

113TH CONGRESS
1ST SESSION

S. 628

To amend title 10, United States Code, to extend the duration of the Physical Disability Board of Review and to the expand the authority of such Board to review of the separation of members of the Armed Forces on the basis of a mental condition not amounting to disability, including separation on the basis of a personality or adjustment disorder.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2013

Mr. TESTER (for himself, Mr. BAUCUS, Mr. BEGICH, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to extend the duration of the Physical Disability Board of Review and to the expand the authority of such Board to review of the separation of members of the Armed Forces on the basis of a mental condition not amounting to disability, including separation on the basis of a personality or adjustment disorder.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Servicemember Mental
3 Health Review Act”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) Since September 11, 2001, approximately
7 30,000 veterans have been separated from the
8 Armed Forces on the basis of a personality disorder
9 or adjustment disorder.

10 (2) Nearly all veterans who are separated on
11 the basis of a personality or adjustment disorder are
12 prohibited from accessing service-connected disability
13 compensation, disability severance pay, and disability
14 retirement pay.

15 (3) Many veterans who are separated on the
16 basis of a personality or adjustment disorder are un-
17 able to find employment because of the “personality
18 disorder” or “adjustment disorder” label on their
19 Certificate of Release or Discharge from Active
20 Duty.

21 (4) The Government Accountability Office has
22 found that the regulatory compliance of the Depart-
23 ment of Defense in separating members of the
24 Armed Forces on the basis of a personality or ad-
25 justment disorder was as low as 40 percent between
26 2001 and 2007.

1 (5) Expansion of the authority of the Physical
 2 Disability Board of Review to include review of the
 3 separation of members of the Armed Forces on the
 4 basis of a mental condition not amounting to dis-
 5 ability, including separation on the basis of a per-
 6 sonality or adjustment disorder, is warranted in
 7 order to ensure that any veteran wrongly separated
 8 on such basis will have the ability to access disability
 9 benefits and employment opportunities available to
 10 veterans.

11 **SEC. 3. REVIEW BY PHYSICAL DISABILITY BOARD OF RE-**
 12 **VIEW OF MILITARY SEPARATION ON BASIS OF**
 13 **A MENTAL CONDITION NOT AMOUNTING TO**
 14 **DISABILITY.**

15 (a) MEMBERS ENTITLED TO REVIEW BY PHYSICAL
 16 DISABILITY BOARD OF REVIEW.—Section 1554a of title
 17 10, United States Code, is amended—

18 (1) in subsection (a)(1), by striking “disability
 19 determinations of covered individuals by Physical
 20 Evaluation Boards” and inserting “disability and
 21 separation determinations regarding certain mem-
 22 bers and former members of the armed forces de-
 23 scribed in subsection (b)”;

24 (2) by striking subsection (b) and inserting the
 25 following new subsection:

1 “(b) COVERED INDIVIDUALS.—For purposes of this
 2 section, covered individuals are members and former mem-
 3 bers of the armed forces who—

4 “(1) during the period beginning on September
 5 11, 2001, and ending on December 31, 2014, are
 6 separated from the armed forces due to unfitness for
 7 duty because of a medical condition with a disability
 8 rating of 20 percent disabled or less and are found
 9 to be not eligible for retirement; or

10 “(2) before December 31, 2014, are separated
 11 from the armed forces due of unfitness for duty be-
 12 cause of a mental condition not amounting to dis-
 13 ability, including separation on the basis of a per-
 14 sonality disorder or adjustment disorder.”.

15 (b) NATURE AND SCOPE OF REVIEW.—Such section
 16 is further amended—

17 (1) by redesignating subsections (d), (e), and
 18 (f) as subsections (e), (f), and (g), respectively; and

19 (2) by inserting after subsection (c) the fol-
 20 lowing new subsection (d):

21 “(d) REVIEW OF SEPARATIONS DUE TO UNFITNESS
 22 FOR DUTY BECAUSE OF A MENTAL CONDITION NOT
 23 AMOUNTING TO DISABILITY.—(1) Upon the request of a
 24 covered individual described in paragraph (2) of sub-
 25 section (b), or a surviving spouse, next of kin, or legal

1 representative of a covered individual described in such
2 paragraph, the Physical Disability Board of Review shall
3 review the findings and decisions of the Physical Evalua-
4 tion Board with respect to such covered individual. In ad-
5 dition, the Physical Disability Board of Review may re-
6 view, upon its own motion, the findings and decisions of
7 the Physical Evaluation Board with respect to a covered
8 individual described in such paragraph.

9 “(2) Whenever a review is conducted under para-
10 graph (1), the members of the Physical Disability Board
11 of Review shall include at least one licensed psychologist
12 and one licensed psychiatrist who has not had any fidu-
13 ciary responsibility to the Department of Defense since
14 December 31, 2001.

15 “(3) In conducting the review under paragraph (1),
16 the Physical Disability Board of Review shall consider—

17 “(A) the findings of the psychologist or psychia-
18 trist of the Department of Defense who diagnosed
19 the mental condition;

20 “(B) the findings and decisions of the separa-
21 tion authority with respect to the covered individual;
22 and

23 “(C) whether the separation authority correctly
24 followed the process for separation as set forth in

1 law, including Department of Defense regulations,
2 directives, and policies.

3 “(4) The review by the Physical Disability Board of
4 Review under paragraph (1) shall be based on the records
5 of the Department of Defense and the Department of Vet-
6 erans Affairs and such other evidence as may be presented
7 to the Board. The Board shall consider any and all evi-
8 dence to be considered, including private mental health
9 records submitted by the covered individual in support of
10 the claim.

11 “(5) If the Physical Disability Board of Review pro-
12 poses, upon its own motion, to conduct a review under
13 paragraph (1) with respect to a covered individual, the
14 Board shall notify the covered individual, or a surviving
15 spouse, next of kin, or legal representative of the covered
16 individual, of the proposed review and obtain the consent
17 of the covered individual or a surviving spouse, next of
18 kin, or legal representative of the covered individual before
19 proceeding with the review.

20 “(6) After the Physical Disability Board of Review
21 has completed the review under this subsection with re-
22 spect to the separation of a covered individual, the Board
23 shall provide the claimant with a statement of reasons con-
24 cerning the Board’s decision. The covered individual has

1 the right to raise with the Board a motion for reconsider-
 2 ation if—

3 “(A) new evidence can be presented that would
 4 address the issues raised in the Board’s statement
 5 of reasons; or

6 “(B) the Board has made a plain error in mak-
 7 ing its recommendation.”.

8 (c) CORRECTION OF MILITARY RECORDS.—Sub-
 9 section (f) of such section, as redesignated by subsection
 10 (b)(1), is amended to read as follows:

11 “(f) CORRECTION OF MILITARY RECORDS.—(1) The
 12 Secretary of the military department concerned shall cor-
 13 rect the military records of a covered individual in accord-
 14 ance with the recommendation made by the Physical Dis-
 15 ability Board of Review under subsection (e) unless the
 16 Secretary determines that the Board has made a clearly
 17 erroneous recommendation. Any such correction shall be
 18 made effective as of the date of the separation of the cov-
 19 ered individual.

20 “(2) In the case of a covered individual previously
 21 separated with a lump-sum or other payment of back pay
 22 and allowances at separation, the amount of pay or other
 23 monetary benefits to which such individual would be enti-
 24 tled based on the individual’s military record as corrected
 25 shall be adjusted to take into account receipt of such

1 lump-sum or other payment in such manner as the Sec-
 2 retary of the military department concerned considers ap-
 3 propriate.

4 “(3) If the Physical Disability Board of Review
 5 makes a recommendation not to correct the military
 6 records of a covered individual, the action taken on the
 7 report of the Physical Evaluation Board to which such rec-
 8 ommendation relates shall be treated as final as of the
 9 date of such action.”.

10 (d) CONFORMING AMENDMENTS.—Such section is
 11 further amended—

12 (1) in subsection (c)—

13 (A) by inserting after “REVIEW” the fol-
 14 lowing: “OF SEPARATIONS DUE TO UNFITNESS
 15 FOR DUTY BECAUSE OF MEDICAL CONDITION
 16 WITH A LOW DISABILITY RATING”; and

17 (B) in paragraph (1)—

18 (i) by inserting “described in para-
 19 graph (1) of subsection (b)” after “a cov-
 20 ered individual” the first place it appears;

21 (ii) by inserting “described in such
 22 paragraph” after “a covered individual”
 23 the second place it appears; and

24 (iii) by striking the second sentence
 25 and inserting the following new sentence:

1 “In addition, the Physical Disability Board
 2 of Review may review, upon its own mo-
 3 tion, the findings and decisions of the
 4 Physical Evaluation Board with respect to
 5 a covered individual described in such
 6 paragraph.”; and

7 (2) in subsection (e), as redesignated by sub-
 8 section (b)(1), by striking “under subsection (c)”
 9 and inserting “conducted under subsection (c) or
 10 (d)”.

11 (e) NOTIFICATION OF NEW AVAILABILITY OF RE-
 12 VIEW.—

13 (1) NOTIFICATION REQUIREMENT.—In the case
 14 of individuals described in subsection (b)(2) of sec-
 15 tion 1554a of title 10, United States Code, as
 16 amended by subsection (a), who have been separated
 17 from the Armed Forces during the period beginning
 18 on September 11, 2001, and ending on the date of
 19 the enactment of this Act or who are separated after
 20 that date, the Secretary of Defense shall ensure, to
 21 the greatest extent practicable, that such individuals
 22 receive oral and written notification of their right to
 23 a review of their separation from the Armed Forces
 24 under such section 1554a.

1 (2) COMPLIANCE.—The Secretary of the mili-
2 tary department with jurisdiction over the Armed
3 Force in which the individual served immediately be-
4 fore separation shall be responsible for providing to
5 the individual the notification required by paragraph
6 (1). The Secretary of Defense shall monitor compli-
7 ance with this notification requirement and promptly
8 notify Congress of any failures to comply.

9 (3) LEGAL COUNSEL.—The notification re-
10 quired by paragraph (1) shall—

11 (A) inform the individual of the right to
12 obtain legal or non-legal counsel to represent
13 the individual before the Physical Disability
14 Board of Review; and

15 (B) include a list of organizations that
16 may provide such counsel at no cost to the indi-
17 vidual.

18 (f) CLERICAL AMENDMENTS.—

19 (1) SECTION HEADING.—The heading of such
20 section is amended to read as follows:

1 **“§ 1554a. Physical Disability Board of Review: review**
2 **of separations with disability rating of 20**
3 **percent or less and separations on basis**
4 **of mental condition not amounting to dis-**
5 **ability”.**

6 (2) TABLE OF SECTIONS.—The table of sections
7 at the beginning of chapter 79 of such title is
8 amended by striking the item relating to section
9 1554a and inserting the following new item:

“1554a. Physical Disability Board of Review: review of separations with disability rating of 20 percent or less and separations on basis of mental condition not amounting to disability.”.

