

111TH CONGRESS  
1ST SESSION

# S. 944

To amend title 10, United States Code, to require the Secretaries of the military departments to give wounded members of the reserve components of the Armed Forces the option of remaining on active duty during the transition process in order to continue to receive military pay and allowances, to authorize members to reside at their permanent places of residence during the process, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 30, 2009

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

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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 “Wounded Warrior  
3 Transition Assistance Act of 2009”.

4 **SEC. 2. CONTINUATION OF MILITARY COMPENSATION FOR**  
5 **RESERVE COMPONENT MEMBERS DURING**  
6 **PHYSICAL EVALUATION BOARD PROCESS**  
7 **AND FOR CERTAIN OTHER RESERVE COMPO-**  
8 **NENT MEMBERS.**

9 Section 1218 of title 10, United States Code, is  
10 amended by adding at the end the following new sub-  
11 sections:

12 “(d)(1) The Secretary of a military department shall  
13 give a member of a reserve component under the jurisdic-  
14 tion of the Secretary who is being evaluated by a physical  
15 evaluation board for separation or retirement for disability  
16 under this chapter or for placement on the temporary dis-  
17 ability retired list or inactive status list under this chapter  
18 the option to remain on active duty in order to continue  
19 to receive pay and allowances under title 37 during the  
20 physical evaluation board process until such time as the  
21 member—

22 “(A) is cleared by the board to return to duty;  
23 or

24 “(B) is separated, retired, or placed on the tem-  
25 porary disability retired list or inactive status list.

1       “(2) A member may change the election under para-  
2 graph (1) at any point during the physical evaluation  
3 board process and be released from active duty.

4       “(3) The requirements in paragraph (1) shall expire  
5 on the date that is five years after the date of the enact-  
6 ment of the Wounded Warrior Transition Assistance Act  
7 of 2009.

8       “(e)(1) The Secretary of a military department shall  
9 retain on active duty a member of a reserve component  
10 under the jurisdiction of the Secretary who incurs an in-  
11 jury or illness while on active duty, is being discharged  
12 or separated from the armed forces, or being released from  
13 active duty in the armed forces, and is not being evaluated  
14 by a physical evaluation board for purposes of this chapter  
15 in connection with such discharge, separation, or release  
16 in order for the member to continue to receive pay and  
17 allowances under title 37 until such time as the member—

18               “(A) is retired or placed on the temporary dis-  
19 ability retired list or inactive status list; or

20               “(B) is determined not to be eligible for such  
21 care or benefits based solely upon such injury or ill-  
22 ness.

23       “(2) A member retained on active duty under para-  
24 graph (1) may elect at any time while so retained to be

1 discharged, separated, or released, as applicable, from ac-  
 2 tive duty.

3 “(3) The requirements in paragraph (1) shall expire  
 4 on the date that is five years after the date of the enact-  
 5 ment of the Wounded Warrior Transition Assistance Act  
 6 of 2009.

7 “(f) A member contemplating the exercise of an op-  
 8 tion under subsection (d), or making an election under  
 9 subsection (e), may exercise such option or make such  
 10 election, as the case may be, only after consultation with  
 11 a member of the applicable judge advocate general’s  
 12 corps.”.

13 **SEC. 3. COMPLIANCE OF HUMAN RESOURCES COMMANDS**  
 14 **WITH REQUESTS FOR RETENTION OF RE-**  
 15 **SERVE COMPONENT MEMBERS ON ACTIVE**  
 16 **DUTY.**

17 (a) IN GENERAL.—The applicable human resources  
 18 command shall return to active duty in the Armed Forces  
 19 for the purposes specified in subsection (b) each member  
 20 of a reserve component of the Armed Forces—

21 (1) who wants to return to active duty; and

22 (2) who—

23 (A) is determined by an appropriate physi-  
 24 cian (including a private physician) to be unable

1 to work due to an illness or injury that may be  
2 determined to be service-connected; and

3 (B) is not retired, placed on the temporary  
4 disability retired list, receiving incapacitation  
5 pay under subsection (g) or (h) of section 204  
6 of title 37, United States Code, or receiving  
7 health care and disability benefits through the  
8 Department of Veterans Affairs with respect to  
9 such illness or injury.

10 (b) COVERED PURPOSES.—The purposes for which a  
11 member of a reserve component of the Armed Forces shall  
12 be returned to active duty under subsection (a) are the  
13 following:

14 (1) The receipt of a medical evaluation.

15 (2) The receipt of medical treatment for an ill-  
16 ness or injury described in subsection (a).

17 (3) A determination of eligibility for placement  
18 on the temporary disability retired list.

19 (c) HUMAN RESOURCES COMMANDS.—For purposes  
20 of this section, the term “applicable human resources com-  
21 mand” means the following:

22 (1) For the Army, the Human Resources Com-  
23 mand.

24 (2) For the Navy and the Marine Corps, the  
25 Air Force, and the Coast Guard, the command or

1 element of the military department concerned (or  
2 the element of the Department of Homeland Secu-  
3 rity with respect to the Coast Guard when it is not  
4 acting as a service in the Navy) responsible for dis-  
5 charging human resources functions with respect to  
6 members of the Armed Forces.

7 (d) SUNSET.—The requirements in subsection (a)  
8 shall expire on the date that is five years after the date  
9 of the enactment of this Act.

10 **SEC. 4. ENCOURAGEMENT OF USE OF LOCAL RESIDENCES**

11 **FOR CERTAIN RESERVE COMPONENT MEM-**  
12 **BERS.**

13 Section 1222 of title 10, United States Code, is  
14 amended by adding at the end the following new sub-  
15 section:

16 “(d) USE OF LOCAL RESIDENCES FOR CERTAIN RE-  
17 SERVE COMPONENT MEMBERS.—(1)(A) A member of a  
18 reserve component described by subparagraph (B) shall be  
19 permitted to reside at the member’s permanent place of  
20 residence if residing at that location is medically feasible,  
21 as determined by a licensed health care provider.

22 “(B) A member of a reserve component described by  
23 this subparagraph is any member as follows:

24 “(i) Any member remaining on active duty  
25 under subsection (d) of section 1218 of this title, or

1 retained on active duty under subsection (e) of such  
2 section, during the period the member is on active  
3 duty under such subsection.

4 “(ii) Any member returned to active duty under  
5 section 3 of the Wounded Warrior Transition Assist-  
6 ance Act of 2009 during the period the member is  
7 on active duty for a purpose specified in subsection  
8 (b) of that section.

9 “(2) Nothing in this subsection shall be construed as  
10 terminating, altering, or otherwise affecting the authority  
11 of the commander of a member described in paragraph  
12 (1)(B) to order the member to perform duties consistent  
13 with the member’s fitness for duty.

14 “(3) The Secretary concerned shall pay any reason-  
15 able expenses of transportation, lodging, and meals in-  
16 curred by a member residing at the member’s permanent  
17 place of residence under this subsection in connection with  
18 travel from the member’s permanent place of residence to  
19 a medical facility during the period in which the member  
20 is covered by this subsection.”.

1 **SEC. 5. AUTHORIZATION FOR USE OF DEFENSE HEALTH**  
2 **PROGRAM FUNDS FOR SUPPORT PROGRAMS**  
3 **FOR CERTAIN MEMBERS OF THE RESERVE**  
4 **COMPONENTS.**

5 (a) AUTHORIZATION.—Funds in the Defense Health  
6 Program shall be available, subject to appropriations, for  
7 support programs for any member of a reserve component  
8 who becomes ill or injured while on active duty and sepa-  
9 rates from active duty as a result of the illness or injury.

10 (b) SUPPORT PROGRAMS.—The support programs for  
11 which such funds shall be available include the following:

12 (1) Non-clinical case management.

13 (2) TRICARE program advisors.

14 (3) Psychological health programs.

15 (4) Connection and support of military health  
16 system electronic medical records.

17 (c) COORDINATION.—The Office of the Secretary of  
18 Defense for Health Affairs shall coordinate with the re-  
19 serve components, including the National Guard, in deter-  
20 mining the budget requirements of the reserve components  
21 for the support programs.

1 **SEC. 6. MAINTENANCE AND ASSIGNMENT OF JUDGE ADVOCATE GENERAL PERSONNEL TO ASSIST MEMBERS OF THE ARMED FORCES IN CONNECTION WITH MEDICAL DISCHARGE PROCESS.**

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3  
4  
5 (a) CAPACITY FOR ASSISTANCE REQUIRED.—Each  
6 Secretary of a military department shall ensure that the  
7 number of members of the judge advocate general's corps  
8 under the jurisdiction of such Secretary who are dedicated  
9 to providing legal assistance to members of the Armed  
10 Forces regarding medical discharge from the Armed  
11 Forces is adequate to ensure that such corps has the ca-  
12 pacity to provide legal assistance to all members of the  
13 Armed Force or Armed Forces under the jurisdiction of  
14 such Secretary who are undergoing medical discharge  
15 from the Armed Forces (including during evaluation by  
16 a medical evaluation board (MEB)) in connection with  
17 such medical discharge.

18 (b) PROVISION OF ASSISTANCE.—

19 (1) IN GENERAL.—The Secretary of each mili-  
20 tary department shall, utilizing members of the  
21 judge advocate general's corps under the jurisdiction  
22 of such Secretary described in subsection (a), ensure  
23 that each member of the Armed Forces under the  
24 jurisdiction of such Secretary who is undergoing  
25 medical discharge from the Armed Forces receives

1 appropriate assistance on all legal matters relating  
2 to medical discharge from the Armed Forces.

3 (2) ELEMENTS.—The assistance provided a  
4 member of the Armed Forces under this subsection  
5 shall include the following:

6 (A) Outreach by a member of the judge  
7 advocate general's corps to the member of the  
8 Armed Forces at the commencement of the  
9 medical discharge process by the member of the  
10 Armed Forces regarding legal matters relating  
11 to evaluation by a medical evaluation board.

12 (B) Representation by a member of the  
13 judge advocate general's corps of the member of  
14 the Armed Forces in connection with evaluation  
15 by a medical evaluation board, if requested by  
16 the member of the Armed Forces.

17 **SEC. 7. MAINTENANCE AND ASSIGNMENT OF JUDGE ADVOCATE GENERAL PERSONNEL TO ASSIST MEMBERS OF THE ARMED FORCES IN CONNECTION WITH DISABILITY EVALUATION BY THE DEPARTMENT OF VETERANS AFFAIRS.**

22 (a) CAPACITY FOR ASSISTANCE REQUIRED.—Each  
23 Secretary of a military department shall ensure that the  
24 judge advocate general's corps under the jurisdiction of  
25 such Secretary has the capacity to provide legal assistance

1 to members of the Armed Force or Armed Forces under  
2 the jurisdiction of such Secretary who are undergoing dis-  
3 ability evaluation by the Department of Veterans Affairs  
4 in connection with such disability evaluation.

5 (b) PROVISION OF ASSISTANCE.—

6 (1) IN GENERAL.—The Secretary of each mili-  
7 tary department shall, utilizing members of the  
8 judge advocate general’s corps under the jurisdiction  
9 of such Secretary covered by subsection (a), ensure  
10 that each member of the Armed Forces under the  
11 jurisdiction of such Secretary who is undergoing dis-  
12 ability evaluation by the Department of Veterans Af-  
13 fairs receives appropriate assistance on all legal mat-  
14 ters relating to such evaluation.

15 (2) ELEMENTS.—The assistance provided a  
16 member of the Armed Forces under this subsection  
17 shall include the following:

18 (A) Outreach by a member of the judge  
19 advocate general’s corps to the member of the  
20 Armed Forces at the commencement by the  
21 member of the Armed Forces of disability eval-  
22 uation by the Department of Veterans Affairs  
23 regarding legal matters relating to disability  
24 evaluation by the Department of Veterans Af-  
25 fairs.

1           (B) Subject to paragraph (3), representa-  
2           tion by a member of the judge advocate gen-  
3           eral's corps of the member of the Armed Forces  
4           in connection with disability evaluation by the  
5           Department of Veterans Affairs if requested by  
6           the member of the Armed Forces.

7           (3) SCOPE OF REPRESENTATION.—Members of  
8           the judge advocate generals' corps shall have such  
9           powers and privileges to practice before the Depart-  
10          ment of Veterans Affairs in connection with rep-  
11          resentation of members of the Armed Forces under-  
12          going disability evaluation by the Department of  
13          Veterans Affairs as the Secretary of Defense and the  
14          Secretary of Veterans Affairs shall jointly prescribe  
15          in regulations for purposes of this section. Such  
16          powers and privileges may not be more restricted  
17          than the powers and privileges afforded representa-  
18          tives of organizations recognized by the Secretary of  
19          Veterans Affairs under section 5902 of title 38,  
20          United States Code, in representing veterans in con-  
21          nection with disability evaluation by the Department  
22          of Veterans Affairs.

1 **SEC. 8. SENSE OF CONGRESS ON ACCESS OF VETERANS**  
2 **SERVICE ORGANIZATIONS TO MILITARY FA-**  
3 **CILITIES FOR COUNSELING AND SERVICES**  
4 **FOR MEMBERS OF THE ARMED FORCES.**

5 (a) SENSE OF CONGRESS.—It is the sense of Con-  
6 gress that—

7 (1) each commander of a military installation  
8 should ensure the use of space and equipment at  
9 military installations, as required by section 2670(c)  
10 of title 10, United States Code, by representatives of  
11 qualified veterans service organizations, including  
12 those authorized to function on military installations  
13 under that section;

14 (2) the commander of each facility or location  
15 at which access is provided under section 2670(c) of  
16 such title should endeavor to provide private space  
17 in which a member of the Armed Forces may receive  
18 counseling and services as available from veterans  
19 service organizations;

20 (3) the Secretary of Defense should widely dis-  
21 seminate information regarding the existence and  
22 availability of the Wounded Warrior Resource Cen-  
23 ter as required by section 1616 of the Wounded  
24 Warrior Act (title XVI of Public Law 110–181; 122  
25 Stat. 447; 10 U.S.C. 1071 note) to members of the  
26 Armed Forces and their dependents; and

1           (4) the Wounded Warrior Center should provide  
2           legal assistance referral information where appro-  
3           priate, as provided for in this Act, especially to those  
4           members of the Armed Forces for whom a medical  
5           evaluation board or a physical evaluation board has  
6           been initiated and their family members.

7           (b) **QUALIFIED VETERANS SERVICES ORGANIZATION**  
8           **DEFINED.**—In this section, the term “qualified veterans  
9           service organization” means an organization that is recog-  
10          nized by the Secretary of Veterans Affairs for the rep-  
11          resentation of veterans under section 5902 of title 38,  
12          United States Code.

13          **SEC. 9. EFFECTIVE DATE.**

14          This Act and the amendments made by this Act shall  
15          take effect on the date that is 180 days after the date  
16          of the enactment of this Act.

17          **SEC. 10. FUNDING.**

18          Notwithstanding any provision of subchapter VI of  
19          chapter 35 of title 31, United States Code, for purposes  
20          of carrying out this Act and the amendments made by this  
21          Act, an amount in the aggregate of \$50,000,000 shall be  
22          derived from amounts recovered by the Department of De-  
23          fense from erroneous payments to contractors pursuant to

1 recovery audits and activities carried out by the Depart-  
2 ment under section 3561 of such title.

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