

Calendar No. 542

107TH CONGRESS
2^D SESSION**S. 2237****[Report No. 107-234]**

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 (for himself and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

AUGUST 1, 2002

Reported by Mr. ROCKEFELLER, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED OR-**
5 **GANS.**

6 (a) **HEARING LOSS REQUIRED FOR COMPENSA-**
7 **TION.**—Section 1160(a)(3) of title 38, United States
8 Code, is amended by striking “total” both places it ap-
9 pears.

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

14 **SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CON-**
15 **NECTION FOR HEARING LOSS ASSOCIATED**
16 **WITH PARTICULAR MILITARY OCCUPA-**
17 **TIONAL SPECIALTIES.**

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

21 **“§ 1119. Presumption of service connection for hear-**
22 **ing loss associated with particular mili-**
23 **tary occupational specialties**

24 “(a) For purposes of section 1110 of this title, and
25 subject to section 1113 of this title, hearing loss, tinnitus,
26 or both of a veteran who while on active military, naval,

1 or air service was assigned to a military occupational spe-
2 cialty or equivalent described in subsection (b) shall be
3 considered to have been incurred in or aggravated by such
4 service, notwithstanding that there is no record of evidence
5 of such hearing loss or tinnitus, as the case may be, during
6 the period of such service.

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

16 “(c) In making determinations for purposes of sub-
17 section (b), the Secretary shall take into account the re-
18 port submitted to the Secretary by the National Academy
19 of Sciences under section 3(c) of the Veterans Hearing
20 Loss Compensation Act of 2002.

21 “(d)(1) Not later than 60 days after the date on
22 which the Secretary receives the report referred to in sub-
23 section (c), the Secretary shall determine whether or not
24 a presumption of service connection for hearing loss,
25 tinnitus, or both is warranted for the hearing loss,

1 tinnitus, or both, as the case may be, of individuals as-
2 signed to each military occupational specialty or equivalent
3 identified by the National Academy of Sciences in such
4 report as a military occupational specialty or equivalent
5 in which individuals are or were likely to be exposed to
6 a sufficiently high level of acoustic trauma as to result
7 in permanent hearing loss, tinnitus, or both to a degree
8 which would be compensable as a service-connected dis-
9 ability under the laws administered by the Secretary.

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

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

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

1 “(B) submit to the Committees on Veterans’
 2 Affairs of the Senate and the House of Representa-
 3 tives a report on the determination, including a jus-
 4 tification for the determination.

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

9 (2) The table of sections at the beginning of chapter
 10 11 of that title is amended by inserting after the item re-
 11 lating to section 1118 the following new item:

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

12 (b) PRESUMPTION REBUTTABLE.—Section 1113 of
 13 title 38, United States Code, is amended by striking “or
 14 1118” each place it appears and inserting “1118, or
 15 1119”.

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

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

3 ~~(A)~~ review and assess available data on occupa-
 4 tional hearing loss;

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

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

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

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

20 ~~(I)~~ immediate or delayed onset;

21 ~~(II)~~ cumulative;

22 ~~(III)~~ progressive; or

23 ~~(IV)~~ any combination of subclauses

24 ~~(I)~~ through ~~(III)~~;

1 ~~(D)~~ review and assess the completeness and ac-
2 curacy of data of the Department of Veterans Af-
3 fairs and the Department of Defense on hearing
4 threshold shift in individuals who were discharged or
5 released from service in the Armed Forces during
6 the period beginning on December 7, 1941, and end-
7 ing on the date of the enactment of this Act upon
8 their discharge or release from such service; and

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

19 ~~(3)~~ Not later than 180 days after the date of the
20 entry into the agreement referred to in paragraph (1), the
21 National Academy of Sciences shall submit to the Sec-
22 retary a report on the activities of the National Academy
23 of Sciences under the agreement, including the results of
24 the activities required by subparagraphs (A) through (F)
25 of paragraph (2).

1 (d) REPORT ON ADMINISTRATION OF BENEFITS FOR
 2 HEARING LOSS AND TINNITUS.—(1) Not later than 180
 3 days after the date of the enactment of this Act, the Sec-
 4 retary of Veterans Affairs shall submit to the Committees
 5 on Veterans' Affairs of the Senate and the House of Rep-
 6 resentatives a report on the claims submitted to the Sec-
 7 retary for disability compensation or health care for hear-
 8 ing loss or tinnitus.

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

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

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

16 (i) the number of claims for which dis-
 17 ability compensation was awarded, set forth by
 18 year;

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

21 (iii) the total amount of disability com-
 22 pensation paid on such claims during such
 23 years.

24 (C) The total cost to the Department of adjudi-
 25 cating the claims referred to in subparagraph (A);

1 set forth in terms of full-time employee equivalents
 2 (FTEEs).

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

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

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

11 ~~(E)~~ The health care furnished to veterans re-
 12 ferred to in subparagraph ~~(D)~~ for hearing-related
 13 disorders, including the number of veterans fur-
 14 nished hearing aids and the cost of furnishing such
 15 hearing aids.

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

17 (a) *SHORT TITLE.*—*This Act may be cited as the “Vet-*
 18 *erans Benefits Improvement Act of 2002”.*

19 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 20 *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.

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

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

1 ***TITLE I—COMPENSATION AND***
 2 ***PENSION MATTERS***

3 ***SEC. 101. CLARIFICATION OF ENTITLEMENT TO WARTIME***
 4 ***DISABILITY COMPENSATION FOR WOMEN***
 5 ***VETERANS WHO HAVE SERVICE-CONNECTED***
 6 ***MASTECTOMIES.***

7 *(a) IN GENERAL.—Section 1114(k) is amended by in-*
 8 *serting “of half or more of the tissue” after “anatomical*
 9 *loss” the second place it appears.*

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

14 ***SEC. 102. COMPENSATION FOR HEARING LOSS IN PAIRED***
 15 ***ORGANS.***

16 *(a) HEARING LOSS REQUIRED FOR COMPENSATION.—*
 17 *Section 1160(a)(3) is amended by striking “total” both*
 18 *places it appears.*

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

1 **SEC. 103. AUTHORITY FOR PRESUMPTION OF SERVICE CON-**
 2 **NECTION FOR HEARING LOSS ASSOCIATED**
 3 **WITH PARTICULAR MILITARY OCCUPATIONAL**
 4 **SPECIALTIES.**

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

7 **“§ 1119. Presumption of service connection for hearing**
 8 **loss associated with particular military**
 9 **occupational specialties**

10 “(a) *For purposes of section 1110 of this title, and sub-*
 11 *ject to section 1113 of this title, hearing loss, tinnitus, or*
 12 *both of a veteran who served on active military, naval, or*
 13 *air service during a period specified by the Secretary under*
 14 *subsection (b)(1) and was assigned during the period of*
 15 *such service to a military occupational specialty or equiva-*
 16 *lent described in subsection (b)(2) shall be considered to*
 17 *have been incurred in or aggravated by such service, not-*
 18 *withstanding that there is no record of evidence of such*
 19 *hearing loss or tinnitus, as the case may be, during the pe-*
 20 *riod of such service.*

21 “(b)(1) *A period referred to in subsection (a) is a pe-*
 22 *riod, if any, that the Secretary determines in regulations*
 23 *prescribed under this section—*

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

1 “(B) *with respect to service in a military occu-*
2 *pational specialty or equivalent described in para-*
3 *graph (2), during which hearing conservation meas-*
4 *ures to prevent individual hearing threshold shift*
5 *were unavailable or provided insufficient protection*
6 *for members assigned to such military occupational*
7 *specialty or equivalent.*

8 “(2) *A military occupational specialty or equivalent*
9 *referred to in subsection (a) is a military occupational spe-*
10 *cialty or equivalent, if any, that the Secretary determines*
11 *in regulations prescribed under this section in which indi-*
12 *viduals assigned to such military occupational specialty or*
13 *equivalent in the active military, naval, or air service are*
14 *or were likely to be exposed to a sufficiently high level of*
15 *acoustic trauma as to result in permanent hearing loss,*
16 *tinnitus, or both.*

17 “(c) *In making determinations for purposes of sub-*
18 *section (b), the Secretary shall take into account the report*
19 *submitted to the Secretary by the National Academy of*
20 *Sciences under section 103(c) of the Veterans Benefits Im-*
21 *provement Act of 2002.*

22 “(d)(1) *Not later than 60 days after the date on which*
23 *the Secretary receives the report referred to in subsection*
24 *(c), the Secretary shall determine whether or not a pre-*
25 *sumption of service connection for hearing loss, tinnitus,*

1 *or both is warranted for the hearing loss, tinnitus, or both,*
 2 *as the case may be, of individuals assigned to each military*
 3 *occupational specialty or equivalent, and during each pe-*
 4 *riod, identified by the National Academy of Sciences in*
 5 *such report as a military occupational specialty or equiva-*
 6 *lent in which individuals are or were likely to be exposed*
 7 *during such period to a sufficiently high level of acoustic*
 8 *trauma as to result in permanent hearing loss, tinnitus,*
 9 *or both to a degree which would be compensable as a service-*
 10 *connected disability under the laws administered by the*
 11 *Secretary.*

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

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

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

3 “(B) submit to the Committees on Veterans’ Af-
4 fairs of the Senate and the House of Representatives
5 a report on the determination, including a justifica-
6 tion for the determination.

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

11 (2) The table of sections at the beginning of chapter
12 11 is amended by inserting after the item relating to section
13 1118 the following new item:

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

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

17 (c) *ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED*
18 *WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES*.—
19 (1) The Secretary of Veterans Affairs shall seek to enter into
20 an agreement with the National Academy of Sciences, or
21 another appropriate scientific organization, for the Acad-
22 emy to perform the activities specified in this subsection.
23 The Secretary shall seek to enter into the agreement not

1 *later than 60 days after the date of the enactment of this*
 2 *Act.*

3 *(2) Under the agreement under paragraph (1), the Na-*
 4 *tional Academy of Sciences shall—*

5 *(A) review and assess available data on occupa-*
 6 *tional hearing loss;*

7 *(B) from such data, identify the forms of acous-*
 8 *tic trauma that, if experienced by individuals in the*
 9 *active military, naval, or air service, could cause or*
 10 *contribute to hearing loss, hearing threshold shift, or*
 11 *tinnitus in such individuals;*

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

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

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

22 *(I) immediate or delayed onset;*

23 *(II) cumulative;*

24 *(III) progressive; or*

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

3 (D) review and assess the completeness and ade-
4 quacy of data of the Department of Veterans Affairs
5 and the Department of Defense on hearing threshold
6 shift in a representative sample of individuals who
7 were discharged or released from service in the Armed
8 Forces following World War II, the Korean conflict,
9 and the Vietnam era, and in peacetime during the pe-
10 riod from the end of the Vietnam era to the beginning
11 of the Persian Gulf War, and during the Persian Gulf
12 War, with such sample to be selected so as to reflect
13 an appropriate distribution of individuals among the
14 various Armed Forces;

15 (E) identify each military occupational specialty
16 or equivalent, if any, in which individuals assigned
17 to such military occupational specialty or equivalent
18 in the active military, naval, or air service are or
19 were likely to be exposed to a sufficiently high level
20 of acoustic trauma as to result in permanent hearing
21 loss, tinnitus, or both to a degree which would be com-
22 pensable as a service-connected disability under the
23 laws administered by the Secretary of Veterans Af-
24 fairs; and

25 (F) assess when, if ever—

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

4 (ii) hearing conservation measures to pre-
 5 vent individual hearing threshold shift were
 6 available and provided sufficient protection for
 7 members assigned to each military occupational
 8 specialty or equivalent identified under subpara-
 9 graph (E).

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

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

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

1 *representatives a report on the claims submitted to the Sec-*
 2 *retary for disability compensation or health care for hear-*
 3 *ing loss or tinnitus.*

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

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

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

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

14 *(ii) the number of claims assigned each dis-*
 15 *ability rating; and*

16 *(iii) the total amount of disability com-*
 17 *penetration paid on such claims during each such*
 18 *year.*

19 *(C) The total cost to the Department of Veterans*
 20 *Affairs of adjudicating the claims referred to in sub-*
 21 *paragraph (A), set forth in terms of full-time em-*
 22 *ployee equivalents (FTEEs).*

23 *(D) The total number of veterans who sought*
 24 *treatment in Department health care facilities in each*

1 of 1999, 2000, and 2001 for hearing-related disorders,
2 set forth by—

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

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

7 (E) The health care furnished to veterans re-
8 ferred to in subparagraph (D) for hearing-related dis-
9 orders, including the number of veterans furnished
10 hearing aids and the cost of furnishing such hearing
11 aids.

12 **SEC. 104. MODIFICATION OF AUTHORITIES ON MEDAL OF**
13 **HONOR ROLL SPECIAL PENSION.**

14 (a) *INCREASE IN AMOUNT.*—Subsection (a) of section
15 1562 is amended by striking “\$600” and inserting “\$1,000,
16 as adjusted from time to time under subsection (e)”.

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

19 “(e) Effective as of December 1 each year, the Secretary
20 shall increase the amount of monthly special pension pay-
21 able under subsection (a) as of November 30 of such year
22 by the same percentage as the percentage by which benefit
23 amounts payable under title II of the Social Security Act
24 (42 U.S.C. 401 et seq.) are increased effective December 1

1 of such year as a result of a determination under section
 2 215(i) of that Act (42 U.S.C. 415(i)).”.

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

8 (2) *The Secretary of Veterans Affairs shall not make*
 9 *any adjustment under subsection (e) of section 1562 of title*
 10 *38, United States Code, as added by subsection (b) of this*
 11 *section, in 2002.*

12 (d) *PAYMENT OF LUMP SUM FOR PERIOD BETWEEN*
 13 *ACT OF VALOR AND COMMENCEMENT OF SPECIAL PEN-*
 14 *SION.*—(1) *The Secretary of Veterans Affairs shall pay, in*
 15 *a lump sum, to each person who is in receipt of special*
 16 *pension payable under section 1562 of title 38, United*
 17 *States Code, an amount equal to the total amount of special*
 18 *pension that the person would have received during the pe-*
 19 *riod beginning on the first day of the first month beginning*
 20 *after the date of the act for which the person was awarded*
 21 *the Medal of Honor and ending on the last day of the month*
 22 *preceding the month in which the person’s special pension*
 23 *in fact commenced.*

24 (2) *For each month of a period referred to in para-*
 25 *graph (1), the amount of special pension payable to a per-*

1 *son shall be determined using the rate of special pension*
 2 *that was in effect for such month, and shall be payable only*
 3 *if the person would have been entitled to payment of special*
 4 *pension during such month under laws for eligibility for*
 5 *special pension in effect at the beginning of such month.*

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

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

10 *(1) by inserting “(1)” after “(a)”;*

11 *(2) by designating the last sentence as paragraph*

12 *(2) and indenting such paragraph, as so designated,*
 13 *two ems from the left margin; and*

14 *(3) by adding at the end the following new para-*
 15 *graph:*

16 *“(3)(A) For purposes of this subsection, in any case*
 17 *where a beneficiary entitled to compensation, pension, or*
 18 *dependency and indemnity compensation enters into an*
 19 *agreement with another person under which agreement such*
 20 *other person acquires for consideration the right to receive*
 21 *payment of such compensation, pension, or dependency and*
 22 *indemnity compensation, as the case may be, whether by*
 23 *payment from the beneficiary to such other person, deposit*
 24 *into an account from which such other person may make*

1 *withdrawals, or otherwise, such agreement shall be deemed*
 2 *to be an assignment and is prohibited.*

3 “(B) *Any agreement or arrangement for collateral for*
 4 *security for an agreement that is prohibited under subpara-*
 5 *graph (A) is also prohibited.*

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

11 “(ii) *This subparagraph does not apply to a bene-*
 12 *ficiary with respect to compensation, pension, or depend-*
 13 *ency and indemnity compensation to which the beneficiary*
 14 *is entitled under a law administered by the Secretary.”.*

15 (b) *EFFECTIVE DATE.—Paragraph (3) of section*
 16 *5301(a) of title 38, United States Code (as added by sub-*
 17 *section (a) of this section), shall apply with respect to any*
 18 *agreement or arrangement described in such paragraph that*
 19 *is entered into on or after the date of the enactment of this*
 20 *Act.*

21 (c) *OUTREACH.—The Secretary of Veterans Affairs*
 22 *shall, during the five-year period beginning on the date of*
 23 *the enactment of this Act, carry out a program of outreach*
 24 *to inform veterans and other recipients or potential recipi-*
 25 *ents of compensation, pension, or dependency and indem-*

1 nity compensation benefits under the laws administered by
 2 the Secretary of the prohibition on the assignment of such
 3 benefits under law. The program shall include information
 4 on various schemes to evade the prohibition, and means of
 5 avoiding such schemes.

6 **SEC. 106. EXTENSION OF INCOME VERIFICATION AUTHOR-**
 7 **ITY.**

8 (a) *TITLE 38, UNITED STATES CODE.*—Section
 9 5317(g) is amended by striking “September 30, 2008” and
 10 inserting “September 30, 2011”.

11 (b) *INTERNAL REVENUE CODE.*—Section
 12 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986
 13 is amended by striking “September 30, 2003” and inserting
 14 “September 30, 2011”.

15 **TITLE II—EDUCATION MATTERS**

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

19 (a) *INCREASE IN AMOUNT.*—Section 3674(a)(4) is
 20 amended in the first sentence by striking “fiscal years 2001
 21 and 2002, \$14,000,000” and inserting “fiscal years 2003,
 22 2004, and 2005, \$18,000,000”.

23 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 24 section (a) shall take effect on October 1, 2002.

1 **SEC. 202. CLARIFYING IMPROVEMENT OF VARIOUS EDU-**
 2 **CATION AUTHORITIES.**

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

6 (b) *ACCELERATED PAYMENT OF ASSISTANCE FOR*
 7 *EDUCATION LEADING TO EMPLOYMENT IN HIGH TECH-*
 8 *NOLOGY INDUSTRY.*—(1) Subsection (b)(1) of section 3014A
 9 is amended by striking “employment in a high technology
 10 industry” and inserting “employment in a high technology
 11 occupation in a high technology industry”.

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

14 **“§3014A. Accelerated payment of basic educational**
 15 **assistance for education leading to em-**
 16 **ployment in high technology occupation**
 17 **in high technology industry”.**

18 (B) The table of sections at the beginning of chapter
 19 30 is amended by striking the item relating to section
 20 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.”.

21 (c) *SOURCE OF FUNDS FOR INCREASED USAGE OF EN-*
 22 *TITLEMENT UNDER ENTITLEMENT TRANSFER AUTHOR-*
 23 *ITY.*—Section 3035(b) is amended—

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

4 (2) by adding at the end the following new para-
5 graph:

6 “(4) Payments attributable to the increased usage of
7 benefits as a result of transfers of entitlement to basic edu-
8 cational assistance under section 3020 of this title shall be
9 made from the Department of Defense Educations Benefits
10 Fund established under section 2006 of title 10 or from ap-
11 propriations made to the Department of Transportation, as
12 appropriate.”.

13 (d) *LICENSING OR CERTIFICATION TESTS.*—(1) *Sec-*
14 *tion 3232(c)(1) is amended by striking “a licensing” and*
15 *inserting “a particular licensing”.*

16 (2) *Section 3689 is amended—*

17 (A) in subsection (b)(1)(B), by inserting “and
18 with such other standards as the Secretary may pre-
19 scribe,” after “practices,”; and

20 (B) in subsection (c)(1)(A), by inserting “and
21 with such other standards as the Secretary may pre-
22 scribe,” after “practices,”.

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

1 (e) *PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DE-*
 2 *PENDENTS' ASSISTANCE.*—*Section 3512(a) is amended—*

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

6 (2) *by redesignating paragraphs (4), (5), (6),*
 7 *and (7) as paragraphs (5), (6), (7), and (8), respec-*
 8 *tively;*

9 (3) *by inserting after paragraph (3) the fol-*
 10 *lowing new paragraph (4):*

11 “(4) *if the person otherwise eligible under para-*
 12 *graph (3) fails to elect a beginning date of entitlement*
 13 *in accordance with that paragraph, the beginning*
 14 *date of the person’s entitlement shall be the date of the*
 15 *Secretary’s decision that the parent has a service-con-*
 16 *necting total disability permanent in nature, or that*
 17 *the parent’s death was service-connected, whichever is*
 18 *applicable;”;* *and*

19 (4) *in paragraph (6), as so redesignated, by*
 20 *striking “paragraph (4)” and inserting “paragraph*
 21 *(5)”.*

1 ***TITLE III—HOUSING MATTERS***

2 ***SEC. 301. AUTHORITY TO GUARANTEE ADJUSTABLE RATE***

3 ***MORTGAGES AND HYBRID ADJUSTABLE RATE***

4 ***MORTGAGES.***

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

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

12 (1) in subsection (b), by striking “Interest rate
13 adjustment provisions” and inserting “Except as pro-
14 vided in subsection (c)(1), interest rate adjustment
15 provisions”;

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

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

20 “(c) *Adjustable rate mortgages that are guaranteed*
21 *under this section shall include adjustable rate mortgages*
22 *(commonly referred to as ‘hybrid adjustable rate mort-*
23 *gages’) having interest rate adjustment provisions that—*

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

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

4 “(3) provide for an initial adjustment in the
5 rate of interest by the mortgagee at the end of the pe-
6 riod described in paragraph (2); and

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

10 (c) *IMPLEMENTATION OF AUTHORITY TO GUARANTEE*
11 *HYBRID ADJUSTABLE RATE MORTGAGES.*—*The Secretary*
12 *of Veterans Affairs shall exercise the authority under section*
13 *3707 of title 38, United States Code, as amended by this*
14 *section, to guarantee adjustable rate mortgages described in*
15 *subsection (c) of such section 3707, as so amended, in ad-*
16 *vance of any rulemaking otherwise required to implement*
17 *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”.

1 **SEC. 402. PROHIBITION ON CERTAIN ADDITIONAL BENE-**
 2 **FITS FOR PERSONS COMMITTING CAPITAL**
 3 **CRIMES.**

4 (a) *PRESIDENTIAL MEMORIAL CERTIFICATE.*—Section
 5 112 is amended by adding at the end the following new
 6 subsection:

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

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

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

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

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

19 (c) *HEADSTONE OR MARKER FOR GRAVE.*—Section
 20 2306 is amended by adding at the end the following new
 21 subsection:

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

1 “(2) *A memorial headstone or marker may not be fur-*
 2 *nished under subsection (b) for the purpose of commemo-*
 3 *rating a person described in section 2411(b) of this title.*

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

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

10 **SEC. 403. PROCEDURES FOR DISQUALIFICATION OF PER-**
 11 **SONS COMMITTING CAPITAL CRIMES FOR IN-**
 12 **TERMENT OR MEMORIALIZATION IN NA-**
 13 **TIONAL CEMETERIES.**

14 Section 2411(a)(2) is amended—

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

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

1 **TITLE V—JUDICIAL, PROCE-**
 2 **DURAL, AND ADMINISTRA-**
 3 **TIVE MATTERS**

4 **SEC. 501. STANDARD FOR REVERSAL BY COURT OF AP-**
 5 **PEALS FOR VETERANS CLAIMS OF ERRO-**
 6 **NEOUS FINDING OF FACT BY BOARD OF VET-**
 7 **ERANS' APPEALS.**

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

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

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

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

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

1 “(e)(1) *In making a determination on a finding of ma-*
 2 *terial fact under subsection (a)(4), the Court shall review*
 3 *the record of proceedings before the Secretary and the Board*
 4 *of Veterans’ Appeals pursuant to section 7252(b) of this*
 5 *title.*

6 “(2) *A determination on a finding of material fact*
 7 *under subsection (a)(4) shall specify the evidence or mate-*
 8 *rial on which the Court relied in making such determina-*
 9 *tion.”.*

10 (d) *APPLICABILITY.—(1) Except as provided in para-*
 11 *graph (2), the amendments made by this section shall take*
 12 *effect on the date of the enactment of this Act.*

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

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

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

1 **SEC. 502. REVIEW BY COURT OF APPEALS FOR THE FED-**
 2 **ERAL CIRCUIT OF DECISIONS OF LAW OF**
 3 **COURT OF APPEALS FOR VETERANS CLAIMS.**

4 (a) *REVIEW.*—(1) *Subsection (a) of section 7292 is*
 5 *amended in the first sentence by inserting after “the valid-*
 6 *ity of” the following: “a decision of the Court on a rule*
 7 *of law or of”.*

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

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

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

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

19 (1) *filed with the United States Court of Appeals*
 20 *for the Federal Circuit on or after the date of the en-*
 21 *actment of this Act; or*

22 (2) *pending with the United States Court of Ap-*
 23 *peals for the Federal Circuit as of the date of the en-*
 24 *actment of this Act in which a decision has not been*
 25 *rendered as of that date.*

1 **SEC. 503. AUTHORITY OF COURT OF APPEALS FOR VET-**
 2 **ERANS CLAIMS TO AWARD FEES UNDER**
 3 **EQUAL ACCESS TO JUSTICE ACT FOR NON-AT-**
 4 **TORNEY PRACTITIONERS.**

5 *The authority of the United States Court of Appeals*
 6 *for Veterans Claims to award reasonable fees and expenses*
 7 *of attorneys under section 2412(d) of title 28, United States*
 8 *Code, shall include authority to award fees and expenses,*
 9 *in an amount determined appropriate by the United States*
 10 *Court of Appeals for Veterans Claims, of individuals admit-*
 11 *ted to practice before the Court as non-attorney practi-*
 12 *tioners under subsection (b) or (c) of Rule 46 of the Rules*
 13 *of Practice and Procedure of the United States Court of Ap-*
 14 *peals for Veterans Claims.*

15 **SEC. 504. RETROACTIVE APPLICABILITY OF MODIFICATIONS**
 16 **OF AUTHORITY AND REQUIREMENTS TO AS-**
 17 **SIST CLAIMANTS.**

18 *(a) RETROACTIVE APPLICABILITY.—Except as specifi-*
 19 *cally provided otherwise, the provisions of sections 5102,*
 20 *5103, 5103A, and 5126 of title 38, United States Code, as*
 21 *amended by section 3 of the Veterans Claims Assistance Act*
 22 *of 2000 (Public Law 106–475; 114 Stat. 2096), apply to*
 23 *any claim—*

- 24 *(1) filed on or after November 9, 2000; or*
 25 *(2) filed before November 9, 2000, and not final*
 26 *as of that date.*

1 (b) *READJUDICATION OF CERTAIN CLAIMS.*—*If the*
2 *United States Court of Appeals for Veterans Claims, the*
3 *United States Court of Appeals for the Federal Circuit, or*
4 *the Supreme Court renders a decision during the period be-*
5 *ginning on April 24, 2002, and ending on the date of the*
6 *enactment of this Act holding that section 3(a) of the Vet-*
7 *erans Claims Assistance Act of 2000 is not applicable to*
8 *a case covered by the decision because such section 3(a) was*
9 *not intended to be given retroactive effect, the Secretary of*
10 *Veterans Affairs shall, upon request of the claimant or on*
11 *the Secretary’s own motion, order the claim readjudicated*
12 *under chapter 51 of such title, as amended by the Veterans*
13 *Claims Assistance Act of 2000, as if Board of Veterans’ Ap-*
14 *peals most recent denial of the claim concerned had not oc-*
15 *curred.*

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.”.

Calendar No. 542

107TH CONGRESS
2^D SESSION

S. 2237

[Report No. 107-234]

A BILL

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

AUGUST 1, 2002

Reported with an amendment and an amendment to the title