

H. R. _____

To amend title 10, United States Code, to establish procedures for the determination of when members of the Armed Forces should be discharged from military service or reassigned to other duties as conscientious objectors.

**IN THE HOUSE OF
REPRESENTATIVES**

_____ introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to establish procedures for the determination of whether members of the Armed Forces should be discharged from military service or reassigned to other duties as conscientious objectors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Military Conscientious Objector Act of 2008'.

SECTION. 2. PROCEDURES FOR DETERMINATION OF CONSCIENTIOUS OBJECTOR STATUS.

(a) IN GENERAL - (1) Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

'Sec. 1057. Conscientious objectors: procedures for application and adjudication

'(a) GENERAL RULE- Members of the armed forces who are conscientiously opposed to military service may apply for discharge from the armed forces or for reassignment from certain duties in accordance with this section.

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`(b) MEMBERS COVERED – This section applies to all members of the armed forces, including members in a retired status and members not on active duty.

`(c) STANDARD FOR DISCHARGE – A member of the armed forces who on the basis of sincerely held moral, ethical, or religious beliefs, is conscientiously opposed to any participation in war in any form or to any participation in a particular conflict is entitled upon application in accordance with this section to be discharged from the armed forces.

`(d) STANDARD FOR REASSIGNMENT – A member of the armed forces who on the basis of sincerely held moral, ethical, or religious beliefs, is conscientiously opposed to the performance of certain duties in the armed forces is entitled upon application in accordance with this section to be reassigned to other duties that are identified by that member as not inconsistent with those sincerely held moral, ethical, or religious beliefs.

`(e) BURDEN AND STANDARD OF PROOF – The burden of establishing a claim of conscientious objection as grounds for separation or assignment to noncombatant training and service is on the applicant. To this end, applicants must establish, by preponderance of the evidence, that the nature or basis of the claim comes within the definition of criteria prescribed in this act for conscientious objection and that their beliefs are sincere. Applicants have the burden of determining and setting forth the exact nature of the request; that is, whether they request separation based on conscientious objection (1–O) or reassignment to noncombatant training and service based on conscientious objection (1–A–O).

`(f) AVAILABILITY OF INFORMATION – (1) A description of the process of applying for a discharge or reassignment under this section, including the person to whom application should be made by applicant nonunit members (Individual Ready Reserve and Standby Reserve), shall be made available to any member of the armed forces upon request. The description shall include a statement of the legal standard for conscientious objection for the purposes of this section and a description of the rights, protections, and obligations afforded members applying for treatment as a conscientious objector under this section.

`(2) Such information shall be available to members through a military personnel office, chaplain's office, or other office outside the chain of command and shall also be available through the chain of command.

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`(g) NOTICE OF INTENT – (1) A member of the armed forces who desires a discharge or reassignment under this section may file a Notice of Intent to file a claim for conscientious objector status. Upon filing such a Notice of Intent, the member shall be relieved from any duties involving the handling, training, and shipment of weapons or ammunition and shall be assigned to duties that conflict as little as possible with the member's beliefs underlying the conscientious objector claim.

`(2). A member of the armed forces who is not on active duty or active reserve and who files a Notice of Intent may not be called or ordered to active duty until the member's application is finally decided.

`(3) Upon the filing of a Notice of Intent, the member shall have 45 days to file a formal application for discharge or reassignment to other duties under this section.

`(h) LEGAL ASSISTANCE – A member seeking a discharge or reassignment under this section shall be provided legal counsel and assistance in the preparation of the applicant's Notice of Intent and application for discharge or reassignment and at all other stages through the decision on the application. A member may retain private counsel at the member's own expense to assist and represent the member. The member may use such private counsel alone or in conjunction with assigned counsel.

`(i) FILING OF APPLICATION – (1) An application filed under this section shall include a detailed statement describing the basis for the application. Personnel will indicate whether they are seeking discharge or assignment to noncombatant duties. The applicant may include any information that the applicant believes would be helpful in establishing the validity of the claimed conscientious objection, including a statement from a military chaplain or a psychiatrist.

`(2) The application shall be filed with the applicant's immediate commanding officer or, in the case of nonunit applicants (Individual Ready Reserve and Standby Reserve), the appropriate party as named by the branch.

`(j) INVESTIGATING OFFICER – (1) Upon the filing of an application under this section, the Secretary concerned shall appoint a commissioned officer on active duty to serve as investigating officer to investigate the claim stated in the application. Each investigating officer shall be in a grade not lower than captain or, in the case of the Navy or the Coast Guard, lieutenant and shall be appointed from outside the

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command in which the applicant is serving. If the applicant is an officer, the investigating officer must be in a grade higher than the applicant.

`(2) The investigating officer for an application under this section shall investigate the validity of the claim stated in the application. The investigation shall be completed and the investigating officer shall issue a recommendation to the applicant's commanding officer on the matter not later than 30 days after the date on which the application is filed.

`(4) The commanding officer shall issue a decision on the matter not later than 45 days after the date on which the application is filed.

If the commanding officer finds that the applicant proved by the preponderance of the evidence the conscientious objector claim, the application shall be approved and the applicant shall be discharged, or reassigned to duties not inconsistent with the claimed objection, as the case may be, as rapidly as possible.

`(5) If the commanding officer finds that the applicant failed to prove by the preponderance of the evidence the applicant is a conscientious objector as stated in the application, the commanding officer shall forward the case with reasons for the denial stated with the decision for consideration by an adjudication panel.

`(k) ADJUDICATION PANEL – (1) Upon submission of a case from a commanding officer for consideration by an adjudication panel, the Secretary concerned shall convene a panel to consider the case.

`(2) Each such panel shall have three members, appointed by the Secretary concerned as follows:

`(A) An officer of the armed forces on active duty in a grade higher than that of the applicant, but not lower than the grade of captain or, in the case of the Navy or Coast Guard, lieutenant.

(B) A civilian who is a member of the clergy or who holds a graduate degree in one of the disciplines of religion, ethics, or philosophy, who has not served on active duty in the armed forces.

(C) An officer of the armed forces Judge Advocate General Corp (JAGC) on active duty in a grade higher than that of the applicant, but not lower than the grade of captain or, in the case of the Navy or Coast Guard, lieutenant, who shall act as chair of the panel.

`(3) The Secretary concerned shall maintain lists of qualified persons who are available to serve on panels under subparagraph (B) of paragraph (2). The Secretary of Defense

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shall submit to Congress an annual report on the number of persons on those lists.

`(4) When a case is referred to a panel under this subsection, the panel shall hold a hearing on the case not later than 45 days after the date on which the case is forwarded by the commanding officer. The applicant shall have the right to appear before the panel and may be accompanied by counsel furnished by the government or by private counsel of the applicant's choosing, or both. The applicant may make a statement to the panel. After the panel hears the evidence presented by the investigating officer, the applicant shall have the right to submit a written rebuttal within 10 days of the date of the hearing.

`(5) After the hearing is concluded, the panel shall issue a decision on the application within 30 days of receiving a rebuttal under paragraph (4) or the applicant's written waiver of the right to submit a rebuttal. The decision of the panel shall be the final administration decision on the matter.

`(6) Information received by a panel may not be used against an applicant in any other forum, including a court martial.

`(1) JUDICIAL REVIEW – (1) A decision of the panel is reviewable by a court of the United States exercising *habeas corpus* jurisdiction pursuant to section 2241(a) of title 28.

`(2) In the exercise of the review power under this subsection, the Federal Rules of Civil Procedure shall govern the service of process and the pleadings, except that the respondent shall answer or otherwise plead to the petition within 20 days of service of process.

`(3) Except as otherwise provided in this subsection, proceedings upon review of a decision of a panel shall be governed by Chapter 7 of Title 5.

`(4) The court exercising judicial review under this subsection shall not conduct a trial *de novo*, but may conduct a supplemental hearing if the court finds that in the proceedings under subsections (j) and (k)--

`(A) the merits of the application for discharge were not resolved;

`(B) the fact-finding procedure used was not adequate to afford a full and fair hearing;

`(C) the material facts were not adequately developed;

`(D) the procedural rights guaranteed by subsections (j) and (k) were not observed;

`(E) the applicant did not receive a full, fair, and adequate hearing; or

`(F) the applicant was denied due process of law.

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`(m) COORDINATION WITH COURT MARTIAL PROCEEDINGS - In the case of a member who files an application under this section and with respect to whom court martial proceedings are pending under Chapter 47 of this Title (the Uniform Code of Military Justice) arising out of the member's objection to participation in war the member shall have the right to elect that all such court martial proceedings be held in abeyance pending final determination of the application under this subsection:

- `(1) If the application is approved, the court martial charges shall be dismissed in conjunction with the discharge or reassignment of the member; or
- `(2) if the application is denied, the stay of the court martial proceedings shall be lifted.

`(n) APPLICABILITY AT ALL TIMES – The provisions of this section apply at all times and, notwithstanding any other provision of law, may not be suspended or superseded.

`(o) CHARACTERIZATION OF DISCHARGES – A discharge issued under this section may not be made with a characterization of service other than the characterization of discharge a member would have received without reference to the conscientious objection claim under this section. The separation document issued to a member discharged under this section may not include any notation that would provide the basis for discrimination against the conscientious objector or which would otherwise in any way differentiate that person from members discharged under other provisions of law. The reenlistment code for a person discharged under this section shall be R-2, unless a lesser designation is warranted by the character of the member's service without respect to the conscientious objection application.'

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

`1057. Conscientious objectors: procedures for application and adjudication.'

(b) EFFECTIVE DATE- Section 1057 of Title 10, United States Code, as added by subsection (a), shall take effect 90 days after the date of the enactment of this Act.

END

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