

110TH CONGRESS  
2D SESSION

# H. R. 5825

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2008

Mr. NUNES (for himself, Mr. COSTA, Mr. AKIN, Mr. ALEXANDER, Mr. ANDREWS, Mr. ARCURI, Mr. BACA, Mr. BARRETT of South Carolina, Mr. BARROW, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Ms. BEAN, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BISHOP of Utah, Mr. BISHOP of Georgia, Mrs. BLACKBURN, Mr. BLUNT, Mr. BOEHNER, Mr. BONNER, Mrs. BONO MACK, Mr. BOOZMAN, Mr. BOREN, Mr. BOSWELL, Mr. BOUSTANY, Mr. BOYD of Florida, Mrs. BOYDA of Kansas, Mr. BRADY of Texas, Mr. BROUN of Georgia, Mr. BROWN of South Carolina, Ms. GINNY BROWN-WAITE of Florida, Mr. BUCHANAN, Mr. BURGESS, Mr. BURTON of Indiana, Mr. BUYER, Mr. CALVERT, Mr. CAMP of Michigan, Mr. CAMPBELL of California, Mr. CANNON, Mr. CANTOR, Mrs. CAPITO, Mr. CARDOZA, Mr. CARNEY, Mr. CARTER, Mr. CASTLE, Mr. CHABOT, Mr. CHANDLER, Mr. COBLE, Mr. COLE of Oklahoma, Mr. CONAWAY, Mr. COOPER, Mr. CRAMER, Mr. CRENSHAW, Mrs. CUBIN, Mr. CUMMINGS, Mr. DAVIS of Kentucky, Mr. LINCOLN DAVIS of Tennessee, Mr. TOM DAVIS of Virginia, Mr. DEAL of Georgia, Mr. DENT, Mr. MARIO DIAZ-BALART of Florida, Mr. LINCOLN DIAZ-BALART of Florida, Mr. DONNELLY, Mr. DOOLITTLE, Mr. DOYLE, Mrs. DRAKE, Mr. DREIER, Mr. EDWARDS, Mr. EHLERS, Mr. ENGLISH of Pennsylvania, Mr. EVERETT, Ms. FALLIN, Mr. FEENEY, Mr. FERGUSON, Mr. FILNER, Mr. FLAKE, Mr. FORBES, Mr. FORTENBERRY, Mr. FOSSELLA, Ms. FOXX, Mr. FRANKS of Arizona, Mr. GALLEGLY, Mr. GERLACH, Mr. GINGREY, Mr. GOHMERT, Mr. GONZALEZ, Mr. GOODE, Mr. GORDON of Tennessee, Mr. GRAVES, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HALL of Texas, Mr. HARE, Ms. HARMAN, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HELLER of Nevada, Mr.

HERGER, Ms. HERSETH SANDLIN, Mr. HINOJOSA, Mr. HOEKSTRA, Mr. HOLDEN, Mr. HUNTER, Mr. INSLEE, Mr. ISSA, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mr. KELLER of Florida, Mr. KENNEDY, Mr. KING of New York, Mr. KINGSTON, Mr. KIRK, Mr. KLINE of Minnesota, Mr. KUCINICH, Mr. KUHL of New York, Mr. LAHOOD, Mr. LAMBORN, Mr. LAMPSON, Mr. LATHAM, Mr. LATOURETTE, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. LOBIONDO, Ms. ZOE LOFGREN of California, Mr. LUCAS, Mr. DANIEL E. LUNGREN of California, Mr. LYNCH, Mr. MAHONEY of Florida, Mr. MARSHALL, Mr. MATHESON, Mr. MCCARTHY of California, Mr. MCCAUL of Texas, Mr. MCCOTTER, Mr. MCCRERY, Mr. MCGOVERN, Mr. MCHENRY, Mr. MCHUGH, Mr. MCKEON, Mrs. MCMORRIS RODGERS, Mr. MCNERNEY, Mr. MEEKS of New York, Mr. MELANCON, Mr. MICA, Mr. MICHAUD, Mrs. MILLER of Michigan, Mr. GARY G. MILLER of California, Mr. MILLER of Florida, Mr. MITCHELL, Mr. MOORE of Kansas, Mr. MORAN of Kansas, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. TIM MURPHY of Pennsylvania, Mrs. MUSGRAVE, Mrs. MYRICK, Mrs. NAPOLITANO, Mr. NEUGEBAUER, Ms. NORTON, Mr. ORTIZ, Mr. PASTOR, Mr. PEARCE, Mr. PENCE, Mr. PETERSON of Minnesota, Mr. PETERSON of Pennsylvania, Mr. PITTS, Mr. PLATTS, Mr. POMEROY, Mr. PORTER, Mr. PRICE of Georgia, Ms. PRYCE of Ohio, Mr. PUTNAM, Mr. RADANOVICH, Mr. RAMSTAD, Mr. REHBERG, Mr. REYES, Mr. REYNOLDS, Mr. RODRIGUEZ, Mr. ROGERS of Kentucky, Mr. ROGERS of Alabama, Mr. ROHRABACHER, Mr. ROSKAM, Ms. ROS-LEHTINEN, Mr. ROSS, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. RYAN of Wisconsin, Mr. SALAZAR, Mr. SALI, Ms. LORETTA SANCHEZ of California, Mr. SAXTON, Mr. SCHIFF, Mrs. SCHMIDT, Mr. SCOTT of Georgia, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHAYS, Mr. SHIMKUS, Mr. SHULER, Mr. SHUSTER, Mr. SIMPSON, Mr. SIRES, Mr. SMITH of Nebraska, Mr. SNYDER, Ms. SOLIS, Mr. SOUDER, Mr. SPACE, Mr. SPRATT, Mr. STEARNS, Mr. SULLIVAN, Mr. TANNER, Mrs. TAUSCHER, Mr. TAYLOR, Mr. TERRY, Mr. THOMPSON of California, Mr. THORNBERRY, Mr. TIBERI, Mr. TURNER, Mr. UDALL of Colorado, Mr. UPTON, Mr. VAN HOLLEN, Mr. WALBERG, Mr. WALZ of Minnesota, Mr. WAMP, Ms. WATSON, Mr. WAXMAN, Mr. WELLER of Illinois, Mr. WESTMORELAND, Mr. WHITFIELD of Kentucky, Mr. WILSON of Ohio, Mrs. WILSON of New Mexico, Mr. WILSON of South Carolina, Mr. WOLF, Mr. YARMUTH, Mr. YOUNG of Alaska, and Mr. McNULTY) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Veterans' Affairs and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles 5, 10, 37, and 38, United States Code,

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

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
 5 “Hubbard Act”.

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

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

1 **SEC. 2. CONTINUED PAYMENT OF BONUSES AND SIMILAR**  
2 **BENEFITS FOR MEMBERS OF THE ARMED**  
3 **FORCES WHO RECEIVE SOLE SURVIVORSHIP**  
4 **DISCHARGE.**

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

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

11 (2) by redesignating paragraph (2) as subpara-  
12 graph (B) of paragraph (1); and

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

15 “(2)(A) If a member of the uniformed services re-  
16 ceives a sole survivorship discharge, the Secretary con-  
17 cerned—

18 “(i) shall not require repayment by the member  
19 of the unearned portion of any bonus, incentive pay,  
20 or similar benefit previously paid to the member;  
21 and

22 “(ii) may grant an exception to the requirement  
23 to terminate the payment of any unpaid amounts of  
24 a bonus, incentive pay, or similar benefit if the Sec-  
25 retary concerned determines that termination of the  
26 payment of the unpaid amounts would be contrary

1 to a personnel policy or management objective,  
2 would be against equity and good conscience, or  
3 would be contrary to the best interests of the United  
4 States.

5 “(B) In this paragraph, the term ‘sole survivorship  
6 discharge’ means the separation of a member from the  
7 armed forces, at the request of the member, pursuant to  
8 the Department of Defense policy permitting the early  
9 separation of a member who is the only surviving child  
10 in a family in which—

11 “(i) the father or mother or one or more sib-  
12 lings—

13 “(I) served in the armed forces; and

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

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

24 (b) SENSE OF CONGRESS.—In light of the extraor-  
25 dinary discretion granted to the Secretary of a military

1 department by statute and policy to continue to pay the  
2 unpaid amounts of a bonus, incentive pay, or similar ben-  
3 efit otherwise due to a member of the Armed Forces under  
4 the jurisdiction of the Secretary who receives a sole survi-  
5 vorship discharge, it is the sense of Congress that the Sec-  
6 retaries of the military departments should aggressively  
7 use such discretion to the benefit of members receiving  
8 a sole survivorship discharge.

9 **SEC. 3. AVAILABILITY OF SEPARATION PAY FOR MEMBERS**  
10 **OF THE ARMED FORCES WITH LESS THAN SIX**  
11 **YEARS OF ACTIVE SERVICE WHO RECEIVE**  
12 **SOLE SURVIVORSHIP DISCHARGE.**

13 Section 1174 of title 10, United States Code, is  
14 amended—

15 (1) by redesignating subsection (i) as subsection  
16 (j); and

17 (2) by inserting after subsection (h) the fol-  
18 lowing new subsection:

19 “(i) SPECIAL RULE FOR MEMBERS RECEIVING SOLE  
20 SURVIVORSHIP DISCHARGE.—(1) A member of the armed  
21 forces who receives a sole survivorship discharge shall be  
22 entitled to separation pay under this section even though  
23 the member has completed less than six years of active  
24 service immediately before that discharge. Subsection (e)

1 shall not apply to a member who receives a sole survivor-  
2 ship discharge.

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

7       “(3) In this subsection, the term ‘sole survivorship  
8 discharge’ means the separation of a member from the  
9 armed forces, at the request of the member, pursuant to  
10 the Department of Defense policy permitting the early  
11 separation of a member who is the only surviving child  
12 in a family in which—

13               “(A) the father or mother or one or more sib-  
14 lings—

15                       “(i) served in the armed forces; and

16                       “(ii) was killed, died as a result of wounds,  
17 accident, or disease, is in a captured or missing  
18 in action status, or is permanently 100 percent  
19 disabled or hospitalized on a continuing basis  
20 (and is not employed gainfully because of the  
21 disability or hospitalization); and

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

1 **SEC. 4. TRANSITIONAL HEALTH CARE FOR MEMBERS OF**  
2 **THE ARMED FORCES WHO RECEIVE SOLE**  
3 **SURVIVORSHIP DISCHARGE.**

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

7 “(E) A member who receives a sole survivorship  
8 discharge (as defined in section 1174(i) of this  
9 title).”.

10 **SEC. 5. TRANSITIONAL COMMISSARY AND EXCHANGE BEN-**  
11 **EFITS FOR MEMBERS OF THE ARMED**  
12 **FORCES WHO RECEIVE SOLE SURVIVORSHIP**  
13 **DISCHARGE.**

14 Section 1146 of title 10, United States Code, is  
15 amended—

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

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

20 (2) by adding at the end the following new sub-  
21 section:

22 “(b) BENEFITS FOR MEMBERS RECEIVING SOLE  
23 SURVIVORSHIP DISCHARGE.—A member of the armed  
24 forces who receives a sole survivorship discharge (as de-  
25 fined in section 1174(i) of this title) is entitled to continue  
26 to use commissary and exchange stores and morale, wel-

1 fare, and recreational facilities in the same manner as a  
2 member on active duty during the two-year period begin-  
3 ning on the later of the following dates:

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

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

8 **SEC. 6. VETERANS BENEFITS FOR MEMBERS OF THE**  
9                           **ARMED FORCES WHO RECEIVE SOLE SURVI-**  
10                           **VORSHIP DISCHARGE.**

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

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

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

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

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

24           (3) by adding at the end the following new sub-  
25 paragraph:

1           “(D) was discharged or released from ac-  
2           tive duty by reason of a sole survivorship dis-  
3           charge (as that term is defined in section  
4           1174(i) of title 10).”.

5           (c) BASIC EDUCATIONAL ASSISTANCE.—

6           (1) SERVICE ON ACTIVE DUTY.—Section  
7           3011(a)(1) of such title is amended—

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

13          (B) in subparagraph (B)(ii), by inserting  
14          after “service-connected disability,” the fol-  
15          lowing: “by reason of a sole survivorship dis-  
16          charge (as that term is defined in section  
17          1174(i) of title 10),”; and

18          (C) in subparagraph (C)(iii)(II), by insert-  
19          ing after “service-connected disability,” the fol-  
20          lowing: “by reason of a sole survivorship dis-  
21          charge (as that term is defined in section  
22          1174(i) of title 10),”.

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

25          (A) in subparagraph (A)—

1 (i) by striking “, or (vi)” and insert-  
2 ing “, (vi)”; and

3 (ii) by inserting before the period at  
4 the end the following: “, or (vii) by reason  
5 of a sole survivorship discharge (as that  
6 term is defined in section 1174(i) of title  
7 10)”; and

8 (B) in subparagraph (B)—

9 (i) in clause (i), by inserting after  
10 “service-connected disability,” the fol-  
11 lowing: “by reason of a sole survivorship  
12 discharge (as that term is defined in sec-  
13 tion 1174(i) of title 10),”; and

14 (ii) in clause (ii)—

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

17 (II) by inserting before the pe-  
18 riod at the end the following: “, or  
19 (VII) by reason of a sole survivorship  
20 discharge (as that term is defined in  
21 section 1174(i) of title 10)”.

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

4 Section 8521(a)(1)(B)(ii)(III) of title 5, United  
5 States Code, is amended by striking “hardship,” and in-  
6 serting “hardship (including pursuant to a sole survivor-  
7 ship discharge, as that term is defined in section 1174(i)  
8 of title 10),”.

9 **SEC. 8. PREFERENCE-ELIGIBLE STATUS FOR MEMBERS OF**  
10 **THE ARMED FORCES WHO RECEIVE SOLE**  
11 **SURVIVORSHIP DISCHARGE.**

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

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

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

18 (3) by inserting after subparagraph (G) the fol-  
19 lowing:

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

24 **SEC. 9. EFFECTIVE DATE.**

25 (a) **RETROACTIVE EFFECTIVE DATE.**—Except as  
26 provided in subsection (b), this Act and the amendments

1 made by this Act shall apply with respect to any sole survi-  
2 vorship discharge granted after September 11, 2001.

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

8 (c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In  
9 this section, the term “sole survivorship discharge” means  
10 the separation of a member from the Armed Forces, at  
11 the request of the member, pursuant to the Department  
12 of Defense policy permitting the early separation of a  
13 member who is the only surviving child in a family in  
14 which—

15 (1) the father or mother or one or more sib-  
16 lings—

17 (A) served in the armed forces; and

18 (B) was killed, died as a result of wounds,  
19 accident, or disease, is in a captured or missing  
20 in action status, or is permanently 100 percent  
21 disabled or hospitalized on a continuing basis  
22 (and is not employed gainfully because of the  
23 disability or hospitalization); and

24 (2) the death, status, or disability did not result  
25 from the intentional misconduct or willful neglect of

- 1 the parent or sibling and was not incurred during a
- 2 period of unauthorized absence.

