

110TH CONGRESS  
2D SESSION

# S. 2874

To amend titles 5, 10, 37, and 38, United States Code, to ensure the fair treatment of a member of the Armed Forces who is discharged from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early discharge of a member who is the only surviving child in a family in which the father or mother, or one or more siblings, served in the Armed Forces and, because of hazards incident to such service, was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently disabled, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 16, 2008

Mrs. FEINSTEIN (for herself, Mr. CHAMBLISS, Mr. KENNEDY, Mr. SCHUMER, and Mrs. BOXER) 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 5, 10, 37, and 38, United States Code, to ensure the fair treatment of a member of the Armed Forces who is discharged from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early discharge of a member who is the only surviving child in a family in which the father or mother, or one or more siblings, served in the Armed Forces and, because of hazards incident to such service, was killed, died as a result of wounds, accident, or disease, is in a captured or

missing in action status, or is permanently disabled, 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 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Hubbard Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Continued payment of bonuses and similar benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 3. Availability of separation pay for members of the Armed Forces with less than six years of active service who receive sole survivorship discharge.
- Sec. 4. Transitional health care for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 5. Transitional commissary and exchange benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 6. Veterans benefits for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 7. Unemployment compensation for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 8. Preference-eligible status for members of the Armed Forces who receive sole survivorship discharge.
- Sec. 9. Effective date.

8 **SEC. 2. CONTINUED PAYMENT OF BONUSES AND SIMILAR**  
 9 **BENEFITS FOR MEMBERS OF THE ARMED**  
 10 **FORCES WHO RECEIVE SOLE SURVIVORSHIP**  
 11 **DISCHARGE.**

12 (a) EFFECT OF SOLE SURVIVORSHIP DISCHARGE.—  
 13 Section 303a(e) of title 37, United States Code, is amend-  
 14 ed—

1           (1) in paragraph (1), by striking “A member”  
2           and inserting “(A) Except as provided in paragraph  
3           (2), a member”;

4           (2) by redesignating paragraph (2) as subpara-  
5           graph (B) of paragraph (1).

6           (3) by inserting after paragraph (1), as so  
7           amended, the following new paragraph (2):

8           “(2)(A) If a member of the uniformed services re-  
9           ceives a sole survivorship discharge, the Secretary con-  
10          cerned—

11           “(i) shall not require repayment by the member  
12           of the unearned portion of any bonus, incentive pay,  
13           or similar benefit previously paid to the member;  
14           and

15           “(ii) may grant an exception to the requirement  
16           to terminate the payment of any unpaid amounts of  
17           a bonus, incentive pay, or similar benefit if the Sec-  
18           retary concerned determines that termination of the  
19           payment of the unpaid amounts would be contrary  
20           to a personnel policy or management objective,  
21           would be against equity and good conscience, or  
22           would be contrary to the best interests of the United  
23           States.

24           “(B) In this paragraph, the term ‘sole survivorship  
25           discharge’ means the separation of a member from the

1 Armed Forces, at the request of the member, pursuant  
2 to the Department of Defense policy permitting the early  
3 separation of a member who is the only surviving child  
4 in a family in which—

5 “(i) the father or mother or one or more sib-  
6 lings—

7 “(I) served in the Armed Forces; and

8 “(II) was killed, died as a result of  
9 wounds, accident, or disease, is in a captured or  
10 missing in action status, or is permanently 100  
11 percent disabled or hospitalized on a continuing  
12 basis (and is not employed gainfully because of  
13 the disability or hospitalization); and

14 “(ii) the death, status, or disability did not re-  
15 sult from the intentional misconduct or willful ne-  
16 glect of the parent or sibling and was not incurred  
17 during a period of unauthorized absence.”.

18 (b) SENSE OF CONGRESS.—In light of the extraor-  
19 dinary discretion granted to the Secretary of a military  
20 department by statute and policy to continue to pay the  
21 unpaid amounts of a bonus, incentive pay, or similar ben-  
22 efit otherwise due to a member of the Armed Forces under  
23 the jurisdiction of the Secretary who receives a sole survi-  
24 vorship discharge, it is the sense of Congress that the Sec-  
25 retaries of the military departments should aggressively

1 use such discretion to the benefit of members receiving  
 2 a sole survivorship discharge.

3 **SEC. 3. AVAILABILITY OF SEPARATION PAY FOR MEMBERS**  
 4 **OF THE ARMED FORCES WITH LESS THAN SIX**  
 5 **YEARS OF ACTIVE SERVICE WHO RECEIVE**  
 6 **SOLE SURVIVORSHIP DISCHARGE.**

7 Section 1174 of title 10, United States Code, is  
 8 amended—

9 (1) by redesignating subsection (i) as subsection  
 10 (j); and

11 (2) by inserting after subsection (h) the fol-  
 12 lowing new subsection:

13 “(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE  
 14 SURVIVORSHIP DISCHARGE.—(1) A member of the Armed  
 15 Forces who receives a sole survivorship discharge shall be  
 16 entitled to separation pay under this section even though  
 17 the member has completed less than six years of active  
 18 service immediately before that discharge. Subsection (e)  
 19 shall not apply to a member who receives a sole survivor-  
 20 ship discharge.

21 “(2) The amount of the separation pay to be paid  
 22 to a member pursuant to this subsection shall be based  
 23 on the years of active service actually completed by the  
 24 member before the member’s sole survivorship discharge.

1       “(3) In this subsection, the term ‘sole survivorship  
 2 discharge’ means the separation of a member from the  
 3 Armed Forces, at the request of the member, pursuant  
 4 to the Department of Defense policy permitting the early  
 5 separation of a member who is the only surviving child  
 6 in a family in which—

7               “(A) the father or mother or one or more sib-  
 8 lings—

9                       “(i) served in the Armed Forces; and

10                      “(ii) was killed, died as a result of wounds,  
 11 accident, or disease, is in a captured or missing  
 12 in action status, or is permanently 100 percent  
 13 disabled or hospitalized on a continuing basis  
 14 (and is not employed gainfully because of the  
 15 disability or hospitalization); and

16               “(B) the death, status, or disability did not re-  
 17 sult from the intentional misconduct or willful ne-  
 18 glect of the parent or sibling and was not incurred  
 19 during a period of unauthorized absence.”.

20 **SEC. 4. TRANSITIONAL HEALTH CARE FOR MEMBERS OF**  
 21 **THE ARMED FORCES WHO RECEIVE SOLE**  
 22 **SURVIVORSHIP DISCHARGE.**

23       Section 1145(a)(2) of title 10, United States Code,  
 24 is amended by adding at the end the following new sub-  
 25 paragraph:

1           “(E) A member who receives a sole survivorship  
2       discharge (as defined in section 1174(i) of this  
3       title).”.

4   **SEC. 5. TRANSITIONAL COMMISSARY AND EXCHANGE BEN-**  
5                   **EFITS FOR MEMBERS OF THE ARMED**  
6                   **FORCES WHO RECEIVE SOLE SURVIVORSHIP**  
7                   **DISCHARGE.**

8       Section 1146 of title 10, United States Code, is  
9   amended—

10           (1) by striking “The Secretary of Defense” and  
11       inserting the following:

12       “(a) BENEFITS FOR MEMBERS INVOLUNTARILY SEP-  
13   ARATED.—The Secretary of Defense”; and

14           (2) by adding at the end the following new sub-  
15       section:

16       “(b) BENEFITS FOR MEMBERS RECEIVING SOLE  
17   SURVIVORSHIP DISCHARGE.—A member of the Armed  
18   Forces who receives a sole survivorship discharge (as de-  
19   fined in section 1174(i) of this title) is entitled to continue  
20   to use commissary and exchange stores and morale, wel-  
21   fare, and recreational facilities in the same manner as a  
22   member on active duty during the two-year period begin-  
23   ning on the later of the following dates:

24           “(1) The date of the separation of the member.

1           “(2) The date on which the member is first no-  
 2           tified of the members entitlement to benefits under  
 3           this section.”.

4 **SEC. 6. VETERANS BENEFITS FOR MEMBERS OF THE**  
 5 **ARMED FORCES WHO RECEIVE SOLE SURVI-**  
 6 **VORSHIP DISCHARGE.**

7           (a) HOUSING LOAN BENEFITS.—Section 3702(a)(2)  
 8 of title 38, United States Code, is amended by adding at  
 9 the end the following new subparagraph:

10           “(F) Each veteran who was discharged or re-  
 11           leased from a period of active duty of 90 days or  
 12           more by reason of a sole survivorship discharge (as  
 13           that term is defined in section 1174(i) of title 10).”.

14           (b) EMPLOYMENT AND TRAINING.—Section 4211(4)  
 15 of such title is amended—

16           (1) in subparagraph (B), by striking “or” at  
 17           the end;

18           (2) in subparagraph (C), by striking the period  
 19           at the end and inserting “; or”; and

20           (3) by adding at the end the following new sub-  
 21           paragraph:

22           “(D) was discharged or released from ac-  
 23           tive duty by reason of a sole survivorship dis-  
 24           charge (as that term is defined in section  
 25           1174(i) of title 10).”.

1 (c) BASIC EDUCATIONAL ASSISTANCE.—

2 (1) SERVICE ON ACTIVE DUTY.—Section  
3 3011(a)(1) of such title is amended—

4 (A) in subparagraph (A)(ii), by inserting  
5 after “service-connected disability,” the fol-  
6 lowing: “by reason of a sole survivorship dis-  
7 charge (as that term is defined in section  
8 1174(i) of title 10),”;

9 (B) in subparagraph (B)(ii), by inserting  
10 after “service-connected disability,” the fol-  
11 lowing: “by reason of a sole survivorship dis-  
12 charge (as that term is defined in section  
13 1174(i) of title 10),” and

14 (C) in subparagraph (C)(iii)(II), by insert-  
15 ing after “service-connected disability,” the fol-  
16 lowing: “by reason of a sole survivorship dis-  
17 charge (as that term is defined in section  
18 1174(i) of title 10),”.

19 (2) SERVICE IN THE SELECTED RESERVE.—  
20 Section 3012(b)(1) of such title is amended—

21 (A) in subparagraph (A)—

22 (i) by striking “, or (vi)” and insert-  
23 ing “, (vi)”; and

24 (ii) by inserting before the period at  
25 the end the following: “, or (vii) by reason

of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10)”; and

(B) in subparagraph (B)—

(i) in clause (i), by inserting after “service-connected disability,” the following: “by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10),”; and

(ii) in clause (ii)—

(I) by striking “, or (VI)” and inserting “, (VI)”; and

(II) by inserting before the period at the end the following: “, or (VII) by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10)”.

**SEC. 7. UNEMPLOYMENT COMPENSATION FOR MEMBERS  
OF THE ARMED FORCES WHO RECEIVE SOLE  
SURVIVORSHIP DISCHARGE.**

Section 8521(a)(1)(B)(ii)(III) of title 5, United States Code, is amended by striking “hardship,” and inserting “hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10),”.

1 **SEC. 8. PREFERENCE-ELIGIBLE STATUS FOR MEMBERS OF**  
2 **THE ARMED FORCES WHO RECEIVE SOLE**  
3 **SURVIVORSHIP DISCHARGE.**

4 Section 2108(3) of title 5, United States Code, is  
5 amended—

6 (1) in subparagraph (F), by striking “and” at  
7 the end;

8 (2) in subparagraph (G), by inserting “and” at  
9 the end; and

10 (3) by inserting after subparagraph (G) the fol-  
11 lowing:

12 “(H) a veteran who was discharged or re-  
13 leased from a period of active duty by reason of  
14 a sole survivorship discharge (as that term is  
15 defined in section 1174(i) of title 10);”.

16 **SEC. 9. EFFECTIVE DATE.**

17 (a) **RETROACTIVE EFFECTIVE DATE.**—Except as  
18 provided in subsection (b), this Act and the amendments  
19 made by this Act shall apply with respect to any sole survi-  
20 vorship discharge granted after September 11, 2001.

21 (b) **DATE OF ENACTMENT EFFECTIVE DATE FOR**  
22 **CERTAIN AMENDMENTS.**—The amendments made by sec-  
23 tions 4, 6(c), 7, and 8 shall apply with respect to any sole  
24 survivorship discharge granted after the date of the enact-  
25 ment of this Act.

1       (c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In  
2 this section, the term “sole survivorship discharge” means  
3 the separation of a member from the Armed Forces, at  
4 the request of the member, pursuant to the Department  
5 of Defense policy permitting the early separation of a  
6 member who is the only surviving child in a family in  
7 which—

8           (1) the father or mother or one or more sib-  
9       lings—

10               (A) served in the Armed Forces; and

11               (B) was killed, died as a result of wounds,  
12       accident, or disease, is in a captured or missing  
13       in action status, or is permanently 100 percent  
14       disabled or hospitalized on a continuing basis  
15       (and is not employed gainfully because of the  
16       disability or hospitalization); and

17           (2) the death, status, or disability did not result  
18       from the intentional misconduct or willful neglect of  
19       the parent or sibling and was not incurred during a  
20       period of unauthorized absence.

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