

107TH CONGRESS  
2D SESSION

# S. 2079

To amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veterans' benefits, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 9, 2002

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Veterans Affairs

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## A BILL

To amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veterans' benefits, 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. JUDICIAL REVIEW OF ADOPTION OR REVISION**  
4                       **OF SCHEDULE OF RATINGS FOR DISABIL-**  
5                       **ITIES.**

6       (a) RESTATEMENT OF CURRENT AUTHORITY WITH  
7       AUTHORITY FOR REVIEW.—The text of section 502 of  
8       title 38, United States Code, is amended to read as fol-  
9       lows:

1       “(a) An action of the Secretary to which section  
2 552(a)(1) or 553 of title 5, or both, refers is subject to  
3 judicial review.

4       “(b)(1) Except as provided in paragraph (2), review  
5 under subsection (a) shall be in accordance with chapter  
6 7 of title 5, and may be sought only in the United States  
7 Court of Appeals for the Federal Circuit.

8       “(2) If review under subsection (a) is sought in con-  
9 nection with an appeal brought under the provisions of  
10 chapter 72 of this title, the provisions of that chapter shall  
11 apply rather than the provisions of chapter 7 of title 5.

12       “(c) In reviewing under subsection (b)(1) an action  
13 relating to the adoption or revision of the schedule of rat-  
14 ings for disabilities adopted under section 1155 of this  
15 title, the United States Court of Appeals for the Federal  
16 Circuit shall hold unlawful and set aside the action if the  
17 action is found by the Court to be—

18               “(1) arbitrary, capricious, an abuse of discre-  
19 tion, or otherwise not in accordance with law; or

20               “(2) in excess of statutory jurisdiction, author-  
21 ity, or limitations, or in violation of statutory  
22 right.”.

23       (b) APPLICABILITY.—The amendment made by sub-  
24 section (a) shall take effect on the date of the enactment  
25 of this Act. The review described by subsection (c) of sec-

tion 502 of title 38, United States Code, as so amended,  
shall be available only for a revision of the schedule of  
ratings of disabilities under section 1155 of that title that  
occurs on or after that date.

**SEC. 2. STANDARD OF REVERSAL BY COURT OF APPEALS  
FOR VETERANS CLAIMS OF ERRONEOUS  
FINDING OF FACT BY BOARD OF VETERANS'  
APPEALS.**

(a) STANDARD OF REVERSAL.—Paragraph (4) of  
subsection (a) of section 7261 of title 38, United States  
Code, is amended by striking “if the finding is clearly er-  
roneous” and inserting “if such finding is not reasonably  
supported by a preponderance of the evidence”.

(b) SCOPE OF AUTHORITY.—That subsection is fur-  
ther amended—

(1) in the matter preceding paragraph (1), by  
striking “this chapter” and inserting “section  
7252(a) of this title”; and

(2) in paragraph (4), as amended by subsection  
(a) of this section—

(A) by inserting “adverse to the claimant  
that is” after “material fact”; and

(B) by inserting “or reverse” after “set  
aside”.

1 (c) MATTERS RELATING TO FINDINGS OF MATERIAL  
2 FACT.—That section is further amended—

3 (1) by redesignating subsections (b), (c), and  
4 (d), as subsections (c), (d), and (e), respectively; and  
5 (2) by inserting after subsection (a) the fol-  
6 lowing new subsection (b):

7 “(b)(1) In making a determination on a finding of  
8 material fact under subsection (a)(4), the Court shall uti-  
9 lize the record of proceedings containing such finding, as  
10 established for purposes of sections 5107(b) and 7252(c)  
11 of this title.

12 “(2) A determination on a finding of material fact  
13 under subsection (a)(4) shall specify the evidence or mate-  
14 rial on which the Court relied in making such determina-  
15 tion.”.

16 (d) APPLICABILITY.—(1) Except as provided in para-  
17 graph (2), the amendments made by this section shall take  
18 effect on the date of the enactment of this Act.

19 (2) The amendments made by subsections (a) and  
20 (b)(2) shall apply with respect to any appeal filed with  
21 the United States Court of Appeals for Veterans Claims—

22 (A) on or after the date of the enactment of  
23 this Act; or

24 (B) before the date of the enactment of this  
25 Act, but in which a final decision has not been made

1 under section 7291 of title 38, United States Code,  
 2 as of that date.

3 **SEC. 3. REVIEW BY COURT OF APPEALS FOR THE FEDERAL**  
 4 **CIRCUIT OF DECISIONS OF LAW OF COURT**  
 5 **OF APPEALS OF VETERANS CLAIMS.**

6 (a) REVIEW.—Section 7292(c) of title 38, United  
 7 States Code, is amended in the first sentence by inserting  
 8 after “the validity of” the following: “a decision of the  
 9 Court of Veterans Appeals on a rule of law or of”.

10 (b) APPLICABILITY.—The amendment made by sub-  
 11 section (a) shall take effect on the date of the enactment  
 12 of this Act, and shall apply with respect to any appeal—

13 (1) filed with the United States Court of Ap-  
 14 peals for the Federal Circuit on or after the date of  
 15 the enactment of this Act; or

16 (2) pending with the United States Court of  
 17 Appeals for the Federal Circuit as of the date of the  
 18 enactment of this Act in which a final decision has  
 19 not been rendered as of that date.

20 **SEC. 4. AUTHORITY OF COURT OF APPEALS FOR VETERANS**  
 21 **CLAIMS TO AWARD FEES UNDER EQUAL AC-**  
 22 **CESS TO JUSTICE ACT FOR NON-ATTORNEY**  
 23 **PRACTITIONERS.**

24 The authority of the United States Court of Appeals  
 25 for Veterans Claims to award reasonable fees and ex-

1   penses of attorneys under section 2412(b) of title 28,  
2   United States Code, shall include authority to award fees  
3   and expenses of individuals admitted to practice before the  
4   Court as non-attorney practitioners under subsection (b)  
5   or (c) of Rule 46 of the Rules of Practice and Procedure  
6   of the United States Court of Appeals for Veterans Claims  
7   as if such non-attorney practitioners were attorneys ad-  
8   mitted to practice before the Court.

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