this subsection shall be based
23 on the years of active service actually completed by the
24 member before the member’s sole survivorship discharge.

1 “(3) In this subsection, the term ‘sole survivorship
2 discharge’ means the separation of a member from the
3 Armed Forces, at the request of the member, pursuant
4 to the Department of Defense policy permitting the early
5 separation of a member who is the only surviving child
6 in a family in which—

7 “(A) the father or mother or one or more sib-
8 lings—

9 “(i) served in the Armed Forces; and

10 “(ii) was killed, died as a result of wounds,
11 accident, or disease, is in a captured or missing
12 in action status, or is permanently 100 percent
13 disabled or hospitalized on a continuing basis
14 (and is not employed gainfully because of the
15 disability or hospitalization); and

16 “(B) the death, status, or disability did not re-
17 sult from the intentional misconduct or willful ne-
18 glect of the parent or sibling and was not incurred
19 during a period of unauthorized absence.”.

20 **SEC. 4. TRANSITIONAL HEALTH CARE FOR MEMBERS OF**
21 **THE ARMED FORCES WHO RECEIVE SOLE**
22 **SURVIVORSHIP DISCHARGE.**

23 Section 1145(a)(2) of title 10, United States Code,
24 is amended by adding at the end the following new sub-
25 paragraph:

1 “(E) A member who receives a sole survivorship
2 discharge (as defined in section 1174(i) of this
3 title).”.

4 **SEC. 5. TRANSITIONAL COMMISSARY AND EXCHANGE BEN-**
5 **EFITS FOR MEMBERS OF THE ARMED**
6 **FORCES WHO RECEIVE SOLE SURVIVORSHIP**
7 **DISCHARGE.**

8 Section 1146 of title 10, United States Code, is
9 amended—

10 (1) by striking “The Secretary of Defense” and
11 inserting the following:

12 “(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEP-
13 ARATED.—The Secretary of Defense”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(b) BENEFITS FOR MEMBERS RECEIVING SOLE
17 SURVIVORSHIP DISCHARGE.—A member of the Armed
18 Forces who receives a sole survivorship discharge (as de-
19 fined in section 1174(i) of this title) is entitled to continue
20 to use commissary and exchange stores and morale, wel-
21 fare, and recreational facilities in the same manner as a
22 member on active duty during the two-year period begin-
23 ning on the later of the following dates:

24 “(1) The date of the separation of the member.

1 “(2) The date on which the member is first no-
2 tified of the members entitlement to benefits under
3 this section.”.

4 **SEC. 6. VETERANS BENEFITS FOR MEMBERS OF THE**
5 **ARMED FORCES WHO RECEIVE SOLE SURVI-**
6 **VORSHIP DISCHARGE.**

7 (a) HOUSING LOAN BENEFITS.—Section 3702(a)(2)
8 of title 38, United States Code, is amended by adding at
9 the end the following new subparagraph:

10 “(F) Each veteran who was discharged or re-
11 leased from a period of active duty of 90 days or
12 more by reason of a sole survivorship discharge (as
13 that term is defined in section 1174(i) of title 10).”.

14 (b) EMPLOYMENT AND TRAINING.—Section 4211(4)
15 of such title is amended—

16 (1) in subparagraph (B), by striking “or” at
17 the end;

18 (2) in subparagraph (C), by striking the period
19 at the end and inserting “; or”; and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(D) was discharged or released from ac-
23 tive duty by reason of a sole survivorship dis-
24 charge (as that term is defined in section
25 1174(i) of title 10).”.

1 (c) BASIC EDUCATIONAL ASSISTANCE.—

2 (1) SERVICE ON ACTIVE DUTY.—Section
3 3011(a)(1) of such title is amended—

4 (A) in subparagraph (A)(ii), by inserting
5 after “service-connected disability,” the fol-
6 lowing: “by reason of a sole survivorship dis-
7 charge (as that term is defined in section
8 1174(i) of title 10),”;

9 (B) in subparagraph (B)(ii), by inserting
10 after “service-connected disability,” the fol-
11 lowing: “by reason of a sole survivorship dis-
12 charge (as that term is defined in section
13 1174(i) of title 10),” and

14 (C) in subparagraph (C)(iii)(II), by insert-
15 ing after “service-connected disability,” the fol-
16 lowing: “by reason of a sole survivorship dis-
17 charge (as that term is defined in section
18 1174(i) of title 10),”.

19 (2) SERVICE IN THE SELECTED RESERVE.—
20 Section 3012(b)(1) of such title is amended—

21 (A) in subparagraph (A)—

22 (i) by striking “, or (vi)” and insert-
23 ing “, (vi)”;

24 (ii) by inserting before the period at
25 the end the following: “, or (vii) by reason

1 of a sole survivorship discharge (as that
 2 term is defined in section 1174(i) of title
 3 10)”; and

4 (B) in subparagraph (B)—

5 (i) in clause (i), by inserting after
 6 “service-connected disability,” the fol-
 7 lowing: “by reason of a sole survivorship
 8 discharge (as that term is defined in sec-
 9 tion 1174(i) of title 10),”; and

10 (ii) in clause (ii)—

11 (I) by striking “, or (VI)” and
 12 inserting “, (VI)”; and

13 (II) by inserting before the pe-
 14 riod at the end the following: “, or
 15 (VII) by reason of a sole survivorship
 16 discharge (as that term is defined in
 17 section 1174(i) of title 10)”.

18 **SEC. 7. UNEMPLOYMENT COMPENSATION FOR MEMBERS**
 19 **OF THE ARMED FORCES WHO RECEIVE SOLE**
 20 **SURVIVORSHIP DISCHARGE.**

21 Section 8521(a)(1)(B)(ii)(III) of title 5, United
 22 States Code, is amended by striking “hardship,” and in-
 23 serting “hardship (including pursuant to a sole survivor-
 24 ship discharge, as that term is defined in section 1174(i)
 25 of title 10),”.

1 **SEC. 8. PREFERENCE-ELIGIBLE STATUS FOR MEMBERS OF**
2 **THE ARMED FORCES WHO RECEIVE SOLE**
3 **SURVIVORSHIP DISCHARGE.**

4 Section 2108(3) of title 5, United States Code, is
5 amended—

6 (1) in subparagraph (F), by striking “and” at
7 the end;

8 (2) in subparagraph (G), by inserting “and” at
9 the end; and

10 (3) by inserting after subparagraph (G) the fol-
11 lowing:

12 “(H) a veteran who was discharged or re-
13 leased from a period of active duty by reason of
14 a sole survivorship discharge (as that term is
15 defined in section 1174(i) of title 10);”.

16 **SEC. 9. EFFECTIVE DATE.**

17 (a) **RETROACTIVE EFFECTIVE DATE.**—Except as
18 provided in subsection (b), this Act and the amendments
19 made by this Act shall apply with respect to any sole survi-
20 vorship discharge granted after September 11, 2001.

21 (b) **DATE OF ENACTMENT EFFECTIVE DATE FOR**
22 **CERTAIN AMENDMENTS.**—The amendments made by sec-
23 tions 4, 6(c), 7, and 8 shall apply with respect to any sole
24 survivorship discharge granted after the date of the enact-
25 ment of this Act.

1 (c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In
2 this section, the term “sole survivorship discharge” means
3 the separation of a member from the Armed Forces, at
4 the request of the member, pursuant to the Department
5 of Defense policy permitting the early separation of a
6 member who is the only surviving child in a family in
7 which—

8 (1) the father or mother or one or more sib-
9 lings—

10 (A) served in the Armed Forces; and

11 (B) was killed, died as a result of wounds,
12 accident, or disease, is in a captured or missing
13 in action status, or is permanently 100 percent
14 disabled or hospitalized on a continuing basis
15 (and is not employed gainfully because of the
16 disability or hospitalization); and

17 (2) the death, status, or disability did not result
18 from the intentional misconduct or willful neglect of
19 the parent or sibling and was not incurred during a
20 period of unauthorized absence.

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