

110TH CONGRESS
2D SESSION

H. R. 6580

IN THE SENATE OF THE UNITED STATES

JULY 30, 2008

Received

AN ACT

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, to amend the Internal Revenue Code of 1986 to repeal the dollar limitation on contributions to funeral trusts, 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; TABLE OF CONTENTS.**

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. Repeal of dollar limitation on contributions to funeral trusts.
- Sec. 10. Effective dates.

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—

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

1 (2) by redesignating paragraph (2) as subpara-
2 graph (B) of paragraph (1); and

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

5 “(2)(A) If a member of the uniformed services re-
6 ceives a sole survivorship discharge, the Secretary con-
7 cerned—

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

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

21 “(B) In this paragraph, the term ‘sole survivorship
22 discharge’ means the separation of a member from the
23 Armed Forces, at the request of the member, pursuant
24 to the Department of Defense policy permitting the early

1 separation of a member who is the only surviving child
2 in a family in which—

3 “(i) the father or mother or one or more sib-
4 lings—

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

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

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

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

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

5 Section 1174 of title 10, United States Code, is
6 amended—

7 (1) by redesignating subsection (i) as subsection
8 (j); and

9 (2) by inserting after subsection (h) the fol-
10 lowing new subsection:

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

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

23 “(3) In this subsection, the term ‘sole survivorship
24 discharge’ means the separation of a member from the
25 Armed Forces, at the request of the member, pursuant
26 to the Department of Defense policy permitting the early

1 separation of a member who is the only surviving child
2 in a family in which—

3 “(A) the father or mother or one or more sib-
4 lings—

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

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

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

16 **SEC. 4. TRANSITIONAL HEALTH CARE FOR MEMBERS OF**
17 **THE ARMED FORCES WHO RECEIVE SOLE**
18 **SURVIVORSHIP DISCHARGE.**

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

22 “(E) A member who receives a sole survivorship
23 discharge (as defined in section 1174(i) of this
24 title).”.

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

5 Section 1146 of title 10, United States Code, is
6 amended—

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

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

11 (2) by adding at the end the following new sub-
12 section:

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

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

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

1 **SEC. 6. VETERANS BENEFITS FOR MEMBERS OF THE**
2 **ARMED FORCES WHO RECEIVE SOLE SURVI-**
3 **VORSHIP DISCHARGE.**

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

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

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

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

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

17 (3) by adding at the end the following new sub-
18 paragraph:

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

23 (c) EXISTING BASIC EDUCATIONAL ASSISTANCE.—

24 (1) SERVICE ON ACTIVE DUTY.—Section
25 3011(a)(1) of such title is amended—

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

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

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

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

18 (A) in subparagraph (A)—

19 (i) by striking “, or (vi)” and insert-
 20 ing “, (vi)”; and

21 (ii) by inserting before the period at
 22 the end the following: “, or (vii) by reason
 23 of a sole survivorship discharge (as that
 24 term is defined in section 1174(i) of title
 25 10),”; and

1 (B) in subparagraph (B)—

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

7 (ii) in clause (ii)—

8 (I) by striking “, or (VI)” and
9 inserting “, (VI)”; and

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

15 **SEC. 7. UNEMPLOYMENT COMPENSATION FOR MEMBERS**
16 **OF THE ARMED FORCES WHO RECEIVE SOLE**
17 **SURVIVORSHIP DISCHARGE.**

18 Section 8521(a)(1)(B)(ii)(III) of title 5, United
19 States Code, is amended by striking “hardship,” and in-
20 serting “hardship (including pursuant to a sole survivor-
21 ship discharge, as that term is defined in section 1174(i)
22 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. REPEAL OF DOLLAR LIMITATION ON CONTRIBU-**
17 **TIONS TO FUNERAL TRUSTS.**

18 (a) IN GENERAL.—Subsection (c) of section 685 of
19 the Internal Revenue Code of 1986 (relating to treatment
20 of funeral trusts) is repealed.

21 (b) CONFORMING AMENDMENT.—Subsections (d),
22 (e), and (f) of such section are redesignated as subsections
23 (c), (d), and (e), respectively.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to taxable years beginning after
26 the date of the enactment of this Act.

1 **SEC. 10. EFFECTIVE DATES.**

2 (a) RETROACTIVE EFFECTIVE DATE.—Except as
3 provided in subsection (b) and section 9, this Act and the
4 amendments made by this Act shall apply with respect to
5 any sole survivorship discharge granted after September
6 11, 2001.

7 (b) DATE OF ENACTMENT EFFECTIVE DATE FOR
8 CERTAIN AMENDMENTS.—The amendments made by sec-
9 tions 4, 7, and 8 shall apply with respect to any sole
10 survivorship discharge granted after the date of the enact-
11 ment of this Act.

12 (c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In
13 this section, the term “sole survivorship discharge” means
14 the separation of a member from the Armed Forces, at
15 the request of the member, pursuant to the Department
16 of Defense policy permitting the early separation of a
17 member who is the only surviving child in a family in
18 which—

19 (1) the father or mother or one or more sib-
20 lings—

21 (A) served in the Armed Forces; and

22 (B) was killed, died as a result of wounds,
23 accident, or disease, is in a captured or missing
24 in action status, or is permanently 100 percent
25 disabled or hospitalized on a continuing basis

Attest: LORRAINE C. MILLER,
Clerk.