

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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—118th Cong., 1st Sess.

(no.) _____

To authorize appropriations for fiscal year 2024 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRUZ

Viz:

1 At the appropriate place in title V, insert the following:
2

3 **SEC. ____.** **REMEDIES FOR MEMBERS OF THE ARMED**
4 **FORCES DISCHARGED OR SUBJECT TO AD-**
5 **VERSE ACTION UNDER THE COVID-19 VAC-**
6 **CINE MANDATE.**

7 (a) **LIMITATION ON IMPOSITION OF NEW MAN-**
8 **DATE.**—The Secretary of Defense may not issue any
9 COVID–19 vaccine mandate as a replacement for the
10 mandate rescinded under section 525 of the James M.

1 Inhofe National Defense Authorization Act for Fiscal Year
2 2023 absent a further act of Congress expressly author-
3 izing a replacement mandate.

4 (b) REMEDIES.—Section 736 of the National Defense
5 Authorization Act for Fiscal Year 2022 (Public Law 117–
6 81; 10 U.S.C. 1161 note prec.) is amended—

7 (1) in the section heading, by striking “**TO**
8 **OBEY LAWFUL ORDER TO RECEIVE**” and insert-
9 ing “**TO RECEIVE**”;

10 (2) in subsection (a)—

11 (A) by striking “a lawful order” and in-
12 serting “an order”; and

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

16 (3) by redesignating subsection (b) as sub-
17 section (e); and

18 (4) by inserting after subsection (a) the fol-
19 lowing new subsections:

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

24 “(c) REMEDIES AVAILABLE FOR A COVERED MEM-
25 BER DISCHARGED OR SUBJECT TO ADVERSE ACTION

1 BASED ON COVID-19 STATUS.—At the election of a cov-
2 ered member discharged or subject to adverse action based
3 on the member’s COVID-19 vaccination status, and upon
4 application through a process established by the Secretary
5 of Defense, the Secretary shall—

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

8 “(A) the member was separated from the
9 Armed Forces based solely on the failure of the
10 member to obey an order to receive a vaccine
11 for COVID-19; and

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

15 “(2) reinstate the member to service at the
16 highest grade held by the member immediately prior
17 to the involuntary separation, allowing, however, for
18 any reduction in rank that was not related to the
19 member’s COVID-19 vaccination status, with an ef-
20 fective date of reinstatement as of the date of invol-
21 untary separation;

22 “(3) for any member who was subject to any
23 adverse action other than involuntary separation
24 based solely on the member’s COVID-19 vaccination
25 status—

1 “(A) restore the member to the highest
2 grade held prior to such adverse action, allow-
3 ing, however, for any reduction in rank that
4 was not related to the member’s COVID–19
5 vaccination status, with an effective date of re-
6 instatement as of the date of involuntary separa-
7 ration; and

8 “(B) compensate such member for any pay
9 and benefits lost as a result of such adverse ac-
10 tion;

11 “(4) expunge from the service record of the
12 member any adverse action, to include non-punitive
13 adverse action and involuntary separation, as well as
14 any reference to any such adverse action, based sole-
15 ly on COVID–19 vaccination status; and

16 “(5) include the time of involuntary separation
17 of the member reinstated under paragraph (2) in the
18 computation of the retired or retainer pay of the
19 member.

20 “(d) RETENTION AND DEVELOPMENT OF
21 UNVACCINATED MEMBERS.—The Secretary of Defense
22 shall—

23 “(1) make every effort to retain covered mem-
24 bers who are not vaccinated against COVID–19 and
25 provide such members with professional develop-

1 ment, promotion and leadership opportunities, and
2 consideration equal to that of their peers;

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

6 “(A) the law or regulations of a foreign
7 country require covered members to be vac-
8 cinated against COVID–19 in order to enter
9 that country; and

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

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

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

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

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

24 “(e) APPLICABILITY OF REMEDIES CONTAINED IN
25 THIS SECTION.—The prohibitions and remedies described

1 in this section shall apply to covered members regardless
2 of whether or not they sought an accommodation to any
3 Department of Defense COVID–19 vaccination policy on
4 any grounds.”.