

ROBERT JACKSON, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE,
VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF

ROBERT JACKSON, ASSISTANT DIRECTOR
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

WITH RESPECT TO

PENDING VETERANS' BENEFITS LEGISLATION

WASHINGTON, D.C.

APRIL 29, 2009

MR. CHAIRMAN, RANKING MEMBER BURR AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on pending veterans' benefits legislation. The 1.8 million men and women of the Veterans of Foreign Wars of the U.S. appreciate the voice you give them at these important hearings.

S. 263, the Servicemembers Access to Justice Act

The VFW strongly supports this legislation. The Servicemembers Access to Justice Act (SAJA) would close several loopholes and strengthen the protections in current law to ensure that servicemembers' and veterans' employment and reemployment rights are effectively enforced under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). We thank Senator Casey and the original cosponsors of this legislation for its introduction, and we urge its passage.

We especially appreciate Section 2 of the legislation. It would waive states sovereign immunity under the 11th amendment, insuring servicemembers rights in regard to state law. Additionally, the bill would make pre-deployment arbitration dispute agreements unenforceable, require the award of attorney fees to servicemembers who prevail in actions to enforce USERRA, and define the parameters of successor in interest for companies that are bought and sold.

Meaningful reform of USERRA is long overdue. With more than one million veterans already on the unemployment rolls, the VFW is deeply concerned with the protection of the servicemember, and ensuring that the servicemember is reemployed by their previous employer in accordance with the law is of paramount importance. According to the Department of Defense's (DOD) Status of Forces study released in November 2007, among Post-9/11 returning National Guard and Reservists, nearly 11,000 were denied prompt reemployment and more than 20,000 lost their seniority, pay, and other benefits. Moreover, 20,000 saw their pensions cut and

more than 15,000 did not receive the training they needed to return to their former jobs. This legislation would eliminate those problems by closing loopholes to ensure that returning reservists keep their jobs and employment benefits as required under current law. Specifically, the bill would make it easier for servicemembers to obtain justice when their employment rights are violated by prohibiting employers from requiring them to give up their ability to enforce their rights under USERRA in court in order to get a job or keep a job.

S. 315, the Veterans' Outreach Improvement Act

The VFW is pleased to offer our support for this legislation, which would increase congressional oversight of the VA's outreach activities and authorize the Secretary of Veterans Affairs to work with State, local and community-based organizations to perform outreach.

Specifically, this bill would improve outreach activities performed by the VA by creating separate funding line items for outreach activities within the budgets of the VA and its agencies, to ensure oversight of the VA's outreach activities. Additionally, the bill would create an intra-agency structure to coordinate outreach activities, allowing VA components to consolidate their efforts, share proven outreach mechanisms, and avoid duplication of effort. Finally, the bill would allow the VA to award grant funds to State, local and community-based organizations to conduct outreach activities.

We believe that the passage of this legislation would help to facilitate consistent implementation of VA's outreach responsibilities around the country. This can only serve to better the care VA provides to this nation's veterans. For this reason, we support this bill.

S. 347

The VFW supports this legislation, which would allow the Secretary of Veterans Affairs to consider the loss of a dominant hand when determining severity of loss for purposes of traumatic injury protection under Servicemembers' Group Life Insurance.

Many occupational therapists, who provide treatment to amputees, maintain that a person who has lost a dominant hand must overcome greater physiological and psychological barriers than someone losing a non-dominant hand. This legislation would give VA the authority to distinguish the difference and to award greater compensation for the loss of a dominant hand.

S. 407, the Veterans' Compensation Cost-of-Living Adjustment Act

The VFW supports this legislation as it allows our disabled veterans and their dependents to keep pace with the rising costs of goods and services, which is especially difficult in these tough economic times.

Congress regularly enacts an annual cost-of-living adjustment for veterans' compensation in order to ensure that inflation does not erode its purchasing power. Without an annual COLA increase, these veterans and their families would see the value of their hard-earned benefits slowly diminish.

This bill would index the cost-of-living adjustment in the rates of disability compensation, dependents compensation, the clothing allowance and DIC rates. This adjustment would be parallel to the rate of increase for Social Security benefits.

We would note that we continue to oppose the rounding-down of compensation to the lowest dollar, which was instituted several years ago as a budget reduction measure. We feel that this unfairly penalizes those who have already given much to this country.

S. 475, the Military Spouses Residency Relief Act

The VFW supports this legislation, which would give a military spouse who moves out of state because of military orders the same option to claim one state of domicile, regardless of where they move. If a spouse chooses to take advantage of this, the servicemember and the spouse must have the same state of residence. This bill makes the move from station to station easier, removing the need to update drivers' licenses, filing tax returns for multiple states, and changing vehicle and voter registrations with each move.

Currently, servicemembers have the ability to claim a state of residence and maintain that residency regardless of where military orders may send them. Unfortunately, military spouses are not granted this same benefit. Consequently, military spouses cannot retain joint ownership of the family vehicle in most states and are much less likely to have their names on deeds and titles of family property because of the implications of moving to another state. Additionally, while servicemembers can vote while deployed overseas, this right is not always extended to spouses.

S. 514, the Veterans Rehabilitation and Training Improvements Act

While the VFW supports S. 514, we believe it does not go far enough to address the core issues facing the Vocational Rehabilitation and Employment Service (VR&E). Specifically, this legislation would require the amount of subsistence allowance paid to a veteran for a month in which the veteran participates in a VA rehabilitation program to be equal to the national average of the basic allowance for housing paid to a member of the Armed Forces in pay grade E-5. The legislation would also provide reimbursement for costs incurred during participation if a servicemember successfully completes the program.

We believe this is an important step in the right direction, but a disparity would still exist between Chapter 31 and 33 living allowance benefits. In utilizing a national average, many veterans may still choose not to use Chapter 31 because they may receive a higher stipend with Chapter 33. This would particularly be true in areas with a high cost of living. That is why the VFW would prefer to see Chapter 31's educational stipend paid at the same rate as a veteran receiving Chapter 33. Additionally, there is merit in providing reimbursement for costs incurred by veterans as a result of participation, however, these costs need to be paid while a veteran is enrolled, not following their successful completion, because that is when assistance is most needed.

We also support the legislation's proposed repeal of the per-fiscal-year limit on veterans who may participate in the VA Independent Living Services and Assistance program.

In recent testimony, the VFW cited several other changes that need to be made to ensure the VR&E program is the best transitional and rehabilitative program in the VA's arsenal, as follows:

Removal of the delimiting date

The VFW would like to see the delimiting date removed for VR&E. Currently, the delimiting date is

set at 12 years after separation from the military, or 12 years following the date a service member learns of their rating for a service-connected disability. This fails to take into account the fact that many service related injuries will not hinder the veteran to the point of needing help or rehabilitation until many years following the injury.

Eliminating VR&E's delimiting date would allow veterans to access the VR&E program on a needs basis for the entirety of their employable lives. Veterans would still have to be approved by VR&E as having an employment handicap resulting from their service-connected disability and would still be subject to the total cap of services. However, dropping the arbitrary delimiting date would insure rehabilitation for veterans should their service connected disability progress over time.

For Many Disabled Veterans with Dependents VR&E Education Tracks are Insufficient

For many veterans with dependents the VR&E educational track provides insufficient support. Veterans with dependents are the second largest group seeking assistance from VR&E and they are often those with the most pressing needs to secure meaningful long-term employment. Many seriously disabled veterans are unable to pursue all of their career options or goals due to the limited resources provided to disabled veterans with children and spouses. We must not forget that these veterans are utilizing VR&E because of a disability they incurred in service to our country. Unfortunately, these heroes utilize VR&E's employment track at a rate higher than disabled veterans without dependents. The VFW believes this is likely because immediate employment, while possibly not the best long-term rehabilitation outlook, immediately provides higher resources to the family that cannot afford long-term educational rehabilitation.

The Veterans of Foreign Wars would like to see VR&E institute a program to help veterans with dependents while they receive training, rehabilitation and education. This could be achieved by establishing a sufficient allowance to assist with the cost-of-living and in some cases by providing childcare vouchers or stipends. Childcare is a substantial expense for many of these veterans. Without aid of some form, many disabled veterans will be unable to afford the costs associated with long-term educational rehabilitation.

By assisting these veterans with these expenses, we can increase the likelihood they will enjoy long-term success and an increased quality of life. This will lead to decreased usage of VA services and is a worthwhile proactive approach.

VR&E Performance Metrics Need to be Revised to Emphasize Long-term Success

Currently VR&E measures the "rehabilitation rate" as the number of veterans with disabilities that achieve their VR&E goals and are declared rehabilitated compared to the number that discontinue or leave the program before achieving these goals. "Rehabilitated" within the employment track means that a veteran has been gainfully employed for a period of 60 days

following any VR&E services they received. This form of performance measure could have the latent consequence of incentivizing short-term employment solutions over long-term strategies.

The VFW would like to see all VR&E performance metrics changed to reflect the employable future of the veteran. A veteran's success in completing a rehabilitation program followed by his employment does not necessarily mean he has been rehabilitated for the course of his employable future. Changing the metrics to reflect a career-long standing will incentivize long-term approaches to VR & E programs. If an injury is aggravated following rehabilitation then a servicemember may need additional rehabilitation to ensure employability.

VR&E Needs to Reduce Time from Enrollment to Start of Services

The current VR&E program can take up to several months to begin a program of training. This occurs primarily because VR&E is required to validate that entitlement is present. In a recent conversation with VR&E's central office, the VFW learned that it is extraordinarily rare that entitlement is not found for the VR&E program. If a veteran has proven eligibility for VR&E, the VFW believes entitlement ought to be assumed thereby minimizing veterans time in gaining access to VR&E programs.

S. 663, the Belated Thank You to the Merchant Mariners of World War II Act

This bill would amend title 46, United States Code to provide benefits to certain individuals who served in the United States Merchant Marines during WWII.

The VFW recognizes the heroic service of Merchant Mariners during WWII. Their sacrifices and heroic efforts were instrumental in winning the Second World War. However, we cannot support this legislation to pay a monthly benefit of \$1000 to these merchant mariners or to their surviving spouses, which would be in addition to any current veterans' benefit that would be otherwise payable. We believe that this payment would be disproportionate, in terms of recognition and benefits, to those received by veterans who have been placed in harm's way.

S. 691/S. 746

The VFW's departments of Colorado and Nebraska have worked diligently with the VA to establish national cemeteries in eastern Nebraska and southern Colorado and we encourage this committee to approve a national cemetery in each region. Both requests fulfill the requirement by the VA under the Veterans Millennium Health Care and Benefits Act (PL 106-117) of a population threshold of 170,000 people living within a 75-mile radius of a state cemetery.

S. 728, the Veterans' Insurance and Benefits Enhancement Act

This comprehensive legislation, which the VFW is pleased to support, addresses a broad range of veterans' benefits and improves services for veterans both young and old. The bill includes several important provisions that would make enhancements to veterans' benefits in the following areas:

A new insurance program for veterans with service-connected disabilities: This new program would provide up to a maximum of \$50,000 in level premium term life insurance coverage with

the premium rates based on an updated mortality table. Consequently, premiums under this program would be fairer to veterans.

Expanded eligibility for retroactive benefits from traumatic injury protection coverage under Service members' Group Life Insurance: Currently, all insured servicemembers under SGLI from December 1, 2005 to the present are covered by traumatic injury protection regardless of where their injuries occurred. Unfortunately, servicemembers who sustained traumatic injuries between October 7, 2001, and November 30, 2005, that were not incurred as a direct result of OEF/OIF service are not eligible for a retroactive payment. This legislation would expand eligibility to these servicemembers.

A \$10,000 increase to the amount of supplemental insurance totally disabled veterans may purchase under the Service-Disabled Veterans Insurance Program: Many veterans who are totally disabled have difficulty obtaining commercial life insurance. This legislation would increase the amount of supplemental life insurance available from \$20,000 to \$30,000, providing these veterans with a more reasonable amount of life insurance coverage.

An increase in the amount of Veterans' Mortgage Life Insurance that a service-connected disabled veteran may purchase: The current economic climate necessitates the need for this provision, which would increase the maximum amount of Veterans' Mortgage Life Insurance that a service-connected disabled veteran may purchase from the current maximum of \$90,000 up to \$200,000. In the event of a veteran's death, the veteran's family is protected because VA will pay the balance of the mortgage owed up to the maximum amount of insurance purchased.

Other provisions within the bill would provide an upgrade of certain benefits for veterans and their survivors, including the extension of eligibility for automobiles and adaptive equipment for servicemembers and veterans with severe burn injuries; increasing the benefit rate for parents whose children die either during military service or as a result of a service-connected disability; and securing indexed cost-of-living increases for certain additional benefits for veterans and their families.

S. 820

The VFW supports this legislation because it will improve the lives of our most seriously disabled service-connected veterans.

This legislation reflects the VFW's recommendations published in the FY 2010 Independent Budget, regarding the enhancement of the automobile assistance allowance for disabled veterans.

More than 50 years ago, Congress set the amount of the automobile allowance to cover the full cost of an automobile. However, over time the value of that allowance has been significantly eroded because adjustments have been irregular and not reflective of the increased cost. This legislation restores equity between the cost of an automobile and the allowance by basing the allowance to 80 percent of the average retail cost of new automobiles for the preceding calendar year. Under this legislation, the automobile allowance would increase from \$11,000, which represents 39 percent of the average cost of a new automobile, to \$22,800, which represents the average cost of an automobile in model year 2008.

S. 842

This legislation provides needed foreclosure protection for our military families, and the VFW is proud to support it.

In the midst of the worst increase in mortgage defaults in close to 70 years, the foreclosure activity rate has gotten higher for the military compared to the rest of the nation. Servicemembers and their families are constantly on the move from one duty station to the next and are finding it increasingly difficult to sell their homes in a housing market that is anything but stable.

In short, our military families are in desperate need of relief.

Last year, Congress passed legislation amending the Servicemembers Civil Relief Act, protecting servicemembers from losing homes for nonpayment of mortgages only while on active duty and for nine months after they return home. The sunset provision for that protection expires at the end of 2010.

S. 842 would repeal the sunset provision and allow the VA to pay mortgage holders unpaid balances on housing loans guaranteed by the VA. Additionally, the legislation allows for long-term refinancing of mortgages.

These soldiers and sailors fought for our country, they should not have to fight to save their homes.

S. 847

The VFW is pleased to support this legislation, which would eliminate the unfair restriction on separately earned benefits for Dependents' Educational Assistance (DEA) beneficiaries who also qualify for and accrue benefits under other VA and DoD educational benefit programs as a result of their own military service.

The DEA program provides education and training opportunities to eligible dependents of veterans who have permanent and total service-connected disabilities or who have died of these disabilities. The program offers up to 45 months of education benefits, which may be used for degree and certificate programs, apprenticeship, and on-the-job training. Currently the VA provides for a \$915 per month entitlement for full time institutional training and a \$737 per month entitlement for full-time farm cooperative training.

Specifically, this bill will allow servicemembers to utilize both the full 45-month DEA entitlement earned through a family member's service, as well as the full G.I. Bill entitlement they earn themselves, and will ensure that these individuals receive the compensation they deserve as children or spouses of those who have serious service-connected disabilities or who died while honorably serving their country.

The VFW agrees with Sen. Webb's assertion that "...the compensation the VA provides for spouses and dependents should not be counted against any educational benefits that a survivor has earned through his or her own service to our country."

Draft Legislation: Clarification of Characteristics of Combat Service Act

The VFW is supportive of this draft legislation, which would provide that evidence in a veteran's record of assignment in a combat zone shall be sufficient for a veteran to prove his or her combat service, when other military documents are unavailable.

Currently, veterans who can establish that they served in combat do not have to produce official military records to support their claim for disabilities related to that service. But some veterans, disabled by their service in Iraq and Afghanistan, are unable to benefit from this evidentiary requirement because they have difficulty proving personal participation in combat by official military documents. This draft legislation would remove those documentation barriers and allow the veteran to proceed through the process of determining the extent of his or her service-connected disability for claim purposes.

This concludes my statement. I would be happy to answer any questions you may have.