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S. 1366

To direct the Secretary of Defense to review the discharge characterization of former members of the Armed Forces who were discharged by reason of the sexual orientation of the member, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2017

Mr. SCHATZ (for himself, Ms. BALDWIN, Mr. BENNET, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. HIRONO, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mr. PETERS, Mr. SANDERS, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mr. KAINE, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To direct the Secretary of Defense to review the discharge characterization of former members of the Armed Forces who were discharged by reason of the sexual orientation of the member, 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 “Restore Honor to Serv-
5 ice Members Act”.

1 **SEC. 2. REVIEW OF DISCHARGE CHARACTERIZATION.**

2 (a) IN GENERAL.—In accordance with this section,
3 the appropriate discharge boards—

4 (1) shall review the discharge characterization
5 of covered members at the request of the covered
6 member; and

7 (2) if such characterization is any characteriza-
8 tion except honorable, may change such character-
9 ization to honorable.

10 (b) CRITERIA.—In changing the discharge character-
11 ization of a covered member to honorable under subsection
12 (a)(2), the Secretary of Defense shall ensure that such
13 changes are carried out consistently and uniformly across
14 the military departments using the following criteria:

15 (1) The original discharge must be based on
16 Don't Ask Don't Tell (in this Act referred to as
17 “DADT”) or a similar policy in place prior to the
18 enactment of DADT.

19 (2) Such discharge characterization shall be so
20 changed if, with respect to the original discharge,
21 there were no aggravating circumstances, such as
22 misconduct, that would have independently led to a
23 discharge characterization that was any character-
24 ization except honorable. For purposes of this para-
25 graph, such aggravating circumstances may not in-
26 clude—

1 (A) an offense under section 925 of title
2 10, United States Code (article 125 of the Uni-
3 form Code of Military Justice), committed by a
4 covered member against a person of the same
5 sex with the consent of such person; or

6 (B) statements, consensual sexual conduct,
7 or consensual acts relating to sexual orientation
8 or identity, or the disclosure of such state-
9 ments, conduct, or acts, that were prohibited at
10 the time of discharge but after the date of such
11 discharge became permitted.

12 (3) When requesting a review, a covered mem-
13 ber, or the member's representative, shall be re-
14 quired to provide either—

15 (A) documents consisting of—

16 (i) a copy of the DD-214 form of the
17 member;

18 (ii) a personal affidavit of the cir-
19 cumstances surrounding the discharge; and

20 (iii) any relevant records pertaining to
21 the discharge; or

22 (B) an affidavit certifying that the mem-
23 ber, or the member's representative, does not
24 have the documents specified in subparagraph
25 (A).

1 (4) If a covered member provides an affidavit
2 described in subparagraph (B) of paragraph (3)—

3 (A) the appropriate discharge board shall
4 make every effort to locate the documents speci-
5 fied in subparagraph (A) of such paragraph
6 within the records of the Department of De-
7 fense; and

8 (B) the absence of such documents may
9 not be considered a reason to deny a change of
10 the discharge characterization under subsection
11 (a)(2).

12 (c) REQUEST FOR REVIEW.—The appropriate dis-
13 charge board shall ensure the mechanism by which covered
14 members, or their representative, may request to have the
15 discharge characterization of the covered member reviewed
16 under this section is simple and straightforward.

17 (d) REVIEW.—

18 (1) IN GENERAL.—After a request described in
19 subsection (c) has been made, the appropriate dis-
20 charge board shall review all relevant laws, records
21 of oral testimony previously taken, service records,
22 or any other relevant information regarding the dis-
23 charge characterization of the covered member.

1 (2) ADDITIONAL MATERIALS.—If additional
2 materials are necessary for the review, the appro-
3 priate discharge board—

4 (A) may request additional information
5 from the covered member or the member’s rep-
6 resentative, in writing, and specifically detailing
7 what is being requested; and

8 (B) shall be responsible for obtaining a
9 copy of the necessary files of the covered mem-
10 ber from the member, or when applicable, from
11 the Department of Defense.

12 (e) CHANGE OF CHARACTERIZATION.—The appro-
13 priate discharge board shall change the discharge charac-
14 terization of a covered member to honorable if such change
15 is determined to be appropriate after a review is conducted
16 under subsection (d) pursuant to the criteria under sub-
17 section (b). A covered member, or the member’s represent-
18 ative, may appeal a decision by the appropriate discharge
19 board to not change the discharge characterization by
20 using the regular appeals process of the board.

21 (f) CHANGE OF RECORDS.—For each covered mem-
22 ber whose discharge characterization is changed under
23 subsection (e), or for each covered member who was hon-
24 orably discharged but whose DD-214 form reflects the
25 sexual orientation of the member, the Secretary of Defense

1 shall reissue to the member or the member's representa-
2 tive a revised DD-214 form that reflects the following:

3 (1) For each covered member discharged, the
4 Separation Code, Reentry Code, Narrative Code, and
5 Separation Authority shall not reflect the sexual ori-
6 entation of the member and shall be placed under
7 secretarial authority. Any other similar indication of
8 the sexual orientation or reason for discharge shall
9 be removed or changed accordingly to be consistent
10 with this paragraph.

11 (2) For each covered member whose discharge
12 occurred prior to the creation of general secretarial
13 authority, the sections of the DD-214 form referred
14 to paragraph (1) shall be changed to similarly reflect
15 a universal authority with codes, authorities, and
16 language applicable at the time of discharge.

17 (g) STATUS.—

18 (1) IN GENERAL.—Each covered member whose
19 discharge characterization is changed under sub-
20 section (e) shall be treated without regard to the
21 original discharge characterization of the member,
22 including for purposes of—

23 (A) benefits provided by the Federal Gov-
24 ernment to an individual by reason of service in
25 the Armed Forces; and

1 (B) all recognitions and honors that the
2 Secretary of Defense provides to members of
3 the Armed Forces.

4 (2) REINSTATEMENT.—In carrying out para-
5 graph (1)(B), the Secretary shall reinstate all rec-
6 ognitions and honors of a covered member whose
7 discharge characterization is changed under sub-
8 section (e) that the Secretary withheld because of
9 the original discharge characterization of the mem-
10 ber.

11 (h) DEFINITIONS.—In this section:

12 (1) The term “appropriate discharge board”
13 means the boards for correction of military records
14 under section 1552 of title 10, United States Code,
15 or the discharge review boards under section 1553
16 of such title, as the case may be.

17 (2) The term “covered member” means any
18 former member of the Armed Forces who was dis-
19 charged from the Armed Forces because of the sex-
20 ual orientation of the member.

21 (3) The term “discharge characterization”
22 means the characterization under which a member
23 of the Armed Forces is discharged or released, in-
24 cluding “dishonorable”, “general”, “other than hon-
25 orable”, and “honorable”.

1 (4) The term “Don’t Ask Don’t Tell” means
2 section 654 of title 10, United States Code, as in ef-
3 fect before such section was repealed pursuant to the
4 Don’t Ask, Don’t Tell Repeal Act of 2010 (Public
5 Law 111–321).

6 (5) The term “representative” means the sur-
7 viving spouse, next of kin, or legal representative of
8 a covered member.

9 **SEC. 3. REPORTS.**

10 (a) REVIEW.—The Secretary of Defense shall con-
11 duct a review of the consistency and uniformity of the re-
12 views conducted under section 2.

13 (b) REPORTS.—Not later than 270 days after the
14 date of the enactment of this Act, and each year thereafter
15 for a four-year period, the Secretary shall submit to Con-
16 gress a report on the reviews under subsection (a). Such
17 reports shall include any comments or recommendations
18 for continued actions.

19 **SEC. 4. HISTORICAL REVIEW.**

20 The Secretary of each military department shall en-
21 sure that oral historians of the department—

22 (1) review the facts and circumstances sur-
23 rounding the estimated 100,000 members of the
24 Armed Forces discharged from the Armed Forces

1 between World War II and September 2011 because
2 of the sexual orientation of the member; and

3 (2) receive oral testimony of individuals who
4 personally experienced discrimination and discharge
5 because of the actual or perceived sexual orientation
6 of the individual so that such testimony may serve
7 as an official record of these discriminatory policies
8 and their impact on American lives.

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