

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 3009) to provide economic security for America's workers.

Mr. REID. Mr. President, I now ask for its second reading but object to my own request.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bill will receive its second reading on the next legislative day.

#### MEASURE READ THE FIRST TIME—H.R. 4691

Mr. REID. Mr. President, I understand that H.R. 4691 is at the desk, and I ask for its first reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (H.R. 4691) to prohibit certain abortion-related discrimination in governmental activities.

Mr. REID. Mr. President, I ask for its second reading and object to my own request.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be read a second time on the next legislative day.

#### MODIFICATION OF CONFEREES TO H.R. 4628

Mr. REID. Mr. President, I ask unanimous consent that the list of conferees for H.R. 4628, the intelligence authorization, be modified to include, from the Committee on Armed Services, Senators REED of Rhode Island and WARNER.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### VETERANS' AND SURVIVORS' BENEFITS EXPANSION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent the Veterans' Affairs Committee be discharged from further consideration of H.R. 4085 and the Senate proceed to its consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4085) to amend title 38, United States Code, to provide a cost-of-living increase in the rates of compensation for veterans with service-connected disability and dependency and indemnity compensation for surviving spouses of such veterans, to expand certain benefits for veterans and their survivors, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I thank my colleagues in the Senate for their support of this legislation that will provide a cost-of-liv-

ing adjustment to veterans' compensation for next year. I thank my colleagues on the Veterans' Affairs Committee, ranking member ARLEN SPECTER, for his commitment to our Nation's veterans.

The Veterans' Compensation Cost-of-Living Adjustment Act of 2002 directs the Secretary of Veterans Affairs to increase, as of December 1, 2002, the rates of veterans' disability compensation, as well as compensation for eligible dependents and surviving spouses. The legislation raises compensation by the same percentage as the increase provided to Social Security recipients.

It is particularly important that we move this legislation as soon as possible. Veterans and their families depend on the cost-of-living increase to ensure that their well-deserved benefits are not eroded by inflation. Veterans' disability compensation rates must keep pace with the increasing cost of living.

I ask unanimous consent that the text of the legislation be printed in the RECORD following this statement.

Mr. REID. Mr. President, I ask unanimous consent that the Rockefeller substitute amendment at the desk be agreed to; the act, as amended, be read a third time, passed, and the motion to reconsider be laid on the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4837) was agreed to, as follows:

#### AMENDMENT NO. 4837

(Purpose: To propose a substitute)

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 2002".

#### SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2002, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under section 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2002.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2002, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

#### SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2003, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

Amend the title to read: "An Act to increase, effective as of December 1, 2002, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.".

The bill (H.R. 4085), as amended, was read the third time and passed.

The amendment to the title was agreed to.

#### VETERANS BENEFITS IMPROVEMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 542, S. 2237.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2237) to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Matter to be stricken is shown in black brackets. Matter to be added is shown in *italic*.]

S. 2239

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

[This Act may be cited as the "Veterans Hearing Loss Compensation Act of 2002".]

**[SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.]**

[(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) of title 38, United States Code, is amended by striking “total” both places it appears.]

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.]

**[SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.]**

[(a) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following new section:

**“[§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties]**

“(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who while on active military, naval, or air service was assigned to a military occupational specialty or equivalent described in subsection (b) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

“(b) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

“(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 3(c) of the Veterans Hearing Loss Compensation Act of 2002.

“(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

“(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary’s determination.

“(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

“(A) publish the determination in the Federal Register; and

“(B) submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

“(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.”

“(2) The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1118 the following new item:

“[§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.”]

[(b) PRESUMPTION REBUTTABLE.—Section 1113 of title 38, United States Code, is amended by striking “or 1118” each place it appears and inserting “1118, or 1119”.

[(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

“(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

“(A) review and assess available data on occupational hearing loss;

“(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

“(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

“(i) determine how much exposure to such form or acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

“(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

“(I) immediate or delayed onset;

“(II) cumulative;

“(III) progressive; or

“(IV) any combination of subclauses (I) through (III);

“(D) review and assess the completeness and accuracy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in individuals who were discharged or released from service in the Armed Forces during the period beginning on December 7, 1941, and ending on the date of the enactment of this Act upon their discharge or release from such service; and

“(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs.

“(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required

by subparagraphs (A) through (F) of paragraph (2).

[(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

“(2) The report under paragraph (1) shall include the following:

“(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

“(B) Of the claims referred to in subparagraph (A)—

“(i) the number of claims for which disability compensation was awarded, set forth by year;

“(ii) the number of claims assigned each disability rating; and

“(iii) the total amount of disability compensation paid on such claims during such years.

“(C) The total cost to the Department of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

“(D) The total number of veterans who sought treatment in Department of Veterans Affairs health facilities care in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

“(i) the number of veterans per year; and

“(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

“(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.”]

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans Benefits Improvement Act of 2002”.

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

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

**TITLE I—COMPENSATION AND PENSION MATTERS**

Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.

Sec. 102. Compensation for hearing loss in paired organs.

Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.

Sec. 104. Modification of authorities on Medal of Honor Roll special pension.

Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.

Sec. 106. Extension of income verification authority.

**TITLE II—EDUCATION MATTERS**

Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.

Sec. 202. Clarifying improvement of various education authorities.

**TITLE III—HOUSING MATTERS**

Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

## TITLE IV—OTHER BENEFITS MATTERS

- Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.
- Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.
- Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

## TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

- Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
- Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
- Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.
- Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

## SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

## TITLE I—COMPENSATION AND PENSION MATTERS

## SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME DISABILITY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED MASTECTOMIES.

(a) IN GENERAL.—Section 1114(k) is amended by inserting "of half or more of the tissue" after "anatomical loss" the second place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

## SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) is amended by striking "total" both places it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

## SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 is amended by adding at the end the following new section:

**"§1119. Presumption of service connection for hearing loss associated with particular military occupational specialties**

"(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who served on active military, naval, or air service during a period specified by the Secretary under subsection (b)(1) and was assigned during the period of such service to a military occupational specialty or equivalent described in subsection (b)(2) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

"(b)(1) A period referred to in subsection (a) is a period, if any, that the Secretary determines in regulations prescribed under this section—

"(A) during which audiometric measures were consistently not adequate to assess individual hearing threshold shift; or

"(B) with respect to service in a military occupational specialty or equivalent described in paragraph (2), during which hearing conservation measures to prevent individual hearing threshold shift were unavailable or provided insufficient protection for members assigned to such military occupational specialty or equivalent.

"(2) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

"(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 103(c) of the Veterans Benefits Improvement Act of 2002.

"(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent, and during each period, identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed during such period to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

"(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

"(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

"(A) publish the determination in the Federal Register; and

"(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

"(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date."

(2) The table of sections at the beginning of chapter 11 is amended by inserting after the item relating to section 1118 the following new item:

"1119. Presumption of service connection for hearing loss associated with particular military occupational specialties."

(b) PRESUMPTION REBUTTABLE.—Section 1113 is amended by striking "or 1118" each place it appears and inserting "1118, or 1119".

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form of acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and adequacy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in a representative sample of individuals who were discharged or released from service in the Armed Forces following World War II, the Korean conflict, and the Vietnam era, and in peacetime during the period from the end of the Vietnam era to the beginning of the Persian Gulf War, and during the Persian Gulf War, with such sample to be selected so as to reflect an appropriate distribution of individuals among the various Armed Forces;

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs; and

(F) assess when, if ever—

(i) audiometric measures became adequate to evaluate individual hearing threshold shift; and

(ii) hearing conservation measures to prevent individual hearing threshold shift were available and provided sufficient protection for members assigned to each military occupational specialty or equivalent identified under subparagraph (E).

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(4) For purposes of paragraph (2)(D), the terms "World War II", "Korean conflict", "Vietnam era", and "Persian Gulf War" have the meanings given such terms in section 101 of title 38, United States Code.

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a

report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during each such year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department health care facilities in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

#### SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF HONOR ROLL SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking “\$600” and inserting “\$1,000, as adjusted from time to time under subsection (e)”.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following:

“(c) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).”.

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2002.

(d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—(1) The Secretary of Veterans Affairs shall pay, in a lump sum, to each person who is in receipt of special pension payable under section 1562 of title 38, United States Code, an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension during such month under laws for eligibility for special pension in effect at the beginning of such month.

#### SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS.

(a) IN GENERAL.—Section 5301(a) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by designating the last sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by adding at the end the following new paragraph:

“(3)(A) For purposes of this subsection, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

“(B) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited.

“(C)(i) Any person who enters into an agreement that is prohibited under subparagraph (A), or an agreement or arrangement that is prohibited under subparagraph (B), shall be fined under title 18, imprisoned for not more than one year, or both.

“(ii) This subparagraph does not apply to a beneficiary with respect to compensation, pension, or dependency and indemnity compensation to which the beneficiary is entitled under a law administered by the Secretary.”.

(b) EFFECTIVE DATE.—Paragraph (3) of section 5301(a) of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to any agreement or arrangement described in such paragraph that is entered into on or after the date of the enactment of this Act.

(c) OUTREACH.—The Secretary of Veterans Affairs shall, during the five-year period beginning on the date of the enactment of this Act, carry out a program of outreach to inform veterans and other recipients or potential recipients of compensation, pension, or dependency and indemnity compensation benefits under the laws administered by the Secretary of the prohibition on the assignment of such benefits under law. The program shall include information on various schemes to evade the prohibition, and means of avoiding such schemes.

#### SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHORITY.

(a) TITLE 38, UNITED STATES CODE.—Section 5317(g) is amended by striking “September 30, 2008” and inserting “September 30, 2011”.

(b) INTERNAL REVENUE CODE.—Section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended by striking “September 30, 2003” and inserting “September 30, 2011”.

#### TITLE II—EDUCATION MATTERS

##### SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) is amended in the first sentence by striking “fiscal years 2001 and 2002, \$14,000,000” and inserting “fiscal years 2003, 2004, and 2005, \$18,000,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

##### SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDUCATION AUTHORITIES.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended by striking “on or”.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN

HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking “employment in a high technology industry” and inserting “employment in a high technology occupation in a high technology industry”.

(2)(A) The heading for section 3014A is amended to read as follows:

“§3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry”.

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

“3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.”.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—Section 3035(b) is amended—

(1) in paragraph (1), by striking “paragraphs (2) and (3) of this subsection,” and inserting “paragraphs (2), (3), and (4).”; and

(2) by adding at the end the following new paragraph:

“(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.”.

(d) LICENSING OR CERTIFICATION TESTS.—(1) Section 3232(c)(1) is amended by striking “a licensing” and inserting “a particular licensing”.

(2) Section 3689 is amended—

(A) in subsection (b)(1)(B), by inserting “and with such other standards as the Secretary may prescribe,” after “practices.”; and

(B) in subsection (c)(1)(A), by inserting “and with such other standards as the Secretary may prescribe,” after “practices.”.

(3) Section 3689(c)(1)(B) is amended by striking “the test” and inserting “such test, or a test to certify or license in a similar or related occupation.”.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS’ AND DEPENDENTS’ ASSISTANCE.—Section 3512(a) is amended—

(1) in paragraph (3), by striking “paragraph (4)” in the matter preceding subparagraph (A) and inserting “paragraph (4) or (5)”;

(2) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(3) by inserting after paragraph (3) the following new paragraph (4):

“(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable.”; and

(4) in paragraph (6), as so redesignated, by striking “paragraph (4)” and inserting “paragraph (5)”.

#### TITLE III—HOUSING MATTERS

##### SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.

(a) THREE-YEAR EXTENSION OF AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 is amended by striking “during fiscal years 1993, 1994, and 1995” and inserting “through fiscal year 2005”.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking "Interest rate adjustment provisions" and inserting "Except as provided in subsection (c)(1), interest rate adjustment provisions";

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) Adjustable rate mortgages that are guaranteed under this section shall include adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

"(1) are not subject to subsection (b)(1);

"(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

"(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

"(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b)."

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs shall exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

#### TITLE IV—OTHER BENEFITS MATTERS

##### SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MOBILIZED BY STATES FOR HOMELAND SECURITY ACTIVITIES AS MILITARY SERVICE UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking "and all" and inserting "all"; and

(B) by inserting before the period the following: "and all members of the National Guard on service described in the following sentence"; and

(2) in the second sentence, by inserting before the period the following: "and shall include service in the National Guard, pursuant to a call or order to duty by the Governor of a State, upon the request of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, to perform full-time duty under section 502(f) of title 32, United States Code, for purposes of carrying out homeland security activities".

##### SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

"(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title."

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

"(g) A flag may not be furnished under this section on behalf of a deceased person described in section 2411(b) of this title."

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

"(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

"(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

"(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

##### SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking "The prohibition" and inserting "In the case of a person described in subsection (b)(1) or (b)(2), the prohibition"; and

(2) by striking "or finding under subsection (b)" and inserting "referred to in subsection (b)(1) or (b)(2), as the case may be."

#### TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

##### SEC. 501. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended by striking "if the finding is clearly erroneous" and inserting "if the finding is adverse to the claimant and the Court determines that the finding is unsupported by substantial evidence of record, taking into account the Secretary's application of section 5107(b) of this title".

(b) SCOPE OF AUTHORITY.—That subsection is further amended—

(1) in the matter preceding paragraph (1), by striking "this chapter" and inserting "section 7252(a) of this title"; and

(2) in paragraph (4), as amended by subsection (a) of this section, by inserting "or reverse" after "set aside".

(c) MATTERS RELATING TO FINDINGS OF MATERIAL FACT.—That section is further amended by adding at the end the following new subsection:

"(e)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title.

"(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination."

(d) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Veterans Claims—

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.

##### SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—(1) Subsection (a) of section 7292 is amended in the first sentence by inserting after "the validity of" the following: "a decision of the Court on a rule of law or of".

(2) Subsection (c) of that section is amended—

(A) in the first sentence, by inserting after "the validity of" the following: "a decision of the Court of Appeals for Veterans Claims on a rule of law or of"; and

(B) in the second sentence, by striking "such court" and inserting "the Court of Appeals for the Federal Circuit".

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

##### SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

##### SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS OF AUTHORITY AND REQUIREMENTS TO ASSIST CLAIMANTS.

(a) RETROACTIVE APPLICABILITY.—Except as specifically provided otherwise, the provisions of sections 5102, 5103, 5103A, and 5126 of title 38, United States Code, as amended by section 3 of the Veterans Claims Assistance Act of 2000 (Public Law 106-475; 114 Stat. 2096), apply to any claim—

(1) filed on or after November 9, 2000; or

(2) filed before November 9, 2000, and not final as of that date.

(b) READJUDICATION OF CERTAIN CLAIMS.—If the United States Court of Appeals for Veterans Claims, the United States Court of Appeals for the Federal Circuit, or the Supreme Court renders a decision during the period beginning on April 24, 2002, and ending on the date of the enactment of this Act holding that section 3(a) of the Veterans Claims Assistance Act of 2000 is not applicable to a case covered by the decision because such section 3(a) was not intended to be given retroactive effect, the Secretary of Veterans Affairs shall, upon request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by the Veterans Claims Assistance Act of 2000, as if Board of Veterans' Appeals most recent denial of the claim concerned had not occurred.

Amend the title to read as follows: "A bill to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes."

Mr. REID. Mr. President, I ask unanimous consent that the Rockefeller substitute amendment be agreed to; that the committee amendment, in the nature of a substitute, as amended, be agreed to; that the bill, as amended, be read the third time and passed; that the amendment to the title be agreed to; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4838) was agreed to.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

Mr. ROCKEFELLER. MR. President, as chairman of the Committee on Veterans' Affairs, I urge the Senate to pass

S. 2237, the proposed "Veterans Benefits Improvement Act of 2002," as modified by a manager's amendment which I developed with the committee's ranking member, Senator SPECTER. I will describe the provisions of the amendment in a moment.

The pending omnibus measure would touch many parts of veterans' lives, from increasing pensions for those who have earned the Medal of Honor to ensuring that veterans' appeals get more than a cursory review. I thank Ranking Member SPECTER and his staff for their significant contributions to a bill I believe will substantially improve the benefits provided to those who have served our Nation.

S. 2237 as reported, which I will refer to as the "committee bill," improves numerous veterans' benefits. I will highlight some of the provisions of which I am most proud.

Congress last year authorized VA to offer special monthly compensation to women who had lost one or both breasts, including through surgery, as a result of their military service. VA subsequently released regulations that limited eligibility for this benefit to women who had suffered complete loss of all breast tissue through simple or radical mastectomy. Even if such a restriction does not influence medical decisions, it fails to acknowledge that tissue-sparing treatments still create physical, emotional, and financial challenges to returning to health. Section 101 of the Committee bill would extend eligibility for benefits to women veterans who have experienced service-connected loss of half or more of a breast's tissue.

The number of claims that veterans submit for hearing loss and tinnitus grows each year, and hearing disorders now account for two of the most commonly claimed disabilities. In order to settle these claims, VA staff must determine whether a veteran's hearing loss is as likely to be linked to noise exposure during service as to other causes, a tough decision made even harder by incomplete medical records and uncertain clinical evidence. Aging veterans—many of whom received no hearing evaluation upon discharge from service—now struggle to prove that their hearing problems resulted from damage suffered decades ago, while VA battles a staggering backlog of claims. Not only must veterans with hearing loss wait for assistance, but all veterans must accept the delays that arise as VA sorts through an enormous number of hearing loss claims without a clear scientific standard on past exposures.

Section 103 of the committee bill would help VA and veterans understand whether service in certain military specialties might be associated with an increased risk of hearing loss later in life. The committee bill would require VA to contract with an independent scientific organization, such as the National Academy of Sciences, to review evidence on acoustic trauma

during military service. Experts would be asked to consider the types of noise exposure that could contribute to hearing disorders, and to determine whether servicemembers' hearing loss would be immediate or cumulative. The scientists would also determine when the audiometric data collected by the military services became adequate for VA to assess individual exposures during subsequent hearing loss claims.

The committee bill would also require that VA review its own records on hearing loss or tinnitus in veterans, and estimate the cost of adjudicating these claims under the current system. With this information, Congress and VA should be in a better position to decide whether evidence warrants service connection of hearing loss or tinnitus for certain veterans, so that their claims can be decided as quickly and fairly as possible.

We currently provide a special pension of recipients of the Medal of Honor to recognize, in some small measure, their extraordinary heroism. Congress has periodically increased this pension to keep pace with inflation and the needs of its recipients, but these increases have been irregular in amount and frequency. For some recipients, delays between the dates of the recipient's act of valor and the actual awarding of the Medal of Honor have resulted in lower aggregate amounts of special pension, based only on differences in the timing of the official recognition.

Section 104 of the committee bill would increase the Medal of Honor special pension from \$600 to \$1,000. Beginning next year, the pension amount would be adjusted annually with inflation. Finally, it would provide for a one-time, lump-sum payment in the amount of pension the recipient would have received between the date of the act of valor and the date that the recipient's pension actually commenced. I want to thank Senators SPECTER and HUTCHINSON for their leadership on this issue, and for assisting the committee in reaffirming our commitment to these heroes.

Section 401 of the committee bill would extend certain protections currently offered to National Guard members called up for national defense to include those who may have been called up for homeland security activities but not federalized. The Soldiers and Sailor's Civil Relief Act of 1940, SSCRA, protects active duty servicemembers and their families from evictions, foreclosures, and certain legal judgments while they serve the Nation in federally funded national defense missions. However, SSCRA protections do not cover National Guard members called up under title 32 of the United States Code, which places the servicemembers under the command of their State Governors.

Following the events of September 11, many National Guard members activated under title 32 guarded commercial airports at the request of the Federal Government, serving for 4 to 6

months. Although they served a national mission, their title 32 status denied them SSCRA protections. Furthermore, the National Defense Authorization Act for Fiscal Year 2003, as passed by the Senate, specifically allows National Guard members to be called up for full-time homeland security duty under title 32. Should this provision be enacted into law, it is likely that National Guard members will be called upon more frequently to serve in this status.

Section 401 of the committee bill would expand SSCRA protections to include National Guard members serving full-time for homeland security purposes under title 32 upon an order of the Governor of a State, by request of the head of a Federal law enforcement agency, and with the concurrence of the Secretary of Defense. As America relies increasingly on the National Guard and reservists to support its all-volunteer forces, we must be sure that all of our servicemembers can focus on their duties when they leave home to serve their Nation.

Sections 501 and 502 of the committee bill would ensure that veterans receive a full judicial review when appealing claims denied by VA.

A long-standing tenet of veterans law is that the veteran receives the "benefit of the doubt." This "benefit of the doubt" rule is unique in administrative law and states that when the evidence in support of benefits is in equipoise the benefit of the doubt must be given to the veteran, recognizing the tremendous sacrifices made by the men and women who have served in our Armed Forces. A number of veterans service organizations have expressed concern that the current appellate process is overly deferential to VA findings of fact that are adverse to veteran claimants. Specifically, these groups argue that the "clearly erroneous" standard applied by the U.S. Court of Appeals for Veterans Claims, CAVC, when reviewing Board of Veterans' Appeals, BVA, cases results in veteran claims receiving only cursory review on appeal, not allowing for full application of the "benefit of the doubt" rule.

Section 501 of the committee bill would change the standard of review the CAVC applies to BVA findings of fact from "clearly erroneous" to "unsupported by substantial evidence" with an explicit reference to VA's application of the "benefit of the doubt" provision. This would clearly instruct the court to perform a searching review of BVA findings of fact, yet allow the CAVC to give deference to BVA findings based on specific evidence.

Section 502 of the committee bill would improve appellate review of veterans claims by expanding the Federal Circuit's authority to review CAVC decisions based on rules of law that are not derived from a specific statute or regulation. This change would allow the Federal circuit to review comprehensively any CAVC decisions of law that adversely affect appellants.



Section 503 of the committee bill would allow nonattorney practitioners admitted to practice before the CAVC without the signature of a supervising attorney, such as veterans service organization representatives, to be awarded fees under the Equal Access to Justice Act. Currently, attorneys and nonattorney practitioners supervised by attorneys who represent claimants that satisfy certain statutory requirements may receive compensation for their services pursuant to the EAJA. This would allow well-deserved compensation to organizations that provide invaluable assistance to veterans.

The Veterans Claims Assistance Act of 2000, VCAA, required VA to take very specific steps to help veterans prepare their benefits claims, such as informing claimants of medical or lay evidence or helping them obtain evidence necessary to substantiate a claim. The Federal circuit, in two recent decisions—*Dyment v. Principi* and *Bernklau v. Principi*—found that certain provisions of the VCAA pertaining to VA's duty to assist cannot be applied retroactively to claims pending at the time of enactment. Section 504 states explicitly that VA's duty to assist will be applied retroactively to cases that were ongoing either at the various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment.

Section 504 of the committee bill would make it clear that VA's duty to assist can be applied retroactively to cases that were either ongoing within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment. This clarification would give full force to the congressionally mandated duty to assist claimant veterans, and provide crucial assistance to the men and women who sacrificed so much in service to our Nation.

I now turn to the manager's amendment, which would modify a section of the committee bill on evaluating service-connected hearing loss.

Section 102 of the committee bill, as modified by the manager's amendment, would address an issue of fairness for veterans who have both service-connected and non-service-connected hearing loss. Currently, when evaluating veterans' service-connected disabilities in paired organs or extremities—such as kidneys, lungs, feet, or hands—VA is authorized to consider any degree of damage to both organs, even if only one resulted from military service. However, total deafness in both ears is required for special consideration of hearing loss.

The committee bill would eliminate the "total deafness" requirement, allowing VA to consider partial non-service-connected hearing loss in one ear when rating disability for veterans with at least 10 percent compensable service-connected hearing loss in the other ear. This change would mirror exceptions made for other "paired" organs and extremities and would help

ensure fair compensation for veterans whose hearing has been more greatly impaired by service than it would have been had they not served.

In conclusion, I urge my colleagues to support these improvements to veterans benefits. In light of our increased military commitments—abroad and on American soil—this represents a critical bipartisan commitment to our Nation's Veterans.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The amendment to the title was agreed to.

The bill (S. 2237), as amended, was read the third time and passed, as follows:

S. 2237

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Veterans Benefits Improvement Act of 2002".

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

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

#### TITLE I—COMPENSATION AND PENSION MATTERS

Sec. 101. Clarification of entitlement to wartime disability compensation for women veterans who have service-connected mastectomies.

Sec. 102. Compensation for hearing loss in paired organs.

Sec. 103. Authority for presumption of service connection for hearing loss associated with particular military occupational specialties.

Sec. 104. Modification of authorities on Medal of Honor Roll special pension.

Sec. 105. Applicability of prohibition on assignment of veterans benefits to agreements on future receipt of certain benefits.

Sec. 106. Extension of income verification authority.

#### TITLE II—EDUCATION MATTERS

Sec. 201. Three-year increase in aggregate annual amount available for State approving agencies for administrative expenses.

Sec. 202. Clarifying improvement of various education authorities.

#### TITLE III—HOUSING MATTERS

Sec. 301. Authority to guarantee adjustable rate mortgages and hybrid adjustable rate mortgages.

#### TITLE IV—OTHER BENEFITS MATTERS

Sec. 401. Treatment of duty of National Guard mobilized by States for homeland security activities as military service under Soldiers' and Sailors' Civil Relief Act of 1940.

Sec. 402. Prohibition on certain additional benefits for persons committing capital crimes.

Sec. 403. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.

#### TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS

Sec. 501. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.

Sec. 502. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.

Sec. 503. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

Sec. 504. Retroactive applicability of modifications of authority and requirements to assist claimants.

#### SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

#### TITLE I—COMPENSATION AND PENSION MATTERS

##### SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME DISABILITY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED MASTECTOMIES.

(a) **IN GENERAL.**—Section 1114(k) is amended by inserting "of half or more of the tissue" after "anatomical loss" the second place it appears.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

##### SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

(a) **HEARING LOSS REQUIRED FOR COMPENSATION.**—Section 1160(a)(3) is amended—

(1) by striking "total deafness" the first place it appears and inserting "deafness compensable to a degree of 10 percent or more"; and

(2) by striking "total deafness" the second place it appears and inserting "deafness".

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

##### SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.

(a) **IN GENERAL.**—(1) Subchapter II of chapter 11 is amended by adding at the end the following new section:

##### "§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties

"(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who served on active military, naval, or air service during a period specified by the Secretary under subsection (b)(1) and was assigned during the period of such service to a military occupational specialty or equivalent described in subsection (b)(2) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

"(b)(1) A period referred to in subsection (a) is a period, if any, that the Secretary determines in regulations prescribed under this section—

“(A) during which audiometric measures were consistently not adequate to assess individual hearing threshold shift; or

“(B) with respect to service in a military occupational specialty or equivalent described in paragraph (2), during which hearing conservation measures to prevent individual hearing threshold shift were unavailable or provided insufficient protection for members assigned to such military occupational specialty or equivalent.

“(2) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

“(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 103(c) of the Veterans Benefits Improvement Act of 2002.

“(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent, and during each period, identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed during such period to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

“(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

“(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

“(A) publish the determination in the Federal Register; and

“(B) submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the determination, including a justification for the determination.

“(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date.”

(2) The table of sections at the beginning of chapter 11 is amended by inserting after the item relating to section 1118 the following new item:

“1119. Presumption of service connection for hearing loss associated with particular military occupational specialties.”

(b) PRESUMPTION REBUTTABLE.—Section 1113 is amended by striking “or 1118” each place it appears and inserting “1118, or 1119”.

(c) ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form of acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and adequacy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in a representative sample of individuals who were discharged or released from service in the Armed Forces following World War II, the Korean conflict, and the Vietnam era, and in peacetime during the period from the end of the Vietnam era to the beginning of the Persian Gulf War, and during the Persian Gulf War, with such sample to be selected so as to reflect an appropriate distribution of individuals among the various Armed Forces;

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs; and

(F) assess when, if ever—

(i) audiometric measures became adequate to evaluate individual hearing threshold shift; and

(ii) hearing conservation measures to prevent individual hearing threshold shift were available and provided sufficient protection for members assigned to each military occupational specialty or equivalent identified under subparagraph (E).

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(4) For purposes of paragraph (2)(D), the terms “World War II”, “Korean conflict”, “Vietnam era”, and “Persian Gulf War” have the meanings given such terms in section 101 of title 38, United States Code.

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not

later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during each such year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department health care facilities in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

#### SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF HONOR ROLL SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking “\$600” and inserting “\$1,000, as adjusted from time to time under subsection (e)”.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following:

“(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).”

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2002.

(d) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—(1) The Secretary of Veterans Affairs shall pay, in a lump sum, to each person who is in receipt of special pension payable under section 1562 of title 38, United States Code, an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.



(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension during such month under laws for eligibility for special pension in effect at the beginning of such month.

**SEC. 105. APPLICABILITY OF PROHIBITION ON ASSIGNMENT OF VETERANS BENEFITS TO AGREEMENTS ON FUTURE RECEIPT OF CERTAIN BENEFITS.**

(a) IN GENERAL.—Section 5301(a) is amended—

(1) by inserting “(1)” after “(a)”;

(2) by designating the last sentence as paragraph (2) and indenting such paragraph, as so designated, two ems from the left margin; and

(3) by adding at the end the following new paragraph:

“(3)(A) For purposes of this subsection, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, whether by payment from the beneficiary to such other person, deposit into an account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

“(B) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited.

“(C)(i) Any person who enters into an agreement that is prohibited under subparagraph (A), or an agreement or arrangement that is prohibited under subparagraph (B), shall be fined under title 18, imprisoned for not more than one year, or both.

“(ii) This subparagraph does not apply to a beneficiary with respect to compensation, pension, or dependency and indemnity compensation to which the beneficiary is entitled under a law administered by the Secretary.”

(b) EFFECTIVE DATE.—Paragraph (3) of section 5301(a) of title 38, United States Code (as added by subsection (a) of this section), shall apply with respect to any agreement or arrangement described in such paragraph that is entered into on or after the date of the enactment of this Act.

(c) OUTREACH.—The Secretary of Veterans Affairs shall, during the five-year period beginning on the date of the enactment of this Act, carry out a program of outreach to inform veterans and other recipients or potential recipients of compensation, pension, or dependency and indemnity compensation benefits under the laws administered by the Secretary of the prohibition on the assignment of such benefits under law. The program shall include information on various schemes to evade the prohibition, and means of avoiding such schemes.

**SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHORITY.**

(a) TITLE 38, UNITED STATES CODE.—Section 5317(g) is amended by striking “September 30, 2008” and inserting “September 30, 2011”.

(b) INTERNAL REVENUE CODE.—Section 6103(1)(7)(D)(viii) of the Internal Revenue Code of 1986 is amended by striking “September 30, 2003” and inserting “September 30, 2011”.

**TITLE II—EDUCATION MATTERS**

**SEC. 201. THREE-YEAR INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES.**

(a) INCREASE IN AMOUNT.—Section 3674(a)(4) is amended in the first sentence by striking “fiscal years 2001 and 2002, \$14,000,000” and inserting “fiscal years 2003, 2004, and 2005, \$18,000,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

**SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDUCATION AUTHORITIES.**

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS.—Section 3011(a)(1)(C)(ii) is amended by striking “on or”.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking “employment in a high technology industry” and inserting “employment in a high technology occupation in a high technology industry”.

(2)(A) The heading for section 3014A is amended to read as follows:

**“§3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry”.**

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

“3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.”.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—Section 3035(b) is amended—

(1) in paragraph (1), by striking “paragraphs (2) and (3) of this subsection,” and inserting “paragraphs (2), (3), and (4).”; and

(2) by adding at the end the following new paragraph:

“(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.”.

(d) LICENSING OR CERTIFICATION TESTS.—(1) Section 3232(c)(1) is amended by striking “a licensing” and inserting “a particular licensing”.

(2) Section 3689 is amended—

(A) in subsection (b)(1)(B), by inserting “and with such other standards as the Secretary may prescribe,” after “practices,”; and

(B) in subsection (c)(1)(A), by inserting “and with such other standards as the Secretary may prescribe,” after “practices,”.

(3) Section 3689(c)(1)(B) is amended by striking “the test” and inserting “such test, or a test to certify or license in a similar or related occupation,”.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS’ AND DEPENDENTS’ ASSISTANCE.—Section 3512(a) is amended—

(1) in paragraph (3), by striking “paragraph (4)” in the matter preceding subparagraph (A) and inserting “paragraph (4) or (5)”;

(2) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(3) by inserting after paragraph (3) the following new paragraph (4):

“(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person’s entitlement shall be the date of the Secretary’s decision that the parent has a service-connected total disability permanent in nature, or that the parent’s death was service-connected, whichever is applicable;” and

(4) in paragraph (6), as so redesignated, by striking “paragraph (4)” and inserting “paragraph (5)”.

**TITLE III—HOUSING MATTERS**

**SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES AND HYBRID ADJUSTABLE RATE MORTGAGES.**

(a) THREE-YEAR EXTENSION OF AUTHORITY TO GUARANTEE ADJUSTABLE RATE MORTGAGES.—Subsection (a) of section 3707 is amended by striking “during fiscal years 1993, 1994, and 1995” and inserting “through fiscal year 2005”.

(b) AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—That section is further amended—

(1) in subsection (b), by striking “Interest rate adjustment provisions” and inserting “Except as provided in subsection (c)(1), interest rate adjustment provisions”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection (c):

“(c) Adjustable rate mortgages that are guaranteed under this section shall include adjustable rate mortgages (commonly referred to as ‘hybrid adjustable rate mortgages’) having interest rate adjustment provisions that—

“(1) are not subject to subsection (b)(1);

“(2) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

“(3) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (2); and

“(4) comply in such initial adjustment, and any subsequent adjustment, with paragraphs (2) through (4) of subsection (b).”.

(c) IMPLEMENTATION OF AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.—The Secretary of Veterans Affairs shall exercise the authority under section 3707 of title 38, United States Code, as amended by this section, to guarantee adjustable rate mortgages described in subsection (c) of such section 3707, as so amended, in advance of any rulemaking otherwise required to implement such authority.

**TITLE IV—OTHER BENEFITS MATTERS**

**SEC. 401. TREATMENT OF DUTY OF NATIONAL GUARD MOBILIZED BY STATES FOR HOMELAND SECURITY ACTIVITIES AS MILITARY SERVICE UNDER SOLDIERS’ AND SAILORS’ CIVIL RELIEF ACT OF 1940.**

Section 101(1) of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking “and all” and inserting “all”; and

(B) by inserting before the period the following: “, and all members of the National Guard on service described in the following sentence”; and

(2) in the second sentence, by inserting before the period the following: “, and shall include service in the National Guard, pursuant to a call or order to duty by the Governor of a State, upon the request of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, to perform full-time duty under section 502(f) of title 32, United States Code, for purposes of carrying out homeland security activities”.

**SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.**

(a) **PRESIDENTIAL MEMORIAL CERTIFICATE.**—Section 112 is amended by adding at the end the following new subsection:

“(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.”.

(b) **FLAG TO DRAPE CASKET.**—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) A flag may not be furnished under this section on behalf of a deceased person described in section 2411(b) of this title.”.

(c) **HEADSTONE OR MARKER FOR GRAVE.**—Section 2306 is amended by adding at the end the following new subsection:

“(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

“(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

“(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

**SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.**

Section 2411(a)(2) is amended—

(1) by striking “The prohibition” and inserting “In the case of a person described in subsection (b)(1) or (b)(2), the prohibition”; and

(2) by striking “or finding under subsection (b)” and inserting “referred to in subsection (b)(1) or (b)(2), as the case may be.”.

**TITLE V—JUDICIAL, PROCEDURAL, AND ADMINISTRATIVE MATTERS****SEC. 501. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.**

(a) **STANDARD FOR REVERSAL.**—Paragraph (4) of subsection (a) of section 7261 is amended by striking “if the finding is clearly erroneous” and inserting “if the finding is adverse to the claimant and the Court determines that the finding is unsupported by substantial evidence of record, taking into account the Secretary's application of section 5107(b) of this title”.

(b) **SCOPE OF AUTHORITY.**—That subsection is further amended—

(1) in the matter preceding paragraph (1), by striking “this chapter” and inserting “section 7252(a) of this title”; and

(2) in paragraph (4), as amended by subsection (a) of this section, by inserting “or reverse” after “set aside”.

(c) **MATTERS RELATING TO FINDINGS OF MATERIAL FACT.**—That section is further amended by adding at the end the following new subsection:

“(e)(1) In making a determination on a finding of material fact under subsection (a)(4), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title.

“(2) A determination on a finding of material fact under subsection (a)(4) shall specify the evidence or material on which the Court relied in making such determination.”.

(d) **APPLICABILITY.**—(1) Except as provided in paragraph (2), the amendments made by

this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by subsections (a) and (b)(2) shall apply with respect to any appeal filed with the United States Court of Appeals for Veterans Claims—

(A) on or after the date of the enactment of this Act; or

(B) before the date of the enactment of this Act, but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.

**SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.**

(a) **REVIEW.**—(1) Subsection (a) of section 7292 is amended in the first sentence by inserting after “the validity of” the following: “a decision of the Court on a rule of law or of”.

(2) Subsection (c) of that section is amended—

(A) in the first sentence, by inserting after “the validity of” the following: “a decision of the Court of Appeals for Veterans Claims on a rule of law or of”; and

(B) in the second sentence, by striking “such court” and inserting “the Court of Appeals for the Federal Circuit”.

(b) **APPLICABILITY.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

**SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.**

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

**SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS OF AUTHORITY AND REQUIREMENTS TO ASSIST CLAIMANTS.**

(a) **RETROACTIVE APPLICABILITY.**—Except as specifically provided otherwise, the provisions of sections 5102, 5103, 5103A, and 5126 of title 38, United States Code, as amended by section 3 of the Veterans Claims Assistance Act of 2000 (Public Law 106-475; 114 Stat. 2096), apply to any claim—

(1) filed on or after November 9, 2000; or

(2) filed before November 9, 2000, and not final as of that date.

(b) **READJUDICATION OF CERTAIN CLAIMS.**—If the United States Court of Appeals for Veterans Claims, the United States Court of Appeals for the Federal Circuit, or the Supreme Court renders a decision during the period beginning on April 24, 2002, and ending on the date of the enactment of this Act holding that section 3(a) of the Veterans Claims Assistance Act of 2000 is not applicable to a case covered by the decision because such section 3(a) was not intended to be given retroactive effect, the Secretary of Veterans Affairs shall, upon request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such

title, as amended by the Veterans Claims Assistance Act of 2000, as if Board of Veterans' Appeals most recent denial of the claim concerned had not occurred.

**ORDERS FOR MONDAY, SEPTEMBER 30, 2002**

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Monday, September 30; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for the transaction of morning business until 2 p.m., with Senators permitted to speak therein for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee, and the second half of the time under the control of the Republican leader or his designee; that at 2 p.m., the Senate resume consideration of the homeland security bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

**PROGRAM**

Mr. REID. Mr. President, another cloture motion was filed on the Gramm-Miller amendment to the homeland security bill. Senators, therefore, have until 1 p.m. on Monday to file first-degree amendments. We expect to reconsider the vote by which cloture was not invoked on the Gramm amendment to the homeland security bill at approximately 5:30 Monday evening.

**ADJOURNMENT UNTIL 1 P.M., MONDAY, SEPTEMBER 30, 2002**

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:34 p.m., adjourned until Monday, September, 30, 2002, at 1 p.m.

**CONFIRMATIONS**

Executive nominations confirmed by the Senate September 26, 2002:

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

MICHELLE GUILLERMIN, OF MARYLAND, TO BE CHIEF FINANCIAL OFFICER, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

**NATIONAL COUNCIL ON DISABILITY**

GLENN BERNARD ANDERSON, OF ARKANSAS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

MILTON APONTE, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2003.

BARBARA GILLCRIST, OF NEW MEXICO, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

GRAHAM HILL, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.

MARCO RODRIGUEZ, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2005.