

109TH CONGRESS  
1ST SESSION

# S. 121

To amend titles 10 and 38, United States Code, to improve the benefits provided for survivors of deceased members of the Armed Forces, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. DEWINE (for himself, Mr. DURBIN, Mr. ALLEN, Mr. HAGEL, Mr. COLEMAN, Mr. JOHNSON, Mr. OBAMA, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend titles 10 and 38, United States Code, to improve the benefits provided for survivors of deceased members of the Armed Forces, 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. DEATH GRATUITIES PAYABLE WITH RESPECT**  
4                       **TO DECEASED MEMBERS OF THE ARMED**  
5                       **FORCES.**

6               (a) INCREASED AMOUNT OF DEATH GRATUITY.—

7       Section 1478(a) of title 10, United States Code, is amend-

1 ed by striking “\$12,000” in the first sentence and insert-  
 2 ing “\$100,000”.

3 (b) ADDITIONAL DEATH GRATUITY PAYABLE TO  
 4 CHILD OF DECEASED.—

5 (1) PAYMENT AT AGE 21.—Section 1477 of  
 6 such title is amended by adding at the end the fol-  
 7 lowing new subsection:

8 “(e) ADDITIONAL DEATH GRATUITY FOR DEPEND-  
 9 ENT CHILDREN.—(1) If, in the case of a death for which  
 10 a death gratuity is payable under section 1475 or 1476  
 11 of this title, the deceased is survived by one or more chil-  
 12 dren described in subsection (b) who are under 18 years  
 13 of age on the date of the death, the Secretary concerned  
 14 shall pay an additional death gratuity to each such child  
 15 when that child attains 21 years of age.

16 “(2) A death gratuity payable to any person under  
 17 this subsection with respect to a death is in addition to  
 18 any death gratuity that is payable to that person under  
 19 section 1475 or 1476 of this title with respect to such  
 20 death pursuant to subsection (a)(2).”.

21 (2) AMOUNT.—

22 (A) Subsection (a) of section 1478 of such  
 23 title, as amended by subsection (a) of this sec-  
 24 tion, is further amended by inserting after the  
 25 first sentence the following new sentence: “The

1 death gratuity payable to a child of a deceased  
 2 person under section 1477(e) of this title shall  
 3 be \$25,000.”.

4 (B) Subsection (c) of such section is  
 5 amended by striking “the amount” and insert-  
 6 ing “each amount”.

7 (3) CONFORMING AMENDMENTS.—(A) Section  
 8 1477(d) of such title is amended by striking “he re-  
 9 ceives the death gratuity,” and inserting “receiving  
 10 payment of a death gratuity under section 1475 or  
 11 1476 of this title,”.

12 (B) Section 1479 of such title is amended—

13 (i) by striking “immediate”; and

14 (ii) by inserting “or 1477(e)” after  
 15 “section 1475”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in para-  
 18 graph (2), this section and the amendments made by  
 19 this section shall take effect as of October 1, 2001,  
 20 and shall apply with respect to deaths occurring on  
 21 or after such date.

22 (2) EXCEPTION.—The amendment made by  
 23 subsection (b)(2)(B) shall take effect as of October  
 24 28, 2004, immediately following the enactment of  
 25 Public Law 108–375.

1 **SEC. 2. INCREASED PERIOD OF CONTINUED TRICARE COV-**  
 2 **ERAGE OF CHILDREN OF MEMBERS OF THE**  
 3 **UNIFORMED SERVICES WHO DIE WHILE**  
 4 **SERVING ON ACTIVE DUTY FOR A PERIOD OF**  
 5 **MORE THAN 30 DAYS.**

6 (a) PERIOD OF ELIGIBILITY.—Section 1079(g) of  
 7 title 10, United States Code, is amended—

8 (1) by inserting “(1)” after “(g)”; and

9 (2) by striking the second sentence and insert-  
 10 ing the following:

11 “(2) In addition to any continuation of eligibility for  
 12 benefits under paragraph (1), when a member dies while  
 13 on active duty for a period of more than 30 days, the  
 14 member’s dependents who are receiving benefits under a  
 15 plan covered by subsection (a) shall continue to be eligible  
 16 for such benefits during the three-year period beginning  
 17 on the date of the member’s death, except that, in the  
 18 case of such a dependent who is a child of the deceased,  
 19 the period of continued eligibility shall be the longer of  
 20 the following periods beginning on such date:

21 “(A) Three years.

22 “(B) The period ending on the date on which  
 23 the child attains 21 years of age.

24 “(C) In the case of a child of the deceased who,  
 25 at 21 years of age, is enrolled in a full-time course  
 26 of study in a secondary school or in a full-time

1 course of study in an institution of higher education  
2 approved by the administering Secretary and was, at  
3 the time of the member's death, in fact dependent  
4 on the member for over one-half of the child's sup-  
5 port, the period ending on the earlier of the fol-  
6 lowing dates:

7           “(i) The date on which the child ceases to  
8           pursue such a course of study, as determined by  
9           the administering Secretary.

10           “(ii) The date on which the child attains  
11           23 years of age.

12           “(3) For the purposes of paragraph (2)(C), a child  
13 shall be treated as being enrolled in a full-time course of  
14 study in an institution of higher education during any rea-  
15 sonable period of transition between the child's completion  
16 of a full-time course of study in a secondary school and  
17 the commencement of an enrollment in a full-time course  
18 of study in an institution of higher education, as deter-  
19 mined by the administering Secretary.

20           “(4) No charge may be imposed for any benefits cov-  
21 erage under this chapter that is provided for a child for  
22 a period of continued eligibility under paragraph (2), or  
23 for any benefits provided to such child during such period  
24 under that coverage.”.

1 (b) EFFECTIVE DATE.—This section and the amend-  
 2 ments made by this section shall take effect as of October  
 3 1, 2001, and shall apply with respect to deaths occurring  
 4 on or after such date.

5 **SEC. 3. INCREASE AND ENHANCEMENT OF DEPENDENCY**  
 6 **AND INDEMNITY COMPENSATION FOR SUR-**  
 7 **VIVING SPOUSES.**

8 (a) IN GENERAL.—Subsection (a) of section 1311 of  
 9 title 38, United States Code, is amended—

10 (1) in paragraph (1), by striking “\$967” and  
 11 inserting “\$1,500”;

12 (2) in paragraph (2), by inserting “or (4)”  
 13 after “paragraph (1)”; and

14 (3) by adding at the end the following new  
 15 paragraph:

16 “(4) In the case of a surviving spouse who remarries,  
 17 dependency and indemnity compensation shall be paid to  
 18 the surviving spouse at a monthly rate equal to 50 percent  
 19 of the monthly rate otherwise provided under paragraph  
 20 (1) for—

21 “(A) the first 60 months beginning after the  
 22 date of such remarriage; or

23 “(B) in the case of a surviving spouse with one  
 24 or more children below the age of 18, each month

1       until the first month beginning after the date on  
2       which each such child has attained the age of 18.”.

3       (b) RATES FOR SURVIVING SPOUSES WITH DEPEND-  
4 ENT CHILDREN.—Such section is further amended—

5           (1) by striking subsection (b) and inserting the  
6       following new subsection (b):

7       “(b)(1) If there is a surviving spouse with one or  
8 more children below the age of 18, the dependency and  
9 indemnity compensation paid monthly to the surviving  
10 spouse shall be increased by \$750 for each such child.

11       “(2)(A) Except as provided in subparagraph (B), the  
12 increase in dependency and indemnity compensation pay-  
13 able to a surviving spouse under paragraph (1) shall cease  
14 beginning with the first month commencing after the  
15 month in which all children of the surviving spouse have  
16 attained the age of 18.

17       “(B) The cessation under subparagraph (A) of the  
18 increase in dependency and indemnity compensation pay-  
19 able to a surviving spouse under paragraph (1) shall not  
20 occur with respect to any child of the surviving spouse  
21 who, before attaining the age of 18, becomes permanently  
22 incapable of support.”; and

23           (2) by striking subsection (e), as added by sec-  
24 tion 301(a) of the Veterans Benefits Improvements  
25 Act of 2004 (Public Law 104–454).

1 (c) EFFECTIVE DATE.—(1) Except as provided in  
 2 paragraph (2), the amendments made by this section shall  
 3 take effect on October 1, 2001, and shall apply with re-  
 4 spect to months beginning on or after that date.

5 (2) The amendment made by subsection (b)(2) shall  
 6 take effect on the date of the enactment of this Act.

7 **SEC. 4. EXPANSION AND ENHANCEMENT OF SURVIVORS’**  
 8 **AND DEPENDENTS’ EDUCATIONAL ASSIST-**  
 9 **ANCE.**

10 (a) TERMINATION OF DURATIONAL LIMITATION ON  
 11 USE OF EDUCATIONAL ASSISTANCE.—

12 (1) TERMINATION OF LIMITATION AND RE-  
 13 STATEMENT OF CONTINUING REQUIREMENTS.—Sub-  
 14 section (a) of section 3511 of title 38, United States  
 15 Code, is amended to read as follows:

16 “(a)(1) Notwithstanding any other provision of this  
 17 chapter or chapter 36 of this title, any payment of edu-  
 18 cational assistance described in paragraph (2) shall not  
 19 be charged against the entitlement of any individual under  
 20 this chapter.

21 “(2) The payment of educational assistance referred  
 22 to in paragraph (1) is the payment of such assistance to  
 23 an individual for pursuit of a course or courses under this  
 24 chapter if the Secretary finds that the individual—



1           “(A) had to discontinue such course pursuit as  
 2           a result of being ordered to serve on active duty  
 3           under section 688, 12301(a), 12301(d), 12301(g),  
 4           12302, or 12304 of title 10; and

5           “(B) failed to receive credit or training time to-  
 6           ward completion of the individual’s approved edu-  
 7           cational, professional, or vocational objective as a re-  
 8           sult of having to discontinue, as described in sub-  
 9           paragraph (A), the course pursuit.”.

10           (2) CONFORMING AMENDMENTS.—(A) The  
 11           heading of section 3511 of such title is amended to  
 12           read as follows:

13           **“§ 3511. Treatment of certain interruptions in pursuit**  
 14           **of programs of education”.**

15           (B) Section 3532(g) of such title, as amended  
 16           by section 106(b)(3) of the Veterans Earn and  
 17           Learn Act of 2004 (title I of Public Law 108–454),  
 18           is further amended—

19                   (i) by striking paragraph (2); and

20                   (ii) by redesignating paragraph (3) as  
 21           paragraph (2).

22           (C) Section 3541 of such title is amended to  
 23           read as follows:

1 **“§ 3541. Special restorative training**

2 “(a) The Secretary may, at the request of an eligible  
3 person—

4 “(1) determine whether such person is in need  
5 of special restorative training; and

6 “(2) if such need is found to exist, prescribe a  
7 course which is suitable to accomplish the purposes  
8 of this chapter.

9 “(b) A course of special restorative training under  
10 subsection (a) may, at the discretion of the Secretary, con-  
11 tain elements that would contribute toward an ultimate  
12 objective of a program of education.”.

13 (D) Section 3695(a)(4) of such title is amended  
14 by striking “35,”.

15 (b) EXTENSION OF DELIMITING AGE OF ELIGIBILITY  
16 FOR DEPENDENTS.—Section 3512(a) of title 38, United  
17 States Code, is amended by striking “twenty-sixth birth-  
18 day” each place it appears and inserting “thirtieth birth-  
19 day”.

20 (c) AMOUNT OF EDUCATIONAL ASSISTANCE.—

21 (1) IN GENERAL.—Section 3532 of title 38,  
22 United States Code, is amended to read as follows:

23 **“§ 3532. Amount of educational assistance**

24 “(a) The aggregate amount of educational assistance  
25 to which an eligible person is entitled under this chapter

1 is \$80,000, as increased from time to time under section  
2 3564 of this title.

3 “(b) Within the aggregate amount provided for in  
4 subsection (a), educational assistance under this chapter  
5 may be paid for any purpose, and in any amount, as fol-  
6 lows:

7 “(1) A program of education consisting of insti-  
8 tutional courses.

9 “(2) A full-time program of education that con-  
10 sists of institutional courses and alternate phases of  
11 training in a business or industrial establishment  
12 with the training in the business or industrial estab-  
13 lishment being strictly supplemental to the institu-  
14 tional portion.

15 “(3) A farm cooperative program consisting of  
16 institutional agricultural courses prescheduled to fall  
17 within forty-four weeks of any period of twelve con-  
18 secutive months that is pursued by an eligible person  
19 who is concurrently engaged in agricultural employ-  
20 ment which is relevant to such institutional agricul-  
21 tural courses as determined under standards pre-  
22 scribed by the Secretary.

23 “(4) A course or courses or other program of  
24 special educational assistance as provided in section  
25 3491(a) of this title.

1           “(5) A program of apprenticeship or other on-  
2           job training pursued in a State as provided in sec-  
3           tion 3687(a) of this title.

4           “(6) In the case of an eligible spouse or sur-  
5           viving spouse, a program of education exclusively by  
6           correspondence as provided in section 3686 of this  
7           title.

8           “(7) A special training allowance for special re-  
9           storative training as provided in section 3542 of this  
10          title.

11          “(c) If a program of education is pursued by an eligi-  
12          ble person at an institution located in the Republic of the  
13          Philippines, any educational assistance for such person  
14          under this chapter shall be paid at the rate of \$0.50 for  
15          each dollar.

16          “(d)(1) Subject to paragraph (2), the amount of edu-  
17          cational assistance payable under this chapter for a licens-  
18          ing or certification test described in section 3501(a)(5) of  
19          this title is the lesser of \$2,000 or the fee charged for  
20          the test.

21          “(2) In no event shall payment of educational assist-  
22          ance under this subsection for such a test exceed the  
23          amount of the individual’s available entitlement under this  
24          chapter.”.

1           (2) CONFORMING AMENDMENTS.—(A) Section  
2       3533 of such title is amended to read as follows:

3   **“§ 3533. Tutorial assistance**

4       “An eligible person shall, without any charge to any  
5   entitlement of such person to educational assistance under  
6   section 3532(a) of this title be entitled to the benefits pro-  
7   vided an eligible veteran under section 3492 of this title.”.

8           (B) Section 3534 of such title is repealed.

9           (C) Section 3542 of such title is amended—

10           (i) in subsection (a), by striking “com-  
11       puted at the basic rate” and all that follows  
12       through the end of the subsection and inserting  
13       a period; and

14           (ii) in subsection (b), by striking “an edu-  
15       cational assistance allowance” and inserting  
16       “educational assistance”.

17           (D) Section 3543(c) of such title is amended—

18           (i) in paragraph (1), by adding “and” at  
19       the end;

20           (ii) by striking paragraph (2); and

21           (iii) by redesignating paragraph (3) as  
22       paragraph (2).

23           (E) Section 3564 of such title is amended by  
24       striking “rates payable under sections 3532,  
25       3534(b), and 3542(a)” and inserting “aggregate

1 amount of educational assistance payable under sec-  
 2 tion 3532”.

3 (F) Paragraph (1) of section 3565(b) of such  
 4 title is amended to read as follows:

5 “(1) educational assistance payable under sec-  
 6 tion 3532 of this title, including the special training  
 7 allowance referred to in subsection (b)(7) of such  
 8 section, shall be paid at the rate of \$0.50 for each  
 9 dollar; and”.

10 (G) Section 3687 of such title is amended—

11 (i) in subsection (a)—

12 (I) in the matter preceding paragraph  
 13 (1), by striking “or an eligible person (as  
 14 defined in section 3501(a) of this title”;  
 15 and

16 (II) in the flush matter following  
 17 paragraph (2), by striking “chapters 34  
 18 and 35” and inserting “chapter 34”;

19 (ii) in subsection (c), by striking “chapters  
 20 34 and 35” and inserting “chapter 34”; and

21 (iii) in subsection (e), as added by section  
 22 102(a) of the Veterans Earn and Learn Act of  
 23 2004 (title I of Public Law 108–454), by strik-  
 24 ing paragraph (3) and inserting the following  
 25 new paragraph (3):

1       “(3) In this subsection, the term ‘individual’ means  
 2   an eligible veteran who is entitled to monthly educational  
 3   assistance allowances payable under section 3015(e) of  
 4   this title.”.

5       (d) OTHER CONFORMING AMENDMENTS.—(1) Sec-  
 6   tion 3524 of title 38, United States Code, is amended by  
 7   striking “allowance” each place it appears.

8       (2)(A) Section 3531 of such title is amended—

9           (i) in subsection (a), by striking “an edu-  
 10   cational assistance allowance” and inserting “edu-  
 11   cational assistance”; and

12          (ii) in subsection (b), by striking “allowance”.

13       (B) The heading of such section is amended by strik-  
 14   ing “**allowance**”.

15       (3) Section 3537(a) of such title is amended by strik-  
 16   ing “additional”.

17       (e) CLERICAL AMENDMENTS.—The table of sections  
 18   at the beginning of chapter 35 of title 38, United States  
 19   Code, is amended—

20           (1) by striking the item relating to section 3511  
 21   and inserting the following new item:

“3511. Treatment of certain interruptions in pursuit of programs of edu-  
 cation.”;

22           (2) by striking the items relating to section  
 23   3531, 3532, and 3533 and inserting the following  
 24   new items:

“3531. Educational assistance.

“3532. Amount of educational assistance.

“3533. Tutorial assistance.”;

1           (3) by striking the item relating to section  
2       3534; and

3           (4) by striking the item relating to section 3541  
4       and inserting the following new item:

“3541. Special restorative training.”.

5       (f) EFFECTIVE DATES.—(1) Except as provided in  
6 paragraph (2), the amendments made by this section shall  
7 take effect on October 1, 2001.

8       (2) The amendments made by subsections (a)(2)(B)  
9 and (c)(2)(G)(iii) shall take effect on the date of the enact-  
10 ment of this Act.

11       (3) Notwithstanding the effective date under para-  
12 graph (1) of the amendment to section 3564 of title 38,  
13 United States Code, made by subsection (c)(2)(E), the  
14 Secretary of Veterans Affairs shall make the first increase  
15 in the aggregate amount of educational assistance under  
16 section 3532 of such title as required by such section 3564  
17 (as so amended) for fiscal year 2006.

○