

118TH CONGRESS
1ST SESSION

S. 29

To provide remedies to members of the Armed Forces discharged or subject to adverse action under the COVID–19 vaccine mandate.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 2023

Mr. CRUZ (for himself, Mr. GRAHAM, Mr. CRAPO, Mr. RISCH, Mr. CRAMER, Mrs. BLACKBURN, Mr. MARSHALL, Mr. LEE, Mr. SCOTT of Florida, Mrs. HYDE-SMITH, Mr. BRAUN, Mr. DAINES, Mr. PAUL, Mr. RUBIO, Mr. LANKFORD, Mr. JOHNSON, Mr. HOEVEN, Mr. HAWLEY, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To provide remedies to members of the Armed Forces discharged or subject to adverse action under the COVID–19 vaccine mandate.

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 “Allowing Military Ex-
5 emptions, Recognizing Individual Concerns About New
6 Shots Act of 2023” or the “AMERICANS Act”.

1 **SEC. 2. REMEDIES FOR MEMBERS OF THE ARMED FORCES**
2 **DISCHARGED OR SUBJECT TO ADVERSE AC-**
3 **TION UNDER THE COVID-19 VACCINE MAN-**
4 **DATE.**

5 (a) LIMITATION ON IMPOSITION OF NEW MAN-
6 DATE.—The Secretary of Defense may not issue any
7 COVID-19 vaccine mandate as a replacement for the
8 mandate rescinded under section 525 of the James M.
9 Inhofe National Defense Authorization Act for Fiscal Year
10 2023 absent a further Act of Congress expressly author-
11 izing a replacement mandate.

12 (b) REMEDIES.—Section 736 of the National Defense
13 Authorization Act for Fiscal Year 2022 (Public Law 117-
14 81; 10 U.S.C. 1161 note prec.) is amended—

15 (1) in the section heading, by striking “**TO**
16 **OBEY LAWFUL ORDER TO RECEIVE**” and insert-
17 ing “**TO RECEIVE**”;

18 (2) in subsection (a)—

19 (A) by striking “a lawful order” and in-
20 sserting “an order”; and

21 (B) by striking “shall be” and all that fol-
22 lows through the period at the end and insert-
23 ing “shall be an honorable discharge.”;

24 (3) by redesignating subsection (b) as sub-
25 section (e); and

1 (4) by inserting after subsection (a) the fol-
2 lowing new subsections:

3 “(b) PROHIBITION ON ADVERSE ACTION.—The Sec-
4 retary of Defense may not take any adverse action against
5 a covered member based solely on the refusal of such
6 member to receive a vaccine for COVID–19.

7 “(c) REMEDIES AVAILABLE FOR A COVERED MEM-
8 BER DISCHARGED OR SUBJECT TO ADVERSE ACTION
9 BASED ON COVID–19 STATUS.—At the election of a cov-
10 ered member discharged or subject to adverse action based
11 on the member’s COVID–19 vaccination status, and upon
12 application through a process established by the Secretary
13 of Defense, the Secretary shall—

14 “(1) adjust to ‘honorable discharge’ the status
15 of the member if—

16 “(A) the member was separated from the
17 Armed Forces based solely on the failure of the
18 member to obey an order to receive a vaccine
19 for COVID–19; and

20 “(B) the discharge status of the member
21 would have been an ‘honorable discharge’ but
22 for the refusal to obtain such vaccine;

23 “(2) reinstate the member to service at the
24 highest grade held by the member immediately prior
25 to the involuntary separation, allowing, however, for

1 any reduction in rank that was not related to the
2 member's COVID-19 vaccination status, with an ef-
3 fective date of reinstatement as of the date of invol-
4 untary separation;

5 “(3) for any member who was subject to any
6 adverse action other than involuntary separation
7 based solely on the member's COVID-19 vaccination
8 status—

9 “(A) restore the member to the highest
10 grade held prior to such adverse action, allow-
11 ing, however, for any reduction in rank that
12 was not related to the member's COVID-19
13 vaccination status, with an effective date of re-
14 instatement as of the date of involuntary sepa-
15 ration; and

16 “(B) compensate such member for any pay
17 and benefits lost as a result of such adverse ac-
18 tion;

19 “(4) expunge from the service record of the
20 member any adverse action, to include non-punitive
21 adverse action and involuntary separation, as well as
22 any reference to any such adverse action, based sole-
23 ly on COVID-19 vaccination status; and

24 “(5) include the time of involuntary separation
25 of the member reinstated under paragraph (2) in the

1 computation of the retired or retainer pay of the
2 member.

3 “(d) RETENTION AND DEVELOPMENT OF
4 UNVACCINATED MEMBERS.—The Secretary of Defense
5 shall—

6 “(1) make every effort to retain covered mem-
7 bers who are not vaccinated against COVID–19 and
8 provide such members with professional develop-
9 ment, promotion and leadership opportunities, and
10 consideration equal to that of their peers;

11 “(2) only consider the COVID–19 vaccination
12 status of a covered member in making deployment,
13 assignment, and other operational decisions where—

14 “(A) the law or regulations of a foreign
15 country require covered members to be vac-
16 cinated against COVID–19 in order to enter
17 that country; and

18 “(B) the covered member’s presence in
19 that foreign country is necessary in order to
20 perform their assigned role; and

21 “(3) for purposes of deployments, assignments,
22 and operations described in paragraph (2), create a
23 process to provide COVID–19 vaccination exemp-
24 tions to covered members with—

25 “(A) a natural immunity to COVID–19;

1 “(B) an underlying health condition that
2 would make COVID–19 vaccination a greater
3 risk to that individual than the general popu-
4 lation; or

5 “(C) sincerely held religious beliefs in con-
6 flict with receiving the COVID–19 vaccination.

7 “(e) APPLICABILITY OF REMEDIES CONTAINED IN
8 THIS SECTION.—The prohibitions and remedies described
9 in this section shall apply to covered members regardless
10 of whether or not they sought an accommodation to any
11 Department of Defense COVID–19 vaccination policy on
12 any grounds.”.

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