

110TH CONGRESS
2D SESSION

S. 2570

To amend title II of the Social Security Act to authorize waivers by the Commissioner of Social Security of the 5-month waiting period for entitlement to benefits based on disability in cases in which the Commissioner determines that such waiting period would cause undue hardship to terminally ill beneficiaries.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2008

Ms. MURKOWSKI (for herself and Mr. STEVENS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title II of the Social Security Act to authorize waivers by the Commissioner of Social Security of the 5-month waiting period for entitlement to benefits based on disability in cases in which the Commissioner determines that such waiting period would cause undue hardship to terminally ill beneficiaries.

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 This Act may be cited as the “Robert James Act of
5 2008”.

1 **SEC. 2. WAIVER OF 5-MONTH WAITING PERIOD FOR BENE-**
2 **FITS BASED ON DISABILITY IN CASES OF TER-**
3 **MINALLY ILL BENEFICIARIES.**

4 (a) DISABILITY INSURANCE BENEFITS.—Section
5 223(a) of the Social Security Act (42 U.S.C. 423(a)) is
6 amended by adding at the end the following new para-
7 graph:

8 “(3) The Commissioner of Social Security may waive
9 the application of the individual’s waiting period under
10 clause (i) in the first sentence of paragraph (1) if the
11 Commissioner determines that such individual would oth-
12 erwise be entitled to disability insurance benefits under
13 this section, that such individual is terminally ill, and that
14 the application of the waiting period would work an undue
15 hardship on such individual (as determined on the basis
16 of criteria established by the Commissioner). In the case
17 of any such waiver granted by the Commissioner with re-
18 spect to an individual, notwithstanding clauses (i) and (ii)
19 in the first sentence of paragraph (1), the individual shall
20 be entitled to disability insurance benefits for each month,
21 beginning with the first month during all of which such
22 individual is under a disability and in which such indi-
23 vidual would become so entitled to such insurance benefits
24 under such sentence but for such waiting period, and end-
25 ing as provided in paragraph (1). For purposes of this
26 paragraph, an individual is considered to be ‘terminally

1 ill' if the individual has a medical prognosis that the indi-
 2 vidual's life expectancy is 6 months or less.”.

3 (b) WIDOW’S INSURANCE BENEFITS BASED ON DIS-
 4 ABILITY.—Section 202(e)(5) of such Act (42 U.S.C.
 5 402(e)(5)) is amended by adding at the end the following
 6 new subparagraph:

7 “(C) The Commissioner of Social Security may waive
 8 the application of the individual’s waiting period under
 9 paragraph (1)(F)(i) if the Commissioner determines that
 10 she would otherwise be entitled to widow’s insurance bene-
 11 fits under this section, that she is terminally ill, and that
 12 such application of the waiting period would work an
 13 undue hardship on her (as determined on the basis of cri-
 14 teria established by the Commissioner). In the case of any
 15 such waiver granted by the Commissioner with respect to
 16 an individual, notwithstanding clauses (i) and (ii) of para-
 17 graph (1)(F), she shall be entitled to widow’s insurance
 18 benefits for each month, beginning with the first month
 19 during all of which she is under a disability and in which
 20 she would become so entitled to such insurance benefits
 21 under paragraph (1) but for such waiting period, and end-
 22 ing as provided in paragraph (1). For purposes of this
 23 subparagraph, an individual is considered to be ‘terminally
 24 ill’ if the individual has a medical prognosis that the indi-
 25 vidual’s life expectancy is 6 months or less.”.

1 (c) WIDOWER’S INSURANCE BENEFITS BASED ON
2 DISABILITY.—Section 202(f)(5) of such Act (42 U.S.C.
3 402(f)(5)) is amended by adding at the end the following
4 new subparagraph:

5 “(C) The Commissioner of Social Security may waive
6 the application of the individual’s waiting period under
7 paragraph (1)(F)(i) if the Commissioner determines that
8 he would otherwise be entitled to widower’s insurance ben-
9 efits under this section, that he is terminally ill, and that
10 such application would work an undue hardship on him
11 (as determined on the basis of criteria established by the
12 Commissioner). In the case of any such waiver granted
13 by the Commissioner with respect to an individual, not-
14 withstanding clauses (i) and (ii) of paragraph (1)(F), he
15 shall be entitled to widower’s insurance benefits for each
16 month, beginning with the first month during all of which
17 he is under a disability and in which he would become
18 so entitled to such insurance benefits under paragraph (1)
19 but for such waiting period, and ending as provided in
20 paragraph (1). For purposes of this subparagraph, an in-
21 dividual is considered to be ‘terminally ill’ if the individual
22 has a medical prognosis that the individual’s life expect-
23 ancy is 6 months or less.”.

1 (d) COMMENCEMENT OF PERIOD OF DISABILITY.—
 2 Section 216(i)(2)(A) of such Act (42 U.S.C. 416(i)(2)(A))
 3 is amended—

- 4 (1) by inserting “(i)” after “(2)(A)”;
- 5 (2) by inserting “(I)” after “but only if”;
- 6 (3) by inserting “(II)” after “duration or”; and
- 7 (4) by adding at the end the following new
 8 clause:

9 “(ii) The Commissioner of Social Security may waive
 10 the application of the five-month requirement under clause
 11 (i)(I) if the Commissioner determines that such individual
 12 would otherwise be entitled to a period of disability under
 13 this paragraph, that such individual is terminally ill, and
 14 that the application of such five-month requirement would
 15 work an undue hardship on such individual (as determined
 16 on the basis of criteria established by the Commissioner).
 17 For purposes of this clause, an individual is considered
 18 to be ‘terminally ill’ if the individual has a medical prog-
 19 nosis that the individual’s life expectancy is 6 months or
 20 less.”.

21 **SEC. 3. EFFECTIVE DATES.**

22 The amendments made by subsection (a) of section
 23 2 of this Act shall apply only with respect to benefits
 24 under section 223 of the Social Security Act, or under sec-
 25 tion 202 of such Act on the basis of the wages and self-

1 employment income of an individual entitled to benefits
2 under such section 223, for months beginning after 90
3 days after the date of the enactment of this Act. The
4 amendments made by subsections (b) and (c) of section
5 2 of this Act shall apply only with respect to benefits based
6 on disability under subsection (e) or (f) of section 202 of
7 the Social Security Act for months after 90 days after the
8 date of the enactment of this Act. The amendments made
9 by subsection (d) of section 2 of this Act shall apply only
10 with respect to applications for disability determinations
11 filed under title II of the Social Security Act after 90 days
12 after the date of the enactment of this Act.

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