

107TH CONGRESS  
1ST SESSION

# **S. 1427**

To amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2001

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

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## **A BILL**

To amend title 10, United States Code, to authorize disability retirement to be granted posthumously for members of the Armed Forces who die in the line of duty while on active duty, 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. POSTHUMOUS DISABILITY RETIREMENT FOR**  
2                   **MEMBERS OF THE ARMED FORCES WHO DIE**  
3                   **IN THE LINE OF DUTY WHILE ON ACTIVE**  
4                   **DUTY.**

5         (a) AUTHORITY.—Chapter 61 of title 10, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing new section:

8     **“§ 1222. Posthumous retirement: retroactive effective**  
9                   **date; related elections**

10        “(a) AUTHORITY.—Upon a determination by the Sec-  
11        retary concerned that it is advantageous for the survivors  
12        of a member of the armed forces who dies in the line of  
13        duty while on active duty, the Secretary concerned may—

14           “(1) posthumously retire the member under  
15        section 1201 of this title effective immediately before  
16        the member’s death; and

17           “(2) make for the deceased member any elec-  
18        tion with respect to survivor benefits under laws re-  
19        ferred to in subsection (c) that the deceased member  
20        would have been entitled to make upon being retired  
21        under that section, except that the Secretary may  
22        not make an election under section 1448(b)(1) or  
23        1458 of this title.

24        “(b) CONSTRUCTION WITH SECTION 1201 REQUIRE-  
25        MENTS.—Nothing in this section modifies the require-

1 ments set forth in section 1201 of this title regarding de-  
2 terminations or eligibility.

3       “(c) ADMINISTRATION OF BENEFITS LAWS.—A re-  
4 tirement and election under subsection (a) shall be effec-  
5 tive for the purposes of laws administered by the Secretary  
6 of Defense or any Secretary concerned and laws adminis-  
7 tered by the Secretary of Veterans Affairs.

8       “(d) NONREVIEWABILITY OF DETERMINATIONS.—A  
9 determination or election made by a Secretary concerned  
10 under subsection (a) is not subject to judicial review.”.

11       (b) CLERICAL AMENDMENT.—The table of sections  
12 at the beginning of such chapter is amended by adding  
13 at the end the following new item:

“1222. Posthumous retirement: retroactive effective date; related elections.”.

14 **SEC. 2. SURVIVOR BENEFIT PLAN.**

15       (a) SURVIVING SPOUSE ANNUITY.—Section 1448(d)  
16 of title 10, United States Code, is amended by striking  
17 paragraph (1) and inserting the following:

18           “(1) SURVIVING SPOUSE ANNUITY.—The Sec-  
19 retary concerned shall pay an annuity under this  
20 subchapter to the surviving spouse of a member  
21 who—

22           “(A) dies in the line of duty while on ac-  
23 tive duty after—

24           “(i) becoming eligible to receive re-  
25 tired pay;

1                             “(ii) qualifying for retired pay except  
2                             that the member has not applied for or  
3                             been granted that pay; or

4                             “(iii) completing 20 years of active  
5                             service but before the member is eligible to  
6                             retire as a commissioned officer because  
7                             the member has not completed 10 years of  
8                             active commissioned service; or

9                             “(B) dies in the line of duty while on ac-  
10                             tive duty and is posthumously retired under  
11                             section 1201 of this title pursuant to section  
12                             1222 of this title.”.

13                             (b) DEPENDENT CHILD ANNUITY.—Paragraph (2)  
14                             of such section is amended by striking “or if the member’s  
15                             surviving spouse subsequently dies” and inserting “or if  
16                             the payment of an annuity to the member’s surviving  
17                             spouse under that paragraph subsequently terminates”.

18                             (c) COMPUTATION OF SURVIVOR ANNUITY.—Section  
19                             1451(c) of title 10, United States Code, is amended by  
20                             adding at the end the following new paragraph:

21                             “(5) SERVICE MEMBERS POSTHUMOUSLY RE-  
22                             TIRED.—In the case of an annuity provided under  
23                             section 1448(d)(1)(B) of this title, the retired pay to  
24                             which the member would have been entitled when  
25                             the member died shall be determined for purposes of

1       paragraph (1) based upon the retired pay base com-  
2       puted for the member under section 1406(b) or  
3       1407 of this title as if the member had been retired  
4       under section 1201 of this title on the date of the  
5       member's death.”.

6       (d) CONFORMING AMENDMENT.—Section 1451(c)(3)  
7       of such title is amended by striking “section  
8       1448(d)(1)(B) or 1448(d)(1)(C)” and inserting “clause  
9       (ii) or (iii) of section 1448(d)(1)(A)”.

10 **SEC. 3. EFFECTIVE DATE AND APPLICABILITY.**

11       This Act and the amendments made by this Act shall  
12       take effect on September 10, 2001, and shall apply with  
13       respect to deaths of members of the Armed Forces occur-  
14       ring on or after that date.

