

110TH CONGRESS
2D SESSION

S. 2872

To amend titles II and XVI of the Social Security Act to provide for treatment of disability rated and certified as total by reason of unemployability by the Secretary of Veterans Affairs as disability for purposes of such titles, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2008

Mr. BROWN (for himself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles II and XVI of the Social Security Act to provide for treatment of disability rated and certified as total by reason of unemployability by the Secretary of Veterans Affairs as disability for purposes of such titles, 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.**

4 This Act may be cited as the “Benefit Rating Accel-
5 eration for Veteran Entitlements Act of 2008”.

1 **SEC. 2. TREATMENT OF SERVICE-CONNECTED DISABILITY**
 2 **RATED AND CERTIFIED AS TOTAL BY REASON**
 3 **OF UNEMPLOYABILITY BY THE SECRETARY**
 4 **OF VETERANS AFFAIRS AS DISABILITY FOR**
 5 **PURPOSES OF TITLE II OF THE SOCIAL SECU-**
 6 **RITY ACT.**

7 (a) DISABILITY FOR PURPOSES OF ENTITLEMENT TO
 8 DISABILITY INSURANCE BENEFITS AND OTHER BENE-
 9 FITS BASED ON DISABILITY.—

10 (1) IN GENERAL.—Section 223(d) of the Social
 11 Security Act (42 U.S.C. 423(d)) is amended by add-
 12 ing at the end the following new paragraph:

13 “(7)(A) Notwithstanding the preceding provisions of
 14 this subsection, any individual who has a service-connected
 15 disability rated by the Secretary of Veterans Affairs as
 16 total by reason of unemployability for purposes of benefits
 17 under chapter 11 of title 38, United States Code, is ex-
 18 pected by such Secretary to have such disability for not
 19 less than one year, and presents written certification of
 20 such rating determination to the Commissioner of Social
 21 Security shall be deemed to be under a disability (within
 22 the meaning of the preceding paragraphs of this sub-
 23 section) for each month—

24 “(i) beginning with the first month for which
 25 the Secretary of Veterans Affairs determines the in-
 26 dividual to have such a rating, and

1 “(ii) ending with the earlier of—

2 “(I) any month during which certification
3 is made to the Commissioner pursuant to sub-
4 paragraph (B) that such service-connected dis-
5 ability has ceased, or

6 “(II) any month during which the Commis-
7 sioner determines that such individual is no
8 longer entitled to benefits under this title on
9 the basis of being disabled as a result of a con-
10 tinuing disability review or a determination that
11 the individual is able to engage in substantial
12 gainful activity.

13 “(B) In any case in which the Secretary of Veterans
14 Affairs determines that an individual who has been deter-
15 mined by such Secretary to be totally disabled by reason
16 of unemployability for purposes of benefits under chapter
17 11 of title 38, United States Code, and with respect to
18 whom a certification has been made to the Commissioner
19 pursuant to subparagraph (A)(ii)(I) that such individual
20 has ceased to be so disabled, such Secretary shall promptly
21 certify to the Commissioner such Secretary’s determina-
22 tion that such individual has ceased to be so disabled.

23 “(C) Nothing in this paragraph shall be construed to
24 preclude a determination under this title that an indi-
25 vidual who is not deemed to be under a disability under

1 subparagraph (A) is under a disability (within the mean-
2 ing of the preceding paragraphs of this subsection).

3 “(D) The Commissioner of Social Security and the
4 Secretary of Veterans Affairs shall enter into such ar-
5 rangements as are necessary and appropriate for purposes
6 of carrying out the provisions of this paragraph. Such ar-
7 rangements shall include requirements for—

8 “(i) the Secretary of Veterans Affairs to—

9 “(I) include in the written certification re-
10 quired under subparagraph (A) the dates of
11 services which resulted in the service connected
12 disability of the individual; and

13 “(II) immediately notify the Commissioner
14 of Social Security of any knowledge of such
15 Secretary that an individual who is deemed to
16 be under a disability under subparagraph (A)
17 engages or is able to engage in substantial gain-
18 ful activity; and

19 “(ii) the Commissioner of Social Security to
20 provide the Secretary of Veterans Affairs with the
21 names of each individual deemed to be under a dis-
22 ability under subparagraph (A).

23 “(E) An individual who is deemed to be under a dis-
24 ability under subparagraph (A) shall be notified of the re-
25 quirement to immediately notify the Commissioner of So-

1 cial Security and the Secretary of Veterans Affairs of any
 2 work activity engaged in by the individual that results in
 3 earnings that exceed the level of earnings established by
 4 the Commissioner of Social Security to represent substan-
 5 tial gainful activity and that are not conducted during a
 6 period of trial work (as defined in section 222(c)).”.

7 (2) OTHER BENEFITS BASED ON DISABILITY.—

8 (A) CHILD’S INSURANCE BENEFITS.—Sec-
 9 tion 202(d)(1) of such Act (42 U.S.C.
 10 402(d)(1)) is amended by adding at the end the
 11 following new sentence: “Under regulations of
 12 the Commissioner of Social Security, the provi-
 13 sions of section 223(d)(7) shall apply with re-
 14 spect to benefits under this section (and deter-
 15 minations of disability made for purposes of de-
 16 terminations of entitlement to such benefits) in
 17 the same manner and to the same extent as
 18 such provisions apply with respect to benefits
 19 under section 223 (and determinations of dis-
 20 ability made for purposes of determinations of
 21 entitlement to benefits under section 223).”.

22 (B) WIDOW’S INSURANCE BENEFITS.—

23 Section 202(e)(1) of such Act (42 U.S.C.
 24 402(e)(1)) is amended by adding at the end the
 25 following new sentence: “Under regulations of

1 the Commissioner of Social Security, the provi-
 2 sions of section 223(d)(7) shall apply with re-
 3 spect to benefits under this section (and deter-
 4 minations of disability made for purposes of de-
 5 terminations of entitlement to such benefits) in
 6 the same manner and to the same extent as
 7 such provisions apply with respect to benefits
 8 under section 223 (and determinations of dis-
 9 ability made for purposes of determinations of
 10 entitlement to benefits under section 223).’’.

11 (C) WIDOWER’S INSURANCE BENEFITS.—
 12 Section 202(f)(1) of such Act (42 U.S.C.
 13 402(f)(1)) is amended by adding at the end the
 14 following new sentence: “Under regulations of
 15 the Commissioner of Social Security, the provi-
 16 sions of section 223(d)(7) shall apply with re-
 17 spect to benefits under this section (and deter-
 18 minations of disability made for purposes of de-
 19 terminations of entitlement to such benefits) in
 20 the same manner and to the same extent as
 21 such provisions apply with respect to benefits
 22 under section 223 (and determinations of dis-
 23 ability made for purposes of determinations of
 24 entitlement to benefits under section 223).’’.

1 (b) DETERMINATIONS OF PERIODS OF DIS-
 2 ABILITY.—Section 216(i) of such Act (42 U.S.C. 416(i))
 3 is amended by adding at the end the following new para-
 4 graph:

5 “(4)(A) Notwithstanding paragraphs (1) and (2), any
 6 individual who has a service-connected disability rated by
 7 the Secretary of Veterans Affairs as total by reason of
 8 unemployability for purposes of benefits under chapter 11
 9 of title 38, United States Code, is expected by such Sec-
 10 retary to have such disability for not less than one year,
 11 and presents written certification of such rating deter-
 12 mination to the Commissioner of Social Security shall be
 13 deemed to be under a disability (within the meaning of
 14 paragraph (1)) for each month—

15 “(i) beginning with the first month for which
 16 the Secretary of Veterans Affairs determines the in-
 17 dividual to have such a rating, and

18 “(ii) ending with the earlier of—

19 “(I) any month during which certification
 20 is made to the Commissioner pursuant to sub-
 21 paragraph (B) that such service-connected dis-
 22 ability has ceased, or

23 “(II) any month during which the Commis-
 24 sioner determines that such individual is no
 25 longer entitled to benefits under this title on

1 the basis of being disabled as a result of a con-
2 tinuing disability review or a determination that
3 the individual is able to engage in substantial
4 gainful activity.

5 “(B) In any case in which the Secretary of Veterans
6 Affairs determines that an individual who has been deter-
7 mined by such Secretary to be totally disabled by reason
8 of unemployability for purposes of benefits under chapter
9 11 of title 38, United States Code, and with respect to
10 whom a certification has been made to the Commissioner
11 pursuant to subparagraph (A) that such individual has
12 ceased to be so disabled, such Secretary shall promptly
13 certify to the Commissioner such Secretary’s determina-
14 tion that such individual has ceased to be so disabled.

15 “(C) Nothing in this paragraph shall be construed to
16 preclude a determination under this title that an indi-
17 vidual who is not deemed to be under a disability under
18 subparagraph (A) is under a disability (within the mean-
19 ing of paragraph (1)).

20 “(D) The Commissioner of Social Security and the
21 Secretary of Veterans Affairs shall enter into such ar-
22 rangements as are necessary and appropriate for purposes
23 of carrying out the provisions of this paragraph. Such ar-
24 rangements shall include requirements for—

25 “(i) the Secretary of Veterans Affairs to—

1 “(I) include in the written certification re-
2 quired under subparagraph (A) the dates of
3 services which resulted in the service connected
4 disability of the individual; and

5 “(II) immediately notify the Commissioner
6 of Social Security of any knowledge of such
7 Secretary that an individual who is deemed to
8 be under a disability under subparagraph (A)
9 engages or is able to engage in substantial gain-
10 ful activity; and

11 “(ii) the Commissioner of Social Security to
12 provide the Secretary of Veterans Affairs with the
13 names of each individual deemed to be under a dis-
14 ability under subparagraph (A).

15 “(E) An individual who is deemed to be under a dis-
16 ability under subparagraph (A) shall be notified of the re-
17 quirement to immediately notify the Commissioner of So-
18 cial Security and the Secretary of Veterans Affairs of any
19 work activity engaged in by the individual that results in
20 earnings that exceed the level of earnings established by
21 the Commissioner of Social Security to represent substan-
22 tial gainful activity and that are not conducted during a
23 period of trial work (as defined in section 222(c)).”.

1 **SEC. 3. TREATMENT OF DISABILITY RATED AND CERTIFIED**
 2 **AS TOTAL BY REASON OF UNEMPLOYABILITY**
 3 **BY THE SECRETARY OF VETERANS AFFAIRS**
 4 **AS DISABILITY FOR PURPOSES OF TITLE XVI**
 5 **OF THE SOCIAL SECURITY ACT.**

6 Section 1614(a)(3) of the Social Security Act (42
 7 U.S.C. 1382c(a)(3)) is amended by adding at the end the
 8 following new subparagraph:

9 “(K) In making determinations with re-
 10 spect to disability under this title, the provi-
 11 sions of section 223(d)(7) shall apply in the
 12 same manner as they apply to determinations of
 13 disability under title II.”.

14 **SEC. 4. APPLICATION OF MEDICAL FINDINGS BY THE SEC-**
 15 **RETARY OF VETERANS AFFAIRS FOR INDIV-**
 16 **IDUALS WITH A SERVICE-CONNECTED DIS-**
 17 **ABILITY FOR PURPOSES OF DISABILITY DE-**
 18 **TERMINATIONS UNDER TITLES II AND XVI OF**
 19 **THE SOCIAL SECURITY ACT.**

20 Section 223(d)(5) of the Social Security Act (42
 21 U.S.C. 423(d)(5)) is amended by adding at the end the
 22 following new subparagraph:

23 “(C) In making any determination with respect to
 24 whether an individual is under a disability or continues
 25 to be under a disability, the medical findings of the Sec-
 26 retary of Veterans Affairs, including any findings of phys-

1 ical limitations, regarding any individual who has a serv-
 2 ice-connected disability certified by the Secretary of Vet-
 3 erans Affairs (without regard to whether such service-con-
 4 nected disability is rated by the Secretary of Veterans Af-
 5 fairs as total by reason of unemployability for purposes
 6 of benefits under chapter 11 of title 38, United States
 7 Code, and is expected by such Secretary to have such dis-
 8 ability for not less than one year) shall be conclusive evi-
 9 dence of disability.”.

10 **SEC. 5. TREATMENT OF VETERANS DETERMINED DISABLED**
 11 **FOR PURPOSES OF THE SOCIAL SECURITY**
 12 **ACT AS VETERANS TOTALLY DISABLED BY**
 13 **REASON OF INDIVIDUAL UNEMPLOYABILITY.**

14 (a) IN GENERAL.—Subchapter VI of chapter 11 of
 15 title 38, United States Code, is amended by adding at the
 16 end the following new section:

17 **“§ 1164. Treatment of certain veterans as totally dis-**
 18 **abled by reason of individual**
 19 **unemployability**

20 “(a) IN GENERAL.—A veteran who is determined by
 21 the Commissioner of Social Security to be under a dis-
 22 ability for purposes of title II or XVI of the Social Security
 23 Act (42 U.S.C. 401 et seq., 1381 et seq.) shall be treated
 24 for purposes of this chapter as being a veteran with a dis-
 25 ability or a combination of disabilities rated as 100 per-

1 cent disabling by reason of a determination of individual
2 unemployability.

3 “(b) NO ESTABLISHMENT OF SERVICE-CONNEC-
4 TION.—The requirement in subsection (a) shall not be
5 construed to establish a service-connection or presumption
6 of service-connection with respect to any disability of a
7 veteran.

8 “(c) TERMINATION OF TREATMENT.—(1) Subsection
9 (a) shall cease to apply to a veteran otherwise covered by
10 that subsection upon either of the following:

11 “(A) A reduction by the Secretary of the com-
12 bined disability rating of the veteran in accordance
13 with a determination by the Secretary that an im-
14 provement in one or more of the veteran’s disabil-
15 ities has occurred.

16 “(B) A determination by the Commissioner of
17 Social Security that the veteran is no longer under
18 a disability for purposes of titles II and XVI of the
19 Social Security Act.

20 “(2) The Commissioner of Social Security shall
21 promptly notify the Secretary of each determination cov-
22 ered by paragraph (1)(B).”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 11 of such title is amended
25 by adding at the end the following new item:

“1164. Treatment of certain veterans as totally disabled by reason of individual unemployability.”.

1 **SEC. 6. EFFECTIVE DATE.**

2 The amendments made by this Act shall apply with
3 respect to determinations of disability in connection with
4 applications for benefits or periods of disability filed or
5 pending on or after the date of the enactment of this Act.

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