

116TH CONGRESS  
1ST SESSION

# H. R. 5028

To amend title 38, United States Code, to codify the authority of the Secretary of Veterans Affairs to assign a disability rating of total to a veteran by reason of unemployability, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 2019

Ms. WATERS (for herself, Ms. NORTON, Mr. KILMER, Mrs. BEATTY, Ms. TLAIB, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Veterans' Affairs

---

## A BILL

To amend title 38, United States Code, to codify the authority of the Secretary of Veterans Affairs to assign a disability rating of total to a veteran by reason of unemployability, 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 “Protecting Benefits  
5 for Disabled Veterans Act of 2019”.

1 **SEC. 2. CODIFICATION OF INDIVIDUAL UNEMPLOYABILITY.**

2 (a) IN GENERAL.—Chapter 11 of title 38, United  
3 States Code, is amended by inserting after section 1163  
4 the following:

5 **“§ 1164. Determination of total disability by reason of**  
6 **unemployability**

7 “(a) AUTHORITY.—Subject to subsections (b) and  
8 (c), for the purposes of this chapter, in the case of a vet-  
9 eran who has a service-connected disability, or service-con-  
10 nected disabilities, not rated as total, the Secretary may  
11 assign a disability rating of total to the veteran if the Sec-  
12 retary determines the veteran—

13 “(1) is unable to secure or maintain substan-  
14 tially gainful employment as a result of, in part or  
15 in whole, a service-connected disability; and

16 “(2) has—

17 “(A) a service-connected disability rated at  
18 least 60 percent; or

19 “(B) two or more service-connected disabili-  
20 ties—

21 “(i) at least one of which is rated at  
22 least 40 percent; and

23 “(ii) that, combined, are rated at least  
24 70 percent.

25 “(b) DETERMINATION OF CERTAIN DISABILITIES.—

26 For the above purpose of service-connected disabilities de-

1 scribed in subsection (a)(2), the Secretary shall consider  
2 as one disability the following:

3 “(1) Disabilities of one or both upper extrem-  
4 ities, or of one or both lower extremities, including  
5 the bilateral factor, if applicable.

6 “(2) Disabilities resulting from common eti-  
7 ology or a single accident.

8 “(3) Disabilities affecting a single body system  
9 (including orthopedic, digestive, respiratory, cardio-  
10 vascular-renal, and neuropsychiatric).

11 “(4) Disabilities incurred or aggravated as a  
12 prisoner of war.

13 “(c) ADDITIONAL AUTHORITY OF THE SECRETARY  
14 TO ASSIGN A DISABILITY RATING OF TOTAL.—The Sec-  
15 retary may assign a disability rating of total to a veteran  
16 who has a service-connected disability or disabilities de-  
17 scribed in subsection (a)(2)—

18 “(1) if the veteran maintains marginal employ-  
19 ment; or

20 “(2) if—

21 “(A) the veteran maintains substantially  
22 gainful employment; and

23 “(B) the Secretary, considering the totality  
24 of circumstances (including total household  
25 medical expenses and the cost of living in the

1 area in which the veteran resides), determines  
2 that such assignment is appropriate.

3 “(d) PROHIBITION ON THE CONSIDERATION OF CER-  
4 TAIN FACTORS.—In making any determination under sub-  
5 section (a) or (c), the Secretary may not consider the fol-  
6 lowing:

7 “(1) The age of a veteran.

8 “(2) The eligibility of a veteran for any retire-  
9 ment benefit, including any benefit under title II of  
10 the Social Security Act (42 U.S.C. 401 et seq.).

11 “(e) DEFINITIONS.—In this section:

12 “(1) The term ‘marginal employment’ means  
13 employment for which the earned annual income is  
14 less than 100 percent of the official poverty thresh-  
15 old for an individual established by the United  
16 States Census Bureau.

17 “(2) The term ‘substantially gainful employ-  
18 ment’ means employment for which the earned an-  
19 nual income equals or exceeds 100 percent of the of-  
20 ficial poverty threshold for an individual established  
21 by the United States Census Bureau.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 at the beginning of chapter 11 of title 38, United States  
24 Code, is amended by adding after the item relating to sec-  
25 tion 1163 the following:

“1164. Determination of total disability by reason of unemployability.”.

1           (c) REGULATIONS.—Not later than 180 days after  
2 the effective date of this Act, the Secretary of Veterans  
3 Affairs shall prescribe such regulations as may be nec-  
4 essary to carry out this section.

○