

118TH CONGRESS  
1ST SESSION

# H. R. 6362

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2023

Ms. WATERS (for herself, Mr. TAKANO, Mr. MCGOVERN, Mr. GRIJALVA, Ms. NORTON, Ms. LEE of California, Mr. DAVIS of Illinois, Ms. SCHAKOWSKY, Mr. CARSON, Mr. CARTER of Louisiana, Mr. CARBAJAL, Ms. JACKSON LEE, Mr. VARGAS, and Ms. ESCOBAR) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## 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 2023”.

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

2 (a) IN GENERAL.—Chapter 11 of title 38, United  
3 States Code, as amended by the Johnny Isakson and  
4 David P. Roe, M.D. Veterans Health Care and Benefits  
5 Improvement Act of 2020 (Public Law 116–315), is  
6 amended by inserting after section 1165 the following:

7 **“§ 1166. Determination of total disability by reason of**  
8 **unemployability**

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

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

18 “(2) has—

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

21 “(B) two or more service-connected disabil-  
22 ities—

23 “(i) at least one of which is rated at  
24 least 40 percent; and

25 “(ii) that, combined, are rated at least  
26 70 percent.

1       “(b) DETERMINATION OF CERTAIN DISABILITIES.—  
2 For the above purpose of service-connected disabilities de-  
3 scribed in subsection (a)(2), the Secretary shall consider  
4 as one disability the following:

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

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

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

13          “(4) Disabilities incurred or aggravated as a  
14 prisoner of war.

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

20           “(1) if the veteran maintains marginal employ-  
21 ment; or

22           “(2) if—

23                   “(A) the veteran maintains substantially  
24 gainful employment; and

1           “(B) the Secretary, considering the totality  
2           of circumstances (including total household  
3           medical expenses and the cost of living in the  
4           area in which the veteran resides), determines  
5           that such assignment is appropriate.

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

10           “(1) The age of a veteran.

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

14           “(e) DEFINITIONS.—In this section:

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

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

1           (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of such chapter is amended by adding  
3 after the item relating to section 1165 the following:

“1166. Determination of total disability by reason of unemployability.”.

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

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