

## ***In the Senate of the United States,***

*October 7, 2009.*

*Resolved*, That the bill from the House of Representatives (H.R. 1037) entitled “An Act to direct the Secretary of Veterans Affairs to conduct a five-year pilot project to test the feasibility and advisability of expanding the scope of certain qualifying work-study activities under title 38, United States Code.”, do pass with the following

### **AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2       (a) *SHORT TITLE*.—*This Act may be cited as the “Vet-*  
3 *erans’ Benefits Enhancement Act of 2009”.*

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

*Sec. 1. Short title; table of contents.*

*Sec. 2. Reference to title 38, United States Code.*

#### ***TITLE I—INSURANCE MATTERS***

*Sec. 101. Increase in amount of supplemental insurance for totally disabled veterans.*

*Sec. 102. Adjustment of coverage of dependents under Servicemembers’ Group Life Insurance.*

- Sec. 103. Expansion of individuals qualifying for retroactive benefits from traumatic injury protection coverage under Servicemembers' Group Life Insurance.*
- Sec. 104. Consideration of loss of dominant hand in prescription of schedule of severity of traumatic injury under Servicemembers' Group Life Insurance.*
- Sec. 105. Enhancement of veterans' mortgage life insurance.*

#### **TITLE II—COMPENSATION AND PENSION MATTERS**

- Sec. 201. Cost-of-living increase for temporary dependency and indemnity compensation payable for surviving spouses with dependent children under the age of 18.*
- Sec. 202. Eligibility of veterans 65 years of age or older for service pension for a period of war.*
- Sec. 203. Clarification of additional requirements for consideration to be afforded time, place, and circumstances of service in determinations regarding service-connected disabilities.*
- Sec. 204. Extension of reduced pension for certain veterans covered by Medicaid plans for services furnished by nursing facilities.*
- Sec. 205. Enhancement of disability compensation for certain disabled veterans with difficulties using prostheses and disabled veterans in need of regular aid and attendance for residuals of traumatic brain injury.*
- Sec. 206. Commencement of period of payment of original awards of compensation for veterans retired or separated from the uniformed services for catastrophic disability.*
- Sec. 207. Applicability of limitation to pension payable to certain children of veterans of a period of war.*
- Sec. 208. Payment of dependency and indemnity compensation to survivors of former prisoners of war who died on or before September 30, 1999.*

#### **TITLE III—READJUSTMENT AND RELATED BENEFIT MATTERS**

- Sec. 301. Repeal of limitation on number of veterans enrolled in programs of independent living services and assistance.*
- Sec. 302. Eligibility of disabled veterans and members of the Armed Forces with severe burn injuries for automobiles and adaptive equipment.*
- Sec. 303. Enhancement of automobile assistance allowance for veterans.*
- Sec. 304. Payment of unpaid balances of Department of Veterans Affairs guaranteed loans.*

#### **TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

- Sec. 401. Waiver of sovereign immunity under the 11th Amendment with respect to enforcement of USERRA.*
- Sec. 402. Clarifying the definition of "successor in interest".*
- Sec. 403. Clarifying that USERRA prohibits wage discrimination against members of the Armed Forces.*
- Sec. 404. Requirement that Federal agencies provide notice to contractors of potential USERRA obligations.*
- Sec. 405. Comptroller General of the United States study on effectiveness of Federal programs of education and outreach on employer obligations under USERRA.*

*Sec. 406. Technical amendments.*

**TITLE V—BURIAL AND MEMORIAL MATTERS**

*Sec. 501. Increase in certain burial and funeral benefits and plot allowances for veterans.*

**TITLE VI—OTHER MATTERS**

*Sec. 601. National Academies review of best treatments for Gulf War Illness.*

*Sec. 602. Extension of National Academy of Sciences reviews and evaluations regarding illness and service in Persian Gulf War.*

*Sec. 603. Extension of authority for regional office in Republic of the Philippines.*

*Sec. 604. Aggregate amount of educational assistance available to individuals who receive both survivors' and dependents educational assistance and other veterans and related educational assistance.*

*Sec. 605. Technical correction.*

**1 SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.**

2 *Except as otherwise expressly provided, whenever in*  
 3 *this Act an amendment or repeal is expressed in terms of*  
 4 *an amendment to, or repeal of, a section or other provision,*  
 5 *the reference shall be considered to be made to a section or*  
 6 *other provision of title 38, United States Code.*

**7 TITLE I—INSURANCE MATTERS**

**8 SEC. 101. INCREASE IN AMOUNT OF SUPPLEMENTAL INSUR-**  
 9 **ANCE FOR TOTALLY DISABLED VETERANS.**

10 *Section 1922A(a) is amended by striking “\$20,000”*  
 11 *and inserting “\$30,000”.*

**12 SEC. 102. ADJUSTMENT OF COVERAGE OF DEPENDENTS**  
 13 **UNDER SERVICEMEMBERS' GROUP LIFE IN-**  
 14 **SURANCE.**

15 *Clause (ii) of section 1968(a)(5)(B) is amended to read*  
 16 *as follows:*

17 *“(ii)(I) in the case of a member of the*  
 18 *Ready Reserve of a uniformed service who*

meets the qualifications set forth in subparagraph (B) or (C) of section 1965(5) of this title, 120 days after separation or release from such assignment; or

“(II) in the case of any other member of the uniformed services, 120 days after the date of the member’s separation or release from the uniformed services; or”.

**SEC. 103. EXPANSION OF INDIVIDUALS QUALIFYING FOR  
RETROACTIVE BENEFITS FROM TRAUMATIC  
INJURY PROTECTION COVERAGE UNDER  
SERVICEMEMBERS’ GROUP LIFE INSURANCE.**

(a) *IN GENERAL.*—Paragraph (1) of section 501(b) of the Veterans’ Housing Opportunity and Benefits Improvement Act of 2006 (Public Law 109–233; 120 Stat. 414; 38 U.S.C. 1980A note) is amended by striking “, if, as determined by the Secretary concerned, that loss was a direct result of a traumatic injury incurred in the theater of operations for Operation Enduring Freedom or Operation Iraqi Freedom”.

(b) *CONFORMING AMENDMENT.*—The heading of such section is amended by striking “IN OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM”.

(c) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on October 1, 2010.

1 **SEC. 104. CONSIDERATION OF LOSS OF DOMINANT HAND IN**  
 2 **PRESCRIPTION OF SCHEDULE OF SEVERITY**  
 3 **OF TRAUMATIC INJURY UNDER**  
 4 **SERVICEMEMBERS' GROUP LIFE INSURANCE.**

5 (a) *IN GENERAL.*—Section 1980A(d) is amended—

6 (1) by striking “Payments under” and inserting  
 7 “(1) Payments under”; and

8 (2) by adding at the end the following new para-  
 9 graph:

10 “(2) As the Secretary considers appropriate, the sched-  
 11 ule required by paragraph (1) may distinguish in speci-  
 12 fying payments for qualifying losses between the severity  
 13 of a qualifying loss of a dominant hand and a qualifying  
 14 loss of a nondominant hand.”.

15 (b) *PAYMENTS FOR QUALIFYING LOSSES INCURRED*  
 16 *BEFORE DATE OF ENACTMENT.*—

17 (1) *IN GENERAL.*—The Secretary of Veterans Af-  
 18 fairs shall prescribe in regulations mechanisms for  
 19 payments under section 1980A of title 38, United  
 20 States Code, for qualifying losses incurred before the  
 21 date of the enactment of this Act by reason of the re-  
 22 quirements of paragraph (2) of subsection (d) of such  
 23 section (as added by subsection (a)(2) of this section).

24 (2) *QUALIFYING LOSS DEFINED.*—In this sub-  
 25 section, the term “qualifying loss” means—

(A) a loss specified in the second sentence of subsection (b)(1) of section 1980A of title 38, United States Code; and

(B) any other loss specified by the Secretary of Veterans Affairs pursuant to the first sentence of that subsection.

**SEC. 105. ENHANCEMENT OF VETERANS' MORTGAGE LIFE INSURANCE.**

(a) *IN GENERAL*.—Section 2106(b) is amended by striking “\$90,000” and inserting “\$150,000, or \$200,000 after January 1, 2012,”.

(b) *EFFECTIVE DATE*.—The amendment made by subsection (a) shall take effect on October 1, 2010.

**TITLE II—COMPENSATION AND PENSION MATTERS**

**SEC. 201. COST-OF-LIVING INCREASE FOR TEMPORARY DEPENDENCY AND INDEMNITY COMPENSATION PAYABLE FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN UNDER THE AGE OF 18.**

Section 1311(f) is amended—

(1) in paragraph (1), by inserting “(as increased from time to time under paragraph (4))” after “\$250”;

(2) by redesignating paragraph (4) as paragraph (5); and

1           (3) by inserting after paragraph (3) the fol-  
 2           lowing new paragraph (4):

3           “(4) Whenever there is an increase in benefit amounts  
 4 payable under title II of the Social Security Act (42 U.S.C.  
 5 401 et seq.) as a result of a determination made under sec-  
 6 tion 215(i) of such Act (42 U.S.C. 415(i)), the Secretary  
 7 shall, effective on the date of such increase in benefit  
 8 amounts, increase the amount payable under paragraph  
 9 (1), as such amount was in effect immediately prior to the  
 10 date of such increase in benefit amounts, by the same per-  
 11 centage as the percentage by which such benefit amounts  
 12 are increased. Any increase in a dollar amount under this  
 13 paragraph shall be rounded down to the next lower whole  
 14 dollar amount.”.

15 **SEC. 202. ELIGIBILITY OF VETERANS 65 YEARS OF AGE OR**  
 16 **OLDER FOR SERVICE PENSION FOR A PERIOD**  
 17 **OF WAR.**

18           (a) *IN GENERAL.*—Section 1513 is amended—

19           (1) in subsection (a), by striking “by section  
 20 1521” and all that follows and inserting “by sub-  
 21 section (b), (c), (f)(1), (f)(5), or (g) of that section, as  
 22 the case may be and as increased from time to time  
 23 under section 5312 of this title.”;

24           (2) by redesignating subsection (b) as subsection  
 25 (c); and

1           (3) by inserting after subsection (a) the following  
 2           new subsection (b):

3           “(b) The conditions in subsections (h) and (i) of sec-  
 4           tion 1521 of this title shall apply to determinations of in-  
 5           come and maximum payments of pension for purposes of  
 6           this section.”.

7           (b) *APPLICABILITY.*—The amendments made by this  
 8           section shall apply with respect to any claim for pension  
 9           filed on or after the date of the enactment of this Act.

10   **SEC. 203. CLARIFICATION OF ADDITIONAL REQUIREMENTS**  
 11                           **FOR CONSIDERATION TO BE AFFORDED TIME,**  
 12                           **PLACE, AND CIRCUMSTANCES OF SERVICE IN**  
 13                           **DETERMINATIONS REGARDING SERVICE-CON-**  
 14                           **NECTED DISABILITIES.**

15           (a) *IN GENERAL.*—Subsection (a) of section 1154 is  
 16           amended to read as follows:

17           “(a) The Secretary shall include in the regulations per-  
 18           taining to service-connection of disabilities the following:

19                   “(1) Provisions requiring that, in each case  
 20                   where a veteran is seeking service-connection for any  
 21                   disability, due consideration shall be given to the  
 22                   places, types, and circumstances of such veteran’s  
 23                   service as shown by—

24                           “(A) such veteran’s service record;



1           “(B) the official history of each organiza-  
2           tion in which such veteran served;

3           “(C) such veteran’s medical records; and

4           “(D) all pertinent medical and lay evi-  
5           dence.

6           “(2) Provisions generally recognizing cir-  
7           cumstances in which lay evidence consistent with the  
8           place, conditions, dangers, or hardships associated  
9           with particular military service does not require con-  
10          firmatory official documentary evidence in order to  
11          establish the occurrence of an event or exposure dur-  
12          ing active military, naval, or air service.

13          “(3) The provisions required by section 5 of the  
14          Veterans’ Dioxin and Radiation Exposure Compensa-  
15          tion Standards Act (Public Law 98–542; 98 Stat.  
16          2727).”.

17          (b) REGULATIONS.—

18               (1) IN GENERAL.—Not later than 210 days after  
19               the date of the enactment of this Act, the Secretary of  
20               Veterans Affairs shall promulgate regulations to im-  
21               plement section 1154(a)(2) of title 38, United States  
22               Code, as added by subsection (a).

23               (2) INTERIM REGULATIONS.—In the case that the  
24               Secretary is unable to promulgate final regulations  
25               under paragraph (1) on or before the date that is 210

1        *days after the date of the enactment of this Act, the*  
 2        *Secretary shall promulgate interim regulations on or*  
 3        *before such date to be in effect until such time as the*  
 4        *Secretary promulgates final regulations.*

5    **SEC. 204. EXTENSION OF REDUCED PENSION FOR CERTAIN**  
 6                    **VETERANS COVERED BY MEDICAID PLANS**  
 7                    **FOR SERVICES FURNISHED BY NURSING FA-**  
 8                    **CILITIES.**

9        *Section 5503(d)(7) is amended by striking “September*  
 10    *30, 2011” and inserting “April 30, 2016”.*

11    **SEC. 205. ENHANCEMENT OF DISABILITY COMPENSATION**  
 12                    **FOR CERTAIN DISABLED VETERANS WITH**  
 13                    **DIFFICULTIES USING PROSTHESES AND DIS-**  
 14                    **ABLED VETERANS IN NEED OF REGULAR AID**  
 15                    **AND ATTENDANCE FOR RESIDUALS OF TRAU-**  
 16                    **MATIC BRAIN INJURY.**

17        *(a) VETERANS SUFFERING ANATOMICAL LOSS OF*  
 18    *HANDS, ARMS, OR LEGS.—Section 1114 is amended—*

19                *(1) in subsection (m)—*

20                    *(A) by striking “at a level, or with com-*  
 21                    *plications,” and inserting “with factors”; and*

22                    *(B) by striking “at levels, or with complica-*  
 23                    *tions,” and inserting “with factors”;*

24                *(2) in subsection (n)—*

1           (A) by striking “at levels, or with complica-  
2           tions,” and inserting “with factors”;

3           (B) by striking “so near the hip as to” and  
4           inserting “with factors that”; and

5           (C) by striking “so near the shoulder and  
6           hip as to” and inserting “with factors that”; and

7           (3) in subsection (o), by striking “so near the  
8           shoulder as to” and inserting “with factors that”.

9           (b) *VETERANS WITH SERVICE-CONNECTED DISABIL-*  
10 *ITIES IN NEED OF REGULAR AID AND ATTENDANCE FOR*  
11 *RESIDUALS OF TRAUMATIC BRAIN INJURY.—*

12           (1) *IN GENERAL.—Such section is further*  
13 *amended—*

14           (A) in subsection (p), by striking the semi-  
15           colon at the end and inserting a period; and

16           (B) by adding at the end the following new  
17           subsection:

18           “(t) Subject to section 5503(c) of this title, if any vet-  
19           eran, as the result of service-connected disability, is in need  
20           of regular aid and attendance for the residuals of traumatic  
21           brain injury, is not eligible for compensation under sub-  
22           section (r)(2), and in the absence of such regular aid and  
23           attendance would require hospitalization, nursing home  
24           care, or other residential institutional care, the veteran  
25           shall be paid, in addition to any other compensation under

1 *this section, a monthly aid and attendance allowance equal*  
 2 *to the rate described in subsection (r)(2), which for purposes*  
 3 *of section 1134 of this title shall be considered as additional*  
 4 *compensation payable for disability. An allowance author-*  
 5 *ized under this subsection shall be paid in lieu of any allow-*  
 6 *ance authorized by subsection (r)(1).”.*

7 (2) *CONFORMING AMENDMENT.—Section 5503(c)*  
 8 *is amended by striking “in section 1114(r)” and in-*  
 9 *serting “in subsection (r) or (t) of section 1114”.*

10 (c) *EFFECTIVE DATE.—The amendments made by this*  
 11 *section shall take effect on August 31, 2010.*

12 **SEC. 206. COMMENCEMENT OF PERIOD OF PAYMENT OF**  
 13 **ORIGINAL AWARDS OF COMPENSATION FOR**  
 14 **VETERANS RETIRED OR SEPARATED FROM**  
 15 **THE UNIFORMED SERVICES FOR CATA-**  
 16 **STROPHIC DISABILITY.**

17 (a) *COMMENCEMENT OF PERIOD OF PAYMENT.—Sub-*  
 18 *section (a) of section 5111 is amended—*

19 (1) *by inserting “(1)” after “(a)”;*

20 (2) *in paragraph (1), as designated by para-*  
 21 *graph (1) of this subsection, by striking “in sub-*  
 22 *section (c) of this section” and inserting “in para-*  
 23 *graph (2) of this subsection and subsection (c)”;* and

24 (3) *by adding at the end the following new para-*  
 25 *graph:*

1       “(2)(A) *In the case of a veteran who is retired or sepa-*  
 2 *rated from the active military, naval, or air service for a*  
 3 *catastrophic disability or disabilities, payment of monetary*  
 4 *benefits based on an award of compensation based on an*  
 5 *original claim shall be made as of the date on which such*  
 6 *award becomes effective as provided under section 5110 of*  
 7 *this title or another applicable provision of law.*

8       “(B) *In this paragraph, the term ‘catastrophic dis-*  
 9 *ability’, with respect to a veteran, means a permanent, se-*  
 10 *verely disabling injury, disorder, or disease that com-*  
 11 *promises the ability of the veteran to carry out the activities*  
 12 *of daily living to such a degree that the veteran requires*  
 13 *personal or mechanical assistance to leave home or bed, or*  
 14 *requires constant supervision to avoid physical harm to self*  
 15 *or others.’.*”

16       (b) *EFFECTIVE DATE.*—*The amendments made by sub-*  
 17 *section (a) shall take effect on the date of the enactment*  
 18 *of this Act and shall apply with respect to awards of com-*  
 19 *ensation based on original claims that become effective on*  
 20 *or after that date.*

21       (c) *TECHNICAL CORRECTION REGARDING WAIVER OF*  
 22 *RETIRED PAY.*—*Section 5305 is amended by striking “sec-*  
 23 *tion 1414” and inserting “sections 1212(d)(2) and 1414”.*

1 **SEC. 207. APPLICABILITY OF LIMITATION TO PENSION PAY-**  
 2 **ABLE TO CERTAIN CHILDREN OF VETERANS**  
 3 **OF A PERIOD OF WAR.**

4 *Section 5503(d)(5) is amended—*

5 *(1) by inserting “(A)” after “(5)”;* and

6 *(2) by adding at the end the following new sub-*  
 7 *paragraph:*

8 *“(B) The provisions of this subsection shall*  
 9 *apply with respect to a child entitled to pension*  
 10 *under section 1542 of this title in the same man-*  
 11 *ner as they apply to a veteran having neither*  
 12 *spouse nor child.”.*

13 **SEC. 208. PAYMENT OF DEPENDENCY AND INDEMNITY COM-**  
 14 **PENSATION TO SURVIVORS OF FORMER PRIS-**  
 15 **ONERS OF WAR WHO DIED ON OR BEFORE**  
 16 **SEPTEMBER 30, 1999.**

17 *Section 1318(b)(3) is amended by striking “who died*  
 18 *after September 30, 1999,”.*

19 **TITLE III—READJUSTMENT AND**  
 20 **RELATED BENEFIT MATTERS**

21 **SEC. 301. REPEAL OF LIMITATION ON NUMBER OF VET-**  
 22 **ERANS ENROLLED IN PROGRAMS OF INDE-**  
 23 **PENDENT LIVING SERVICES AND ASSIST-**  
 24 **ANCE.**

25 *(a) IN GENERAL.—Section 3120 is amended—*

26 *(1) by striking subsection (e); and*

1           (2) by redesignating subsection (f) as subsection  
2       (e).

3       (b) *CONFORMING AMENDMENT.*—Subsection (a) of  
4 such section is amended by striking “described in subsection  
5 (f)” and inserting “described in subsection (e)”.

6 **SEC. 302. ELIGIBILITY OF DISABLED VETERANS AND MEM-**  
7 **BERS OF THE ARMED FORCES WITH SEVERE**  
8 **BURN INJURIES FOR AUTOMOBILES AND**  
9 **ADAPTIVE EQUIPMENT.**

10       (a) *ELIGIBILITY.*—Paragraph (1) of section 3901 is  
11 amended—

12           (1) in subparagraph (A)—

13               (A) in the matter preceding clause (i), by  
14 striking “in subclause (i), (ii), or (iii) below”  
15 and inserting “in clause (i), (ii), (iii), or (iv) of  
16 this subparagraph”; and

17               (B) by adding at the end the following new  
18 clause:

19                   “(iv) A severe burn injury (as determined  
20 pursuant to regulations prescribed by the Sec-  
21 retary).”; and

22       (2) in subparagraph (B), by striking “subclause  
23 (i), (ii), or (iii) of clause (A) of this paragraph” and  
24 inserting “clause (i), (ii), (iii), or (iv) of subpara-  
25 graph (A)”.

1       (b) *STYLISTIC AMENDMENTS.*—*Such section is further*  
 2 *amended—*

3           (1) *in the matter preceding paragraph (1), by*  
 4 *striking “chapter—” and inserting “chapter:”;*

5           (2) *in paragraph (1)—*

6               (A) *in the matter preceding subparagraph*  
 7 *(A), by striking “means—” and inserting*  
 8 *“means the following:”;*

9               (B) *in subparagraph (A)—*

10                   (i) *in the matter preceding clause (i),*  
 11 *by striking “any veteran” and inserting*  
 12 *“Any veteran”;*

13                   (ii) *in clauses (i) and (ii), by striking*  
 14 *the semicolon at the end and inserting a pe-*  
 15 *riod; and*

16                   (iii) *in clause (iii), by striking “; or”*  
 17 *and inserting a period; and*

18               (C) *in subparagraph (B), by striking “any*  
 19 *member” and inserting “Any member”.*

20       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 21 *section shall take effect on October 1, 2010.*

22 **SEC. 303. ENHANCEMENT OF AUTOMOBILE ASSISTANCE AL-**  
 23 **LOWANCE FOR VETERANS.**

24       (a) *INCREASE IN AMOUNT OF ALLOWANCE.*—*Sub-*  
 25 *section (a) of section 3902 is amended by striking*



1 “\$11,000” and inserting “\$22,500 (as adjusted from time  
2 to time under subsection (e))”.

3 (b) *ANNUAL ADJUSTMENT.*—Such section is further  
4 amended by adding at the end the following new subsection:

5 “(e)(1) *Effective on October 1 of each year (beginning*  
6 *in 2011), the Secretary shall increase the dollar amount in*  
7 *effect under subsection (a) to an amount equal to 80 percent*  
8 *of the average retail cost of new automobiles for the pre-*  
9 *ceding calendar year.*

10 “(2) *The Secretary shall establish the method for deter-*  
11 *mining the average retail cost of new automobiles for pur-*  
12 *poses of this subsection. The Secretary may use data devel-*  
13 *oped in the private sector if the Secretary determines the*  
14 *data is appropriate for purposes of this subsection.”.*

15 (c) *EFFECTIVE DATE.*—The amendments made by this  
16 section shall take effect on October 1, 2010.

17 **SEC. 304. PAYMENT OF UNPAID BALANCES OF DEPARTMENT**  
18 **OF VETERANS AFFAIRS GUARANTEED LOANS.**

19 Section 3732(a)(2) is amended—

20 (1) by striking “Before suit” and inserting “(A)  
21 Before suit”; and

22 (2) by adding at the end the following new sub-  
23 paragraph:

24 “(B) *In the event that a housing loan guaranteed*  
25 *under this chapter is modified under the authority provided*

1 *under section 1322(b) of title 11, the Secretary may pay*  
 2 *the holder of the obligation the unpaid balance of the obliga-*  
 3 *tion due as of the date of the filing of the petition under*  
 4 *title 11 plus accrued interest, but only upon the assignment,*  
 5 *transfer, and delivery to the Secretary (in a form and man-*  
 6 *ner satisfactory to the Secretary) of all rights, interest,*  
 7 *claims, evidence, and records with respect to the housing*  
 8 *loan.”.*

9 ***TITLE IV—EMPLOYMENT AND***  
 10 ***REEMPLOYMENT RIGHTS OF***  
 11 ***MEMBERS OF THE UNI-***  
 12 ***FORMED SERVICES***

13 ***SEC. 401. WAIVER OF SOVEREIGN IMMUNITY UNDER THE***  
 14 ***11TH AMENDMENT WITH RESPECT TO EN-***  
 15 ***FORCEMENT OF USERRA.***

16 *(a) IN GENERAL.—Section 4323 is amended—*

17 *(1) in subsection (b) by striking paragraph (2)*  
 18 *and inserting the following new paragraph:*

19 *“(2) In the case of an action against a State (as an*  
 20 *employer) by a person, the action may be brought in the*  
 21 *appropriate district court of the United States or State*  
 22 *court of competent jurisdiction.”;*

23 *(2) by redesignating subsection (i) as subsection*  
 24 *(j); and*

1           (3) by inserting after subsection (h) the following  
 2       new subsection (i):

3       “(i) *WAIVER OF STATE SOVEREIGN IMMUNITY.—(1) A*  
 4       *State’s receipt or use of Federal financial assistance for any*  
 5       *program or activity of a State shall constitute a waiver*  
 6       *of sovereign immunity, under the 11th amendment to the*  
 7       *Constitution or otherwise, to a suit brought by—*

8           “(A) *a person who is or was an employee in that*  
 9       *program or activity for the rights or benefits author-*  
 10       *ized the person by this chapter;*

11          “(B) *a person applying to be such an employee*  
 12       *in that program or activity for the rights or benefits*  
 13       *authorized the person by this chapter; or*

14          “(C) *a person seeking reemployment as an em-*  
 15       *ployee in that program or activity for the rights or*  
 16       *benefits authorized the person by this chapter.*

17       “(2) *In this subsection, the term ‘program or activity’*  
 18       *has the meaning given that term in section 309 of the Age*  
 19       *Discrimination Act of 1975 (42 U.S.C. 6107).’.*

20       (b) *APPLICATION.—The amendments made by sub-*  
 21       *section (a) shall apply to—*

22           (1) *any failure to comply with a provision of or*  
 23       *any violation of chapter 43 of title 38, United States*  
 24       *Code, that occurs before, on, or after the date of the*  
 25       *enactment of this Act; and*

1           (2) *all actions or complaints filed under such*  
 2           *chapter 43 that are commenced after the date of the*  
 3           *enactment of this Act.*

4   **SEC. 402. CLARIFYING THE DEFINITION OF “SUCCESSOR IN**  
 5           **INTEREST”.**

6           (a) *IN GENERAL.*—Section 4303(4) is amended by  
 7           *adding at the end the following new subparagraph:*

8                   “(D)(i) *Whether the term ‘successor in interest’*  
 9                   *applies with respect to an entity described in sub-*  
 10                   *paragraph (A) for purposes of clause (iv) of such sub-*  
 11                   *paragraph shall be determined on a case-by-case basis*  
 12                   *using a multi-factor test that considers the following*  
 13                   *factors:*

14                           “(I) *Substantial continuity of business op-*  
 15                           *erations.*

16                           “(II) *Use of the same or similar facilities.*

17                           “(III) *Continuity of work force.*

18                           “(IV) *Similarity of jobs and working condi-*  
 19                           *tions.*

20                           “(V) *Similarity of supervisory personnel.*

21                           “(VI) *Similarity of machinery, equipment,*  
 22                           *and production methods.*

23                           “(VII) *Similarity of products or services.*

24                           “(ii) *The entity’s lack of notice or awareness of*  
 25                   *a potential or pending claim under this chapter at*

1     *the time of a merger, acquisition, or other form of*  
 2     *succession shall not be considered when applying the*  
 3     *multi-factor test under clause (i).”.*

4     **(b) APPLICATION.**—*The amendment made by sub-*  
 5     *section (a) shall apply to—*

6             *(1) any failure to comply with a provision of or*  
 7             *any violation of chapter 43 of title 38, United States*  
 8             *Code, that occurs before, on, or after the date of the*  
 9             *enactment of this Act; and*

10            *(2) all actions or complaints filed under such*  
 11            *chapter 43 that are pending on or after the date of*  
 12            *the enactment of this Act.*

13     **SEC. 403. CLARIFYING THAT USERRA PROHIBITS WAGE DIS-**  
 14                     **CRIMINATION AGAINST MEMBERS OF THE**  
 15                     **ARMED FORCES.**

16     **(a) IN GENERAL.**—*Section 4303(2) is amended by*  
 17     *striking “other than” and inserting “including”.*

18     **(b) APPLICATION.**—*The amendment made by sub-*  
 19     *section (a) shall apply to—*

20             *(1) any failure to comply with a provision of or*  
 21             *any violation of chapter 43 of title 38, United States*  
 22             *Code, that occurs before, on, or after the date of the*  
 23             *enactment of this Act; and*

1           (2) *all actions or complaints filed under such*  
 2           *chapter 43 that are pending on or after the date of*  
 3           *the enactment of this Act.*

4   **SEC. 404. REQUIREMENT THAT FEDERAL AGENCIES PRO-**  
 5                   **VIDE NOTICE TO CONTRACTORS OF POTEN-**  
 6                   **TIAL USERRA OBLIGATIONS.**

7           (a) *CIVILIAN AGENCIES.*—*The Federal Property and*  
 8           *Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)*  
 9           *is amended by adding at the end the following new section:*  
 10   **“SEC. 318. NOTICE TO CONTRACTORS OF POTENTIAL OBLI-**  
 11                   **GATIONS RELATING TO EMPLOYMENT AND**  
 12                   **REEMPLOYMENT OF MEMBERS OF THE**  
 13                   **ARMED FORCES.**

14           *“Each contract for the procurement of property or*  
 15           *services that is entered into by the head of an executive*  
 16           *agency shall include a notice to the contractor that the con-*  
 17           *tractor may have obligations under chapter 43 of title 38,*  
 18           *United States Code.”.*

19           (b) *ARMED FORCES.*—

20           (1) *IN GENERAL.*—*Chapter 137 of title 10,*  
 21           *United States Code, is amended by adding at the end*  
 22           *the following new section:*

1 **“§2334. Notice to contractors of potential obligations**  
 2 **relating to employment and reemployment**  
 3 **of members of the armed forces**

4 “Each contract for the procurement of property or  
 5 services that is entered into by the head of an executive  
 6 agency shall include a notice to the contractor that the con-  
 7 tractor may have obligations under chapter 43 of title 38.”.

8 (2) *CLERICAL AMENDMENT.*—The table of sec-  
 9 tions for such chapter is amended by adding at the  
 10 end the following new item:

“2334. Notice to contractors of potential obligations relating to employment and  
 reemployment of members of the armed forces.”.

11 **SEC. 405. COMPTROLLER GENERAL OF THE UNITED STATES**  
 12 **STUDY ON EFFECTIVENESS OF FEDERAL PRO-**  
 13 **GRAMS OF EDUCATION AND OUTREACH ON**  
 14 **EMPLOYER OBLIGATIONS UNDER USERRA.**

15 (a) *STUDY REQUIRED.*—The Comptroller General of  
 16 the United States shall conduct a study on the effectiveness  
 17 of Federal programs of education and outreach on employer  
 18 obligations under chapter 43 of title 38, United States Code.

19 (b) *CONTENTS OF STUDY.*—In carrying out the study  
 20 required by subsection (a), the Comptroller General shall—

21 (1) assess current practices and procedures of  
 22 Federal agencies for educating employers about their  
 23 obligations under chapter 43 of title 38, United States  
 24 Code;

1           (2) *identify best practices for bringing the em-*  
 2           *ployment practices of small businesses into compli-*  
 3           *ance with such chapter;*

4           (3) *determine whether the Employer Support for*  
 5           *the Guard and Reserve, the Small Business Adminis-*  
 6           *tration, or other agencies could collaborate to develop*  
 7           *a program to educate employers regarding their obli-*  
 8           *gations under such chapter; and*

9           (4) *determine the effect on recruitment and re-*  
 10          *tention in the National Guard and Reserves of the*  
 11          *failure of employers to meet their reemployment obli-*  
 12          *gations under such chapter.*

13          (c) *REPORT TO CONGRESS.*—*Not later than June 30,*  
 14          *2010, the Comptroller General shall submit to Congress a*  
 15          *report on the study conducted under subsection (a), includ-*  
 16          *ing the following:*

17               (1) *The findings of the Comptroller General with*  
 18               *respect to such study.*

19               (2) *The recommendations of the Comptroller*  
 20               *General for the improvement of education and out-*  
 21               *reach for employers with respect to their obligations*  
 22               *under chapter 43 of title 38, United States Code.*

23   **SEC. 406. TECHNICAL AMENDMENTS.**

24          (a) *AMENDMENT TO CONGRESSIONAL ACCOUNTABILITY*  
 25          *ACT OF 1995.*—*Section 206(b) of the Congressional Ac-*



1 *countability Act of 1995 (2 U.S.C. 1316(b)) is amended by*  
 2 *striking “under paragraphs (1), (2)(A), and (3) of section*  
 3 *4323(c) of title 38, United States Code” and inserting*  
 4 *“under section 4323(d) of title 38, United States Code”.*

5 *(b) AMENDMENT TO SECTION 416 OF TITLE 3, UNITED*  
 6 *STATES CODE.—Section 416(b) of title 3, United States*  
 7 *Code, is amended by striking “under paragraphs (1) and*  
 8 *(2)(A) of section 4323(c) of title 38” and inserting “under*  
 9 *section 4323(d) of title 38”.*

10 *(c) AMENDMENT TO SECTION 4324 OF TITLE 38,*  
 11 *UNITED STATES CODE.—Section 4324(b)(4) of title 38,*  
 12 *United States Code, is amended by inserting before the pe-*  
 13 *riod the following: “declining to initiate an action and rep-*  
 14 *resent the person before the Merit Systems Protection*  
 15 *Board”.*

## 16 ***TITLE V—BURIAL AND*** 17 ***MEMORIAL MATTERS***

18 ***SEC. 501. INCREASE IN CERTAIN BURIAL AND FUNERAL***  
 19 ***BENEFITS AND PLOT ALLOWANCES FOR VET-***  
 20 ***ERANS.***

21 *(a) INCREASE IN BURIAL AND FUNERAL EXPENSES*  
 22 *FOR DEATHS IN DEPARTMENT FACILITIES.—Section*  
 23 *2303(a)(1)(A) is amended by striking “\$300” and inserting*  
 24 *“\$745 (as increased from time to time under subsection*  
 25 *(c))”.*

1       (b) *INCREASE IN AMOUNT OF PLOT ALLOWANCES.*—  
 2       Section 2303(b) is amended by striking “\$300” each place  
 3       it appears and inserting “\$745 (as increased from time to  
 4       time under subsection (c))”.

5       (c) *ANNUAL ADJUSTMENT.*—Section 2303 is amended  
 6       by adding at the end the following new subsection:

7           “(c) With respect to any fiscal year, the Secretary shall  
 8       provide a percentage increase (rounded to the nearest dol-  
 9       lar) in the burial and funeral expenses under subsection (a)  
 10      and in the plot allowance under subsection (b), equal to  
 11      the percentage by which—

12           “(1) the Consumer Price Index (all items, United  
 13      States city average) for the 12-month period ending  
 14      on the June 30 preceding the beginning of the fiscal  
 15      year for which the increase is made, exceeds

16           “(2) the Consumer Price Index for the 12-month  
 17      period preceding the 12-month period described in  
 18      paragraph (1).”.

19      (d) *EFFECTIVE DATE.*—

20           (1) *IN GENERAL.*—Except as provided in para-  
 21      graph (2), the amendments made by this section shall  
 22      apply with respect to deaths occurring on or after Oc-  
 23      tober 1, 2010.

24           (2) *PROHIBITION ON COST-OF-LIVING ADJUST-*  
 25      *MENT FOR FISCAL YEAR 2011.*—No adjustments shall

1        *be made under section 2303(c) of title 38, United*  
 2        *States Code, as added by subsection (c), for fiscal year*  
 3        *2011.*

## 4        ***TITLE VI—OTHER MATTERS***

### 5        ***SEC. 601. NATIONAL ACADEMIES REVIEW OF BEST TREAT-*** 6        ***MENTS FOR GULF WAR ILLNESS.***

7        *(a) IN GENERAL.—The Secretary of Veterans Affairs*  
 8        *shall enter into a contract with the Institute of Medicine*  
 9        *of the National Academies to conduct a comprehensive re-*  
 10       *view of the best treatments for Gulf War Illness.*

11       *(b) GROUP OF MEDICAL PROFESSIONALS.—In con-*  
 12       *ducting the study required under subsection (a), the Insti-*  
 13       *tute of Medicine shall convene a group of medical profes-*  
 14       *sionals who are experienced in treating individuals diag-*  
 15       *nosed with Gulf War illness as follows:*

16                *(1) Members of the Armed Forces who served*  
 17        *during the Persian Gulf War in the Southwest Asia*  
 18        *theater of operations.*

19                *(2) Members of the Armed Forces who served in*  
 20        *the Post 9/11 Global Operations theaters.*

21        *(c) REPORTS.—The contract required by subsection (a)*  
 22        *shall require the Institute of Medicine to submit to the Sec-*  
 23        *retary and to the appropriate committees of Congress a re-*  
 24        *port on the review required under subsection (a) not later*  
 25        *than December 31, 2011. The final report shall include such*

1 *recommendations for legislative or administrative action as*  
 2 *the Institute considers appropriate in light of the results*  
 3 *of the review.*

4 (d) *FUNDING.*—*The Secretary shall provide the Insti-*  
 5 *tute of Medicine with such funds as are necessary to ensure*  
 6 *the timely completion of the review required under sub-*  
 7 *section (a).*

8 (e) *DEFINITIONS.*—*In this section:*

9 (1) *APPROPRIATE COMMITTEES OF CONGRESS.*—  
 10 *The term “appropriate committees of Congress”*  
 11 *means—*

12 (A) *the Committee on Veterans’ Affairs of*  
 13 *the Senate; and*

14 (B) *the Committee on Veterans’ Affairs of*  
 15 *the House of Representatives.*

16 (2) *GULF WAR ILLNESS.*—*The term “Gulf War*  
 17 *Illness” means a medically unexplained chronic*  
 18 *multisymptom illness, such as chronic fatigue syn-*  
 19 *drome, fibromyalgia, and irritable bowel syndrome,*  
 20 *that is defined by a cluster of signs or symptoms re-*  
 21 *lating to service in the Persian Gulf War or Post 9/*  
 22 *11 Global Operations theaters.*

23 (3) *PERSIAN GULF WAR.*—*The term “Persian*  
 24 *Gulf War” has the meaning given that term in sec-*  
 25 *tion 101(33) of title 38, United States Code.*

1           (4) *POST 9/11 GLOBAL OPERATIONS THEATERS.*—  
 2       *The term “Post 9/11 Global Operations theaters”*  
 3       *means Afghanistan, Iraq, or any other theater in*  
 4       *which the Global War on Terrorism Expeditionary*  
 5       *Medal is awarded for service.*

6   **SEC. 602. EXTENSION OF NATIONAL ACADEMY OF SCIENCES**  
 7                           **REVIEWS AND EVALUATIONS REGARDING ILL-**  
 8                           **NESS AND SERVICE IN PERSIAN GULF WAR.**

9       (a) *REVIEW AND EVALUATION OF TOXIC DRUGS AND*  
 10    *ILLNESSES ASSOCIATED WITH PERSIAN GULF WAR.*—*Sec-*  
 11    *tion 1603(j) of the Persian Gulf War Veterans Act of 1998*  
 12    *(38 U.S.C. 1117 note) is amended by striking “October 1,*  
 13    *2010” and inserting “October 1, 2015”.*

14    (b) *REVIEW AND EVALUATION OF AVAILABLE EVI-*  
 15    *DENCE REGARDING ILLNESS AND SERVICE IN PERSIAN*  
 16    *GULF WAR.*—

17           (1) *IN GENERAL.*—*Section 101(j) of the Veterans*  
 18    *Programs Enhancement Act of 1998 (Public Law*  
 19    *105–368; 112 Stat. 3321) is amended by striking “11*  
 20    *years after” and all that follows through “under sub-*  
 21    *section (b)” and inserting “on October 1, 2018”.*

22           (2) *CONFORMING AMENDMENT.*—*Section 1604 of*  
 23    *the Persian Gulf War Veterans Act of 1998 (Public*  
 24    *Law 105–277; 38 U.S.C. 1117 note) is repealed.*

1 **SEC. 603. EXTENSION OF AUTHORITY FOR REGIONAL OF-**  
 2 **FICE IN REPUBLIC OF THE PHILIPPINES.**

3 *Section 315(b) is amended by striking “December 31,*  
 4 *2009” and inserting “December 31, 2011”.*

5 **SEC. 604. AGGREGATE AMOUNT OF EDUCATIONAL ASSIST-**  
 6 **ANCE AVAILABLE TO INDIVIDUALS WHO RE-**  
 7 **CEIVE BOTH SURVIVORS’ AND DEPENDENTS**  
 8 **EDUCATIONAL ASSISTANCE AND OTHER VET-**  
 9 **ERANS AND RELATED EDUCATIONAL ASSIST-**  
 10 **ANCE.**

11 *(a) AGGREGATE AMOUNT AVAILABLE.—Section 3695*  
 12 *is amended—*

13 *(1) in subsection (a)(4), by striking “35,”; and*  
 14 *(2) by adding at the end the following new sub-*  
 15 *section:*

16 *“(c) The aggregate period for which any person may*  
 17 *receive assistance under chapter 35 of this title, on the one*  
 18 *hand, and any of the provisions of law referred to in sub-*  
 19 *section (a), on the other hand, may not exceed 81 months*  
 20 *(or the part-time equivalent thereof).”.*

21 *(b) APPLICABILITY.—The amendment made by sub-*  
 22 *section (a) shall take effect on October 1, 2010, and shall*  
 23 *not operate to revive any entitlement to assistance under*  
 24 *chapter 35 of title 38, United States Code, or the provisions*  
 25 *of law referred to in section 3695(a) of such title, as in*  
 26 *effect on the day before such date, that was terminated by*

1 *reason of the operation of section 3695(a) of such title, as*  
2 *so in effect, before such date.*

3 *(c) REVIVAL OF ENTITLEMENT REDUCED BY PRIOR*  
4 *UTILIZATION OF CHAPTER 35 ASSISTANCE.—*

5 *(1) IN GENERAL.—Subject to paragraph (2), in*  
6 *the case of an individual whose period of entitlement*  
7 *to assistance under a provision of law referred to in*  
8 *section 3695(a) of title 38, United States Code (other*  
9 *than chapter 35 of such title), as in effect on Sep-*  
10 *tember 30, 2010, was reduced under such section*  
11 *3695(a), as so in effect, by reason of the utilization*  
12 *of entitlement to assistance under chapter 35 of such*  
13 *title before October 1, 2010, the period of entitlement*  
14 *to assistance of such individual under such provision*  
15 *shall be determined without regard to any entitlement*  
16 *so utilized by the individual under chapter 35 of such*  
17 *title.*

18 *(2) LIMITATION.—The maximum period of enti-*  
19 *tlement to assistance of an individual under para-*  
20 *graph (1) may not exceed 81 months.*

1 **SEC. 605. TECHNICAL CORRECTION.**

2       *Section 5503(c) is amended by striking “veterans’”*  
3 *and inserting “veteran’s”.*

Attest:

*Secretary.*





11<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H.R. 1037**

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**AMENDMENT**