

107TH CONGRESS
2D SESSION

S. 2237

To amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2002

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Hearing Loss
5 Compensation Act of 2002”.

6 **SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED OR-**
7 **GANS.**

8 (a) HEARING LOSS REQUIRED FOR COMPENSA-
9 TION.—Section 1160(a)(3) of title 38, United States

1 Code, is amended by striking “total” both places it ap-
2 pears.

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

7 **SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CON-**
8 **NECTION FOR HEARING LOSS ASSOCIATED**
9 **WITH PARTICULAR MILITARY OCCUPA-**
10 **TIONAL SPECIALTIES.**

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

14 **“§ 1119. Presumption of service connection for hear-**
15 **ing loss associated with particular mili-**
16 **tary occupational specialties**

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

1 "(b) A military occupational specialty or equivalent
2 referred to in subsection (a) is a military occupational spe-
3 cialty or equivalent, if any, that the Secretary determines
4 in regulations prescribed under this section in which indi-
5 viduals assigned to such military occupational specialty or
6 equivalent in the active military, naval, or air service are
7 or were likely to be exposed to a sufficiently high level
8 of acoustic trauma as to result in permanent hearing loss,
9 tinnitus, or both.

10 "(c) In making determinations for purposes of sub-
11 section (b), the Secretary shall take into account the re-
12 port submitted to the Secretary by the National Academy
13 of Sciences under section 3(c) of the Veterans Hearing
14 Loss Compensation Act of 2002.

15 "(d)(1) Not later than 60 days after the date on
16 which the Secretary receives the report referred to in sub-
17 section (c), the Secretary shall determine whether or not
18 a presumption of service connection for hearing loss,
19 tinnitus, or both is warranted for the hearing loss,
20 tinnitus, or both, as the case may be, of individuals as-
21 signed to each military occupational specialty or equivalent
22 identified by the National Academy of Sciences in such
23 report as a military occupational specialty or equivalent
24 in which individuals are or were likely to be exposed to
25 a sufficiently high level of acoustic trauma as to result

1 in permanent hearing loss, tinnitus, or both to a degree
2 which would be compensable as a service-connected dis-
3 ability under the laws administered by the Secretary.

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

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

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

19 “(B) submit to the Committees on Veterans’
20 Affairs of the Senate and the House of Representa-
21 tives a report on the determination, including a jus-
22 tification for the determination.

23 “(e) Any regulations issued under subsection (d)(2)
24 shall take effect on the date provided for in such regula-

1 tions. No benefit may be paid under this section for any
2 month that begins before that date.”.

3 (2) The table of sections at the beginning of chapter
4 11 of that title is amended by inserting after the item re-
5 lating to section 1118 the following new item:

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

6 (b) PRESUMPTION REBUTTABLE.—Section 1113 of
7 title 38, United States Code, is amended by striking “or
8 1118” each place it appears and inserting “1118, or
9 1119”.

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

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

21 (A) review and assess available data on occupa-
22 tional hearing loss;

23 (B) from such data, identify the forms of
24 acoustic trauma that, if experienced by individuals in

1 the active military, naval, or air service, could cause
2 or contribute to hearing loss, hearing threshold shift,
3 or tinnitus in such individuals;

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

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

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

14 (I) immediate or delayed onset;
15 (II) cumulative;
16 (III) progressive; or
17 (IV) any combination of subclauses
18 (I) through (III);

19 (D) review and assess the completeness and ac-
20 curacy of data of the Department of Veterans Af-
21 fairs and the Department of Defense on hearing
22 threshold shift in individuals who were discharged or
23 released from service in the Armed Forces during
24 the period beginning on December 7, 1941, and end-

1 ing on the date of the enactment of this Act upon
2 their discharge or release from such service; and

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

13 (3) Not later than 180 days after the date of the
14 entry into the agreement referred to in paragraph (1), the
15 National Academy of Sciences shall submit to the Sec-
16 retary a report on the activities of the National Academy
17 of Sciences under the agreement, including the results of
18 the activities required by subparagraphs (A) through (F)
19 of paragraph (2).

20 (d) REPORT ON ADMINISTRATION OF BENEFITS FOR
21 HEARING LOSS AND TINNITUS.—(1) Not later than 180
22 days after the date of the enactment of this Act, the Sec-
23 retary of Veterans Affairs shall submit to the Committees
24 on Veterans' Affairs of the Senate and the House of Rep-
25 resentatives a report on the claims submitted to the Sec-

1 retary for disability compensation or health care for hear-
2 ing loss or tinnitus.

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

5 (A) The number of claims submitted to the Sec-
6 retary in each of 1999, 2000, and 2001 for disability
7 compensation for hearing loss, tinnitus, or both.

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

10 (i) the number of claims for which dis-
11 ability compensation was awarded, set forth by
12 year;

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

15 (iii) the total amount of disability com-
16 pensation paid on such claims during such
17 years.

18 (C) The total cost to the Department of adjudic-
19 ating the claims referred to in subparagraph (A),
20 set forth in terms of full-time employee equivalents
21 (FTEEs).

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

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