

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

— ● —

ENROLLED

Committee Substituted for
HOUSE BILL No. 842

(By Mr. *Speaker, Mr. McManus, & Mr. Green*)

— ● —

PASSED March 5, 1974

In Effect July 1, 1974 Passage



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ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 842

(By MR. SPEAKER, MR. McMANUS, and MR. QUEEN)

[Passed March 5, 1974; in effect July 1, 1974.]

AN ACT providing for the payment of the Vietnam veterans bonus and for the administration thereof, prohibiting certain acts with respect thereto, and prescribing penalties for the violation of such provisions.

Be it enacted by the Legislature of West Virginia:

§1. Department of veterans affairs to administer act; veterans advisory committee.

1 The West Virginia department of veterans affairs is hereby
2 designated as the state agency to administer the provisions
3 of this act. The director of the department of veterans
4 affairs shall do all things necessary for the proper ad-
5 ministration thereof. The director, with the advice and consent
6 of the veterans council, may adopt and promulgate such
7 reasonable rules and regulations, not inconsistent herewith,
8 as may be necessary to effect the purposes of this act,
9 including regulations concerning evidence or other data re-
10 quired to establish eligibility and qualifications for the bonus
11 as herein provided. The director shall prepare and furnish
12 all necessary forms which shall be distributed by him through
13 such veterans and other organizations as he may deem most
14 practicable.

15 The department of veterans affairs may employ such
16 additional personnel as may be necessary for the proper
17 administration of this act, subject, however, to the approval
18 of the commissioner of finance and administration, who must
19 also approve the salaries and other compensation for such
20 personnel.

21 The governor may appoint a veterans advisory committee,
22 consisting of representatives of veterans organizations char-
23 tered under acts of Congress and operating in this state, to
24 advise and counsel with the director in the administration
25 of this act. Such committee shall meet on the call of the
26 director at such times and places as he may specify.

§2. Veterans entitled to bonus.

1 In grateful recognition of their services in time of grave
2 national emergency, a cash bonus as herein provided shall
3 be paid to veterans of the Vietnam conflict. Such bonus
4 shall be paid to all persons who rendered active service in the
5 armed forces of the United States during the Vietnam conflict
6 between the first day of August, one thousand nine hundred
7 sixty-four, and the twenty-eighth day of March, one thousand
8 nine hundred seventy-three, both dates inclusive, who were
9 bona fide residents of the state of West Virginia at the time
10 of their entry into such service and for a period of at least
11 six months immediately prior thereto, who have not been
12 separated from such armed forces under conditions other than
13 honorable and who within the period specified above, actively
14 served in such armed forces for a period of at least ninety
15 days. Such bonus shall also be paid to any person, otherwise
16 eligible under the preceding sentence, who rendered active
17 service in the armed forces of the United States prior to
18 the first day of August, one thousand nine hundred sixty-four,
19 and who received a Vietnam armed forces expeditionary
20 medal. Such cash bonus shall also be paid to any veteran,
21 otherwise qualified under either of the two sentences next
22 preceding, who was discharged within ninety days after
23 entering the armed forces because of a service-connected dis-
24 ability.

25 As used in this act, "armed forces" means the army, navy,
26 air force, marine corps and coast guard of the United States.

27 As used in this act, "active duty" means full-time active
28 service in the armed forces with full duty pay status, but shall
29 not include time absent from leave, absent over leave, while
30 in confinement or any other time classified by the respective
31 branches of the armed forces as "bad" or "lost" time.

§3. Payment of bonus to relatives of deceased veterans.

1 The bonus to which any deceased veteran would have been
2 entitled, had he lived, shall be paid only to the following
3 surviving relatives of such veteran, provided that such
4 relatives are residents of this state when application for
5 payment is made and if such relatives are living at the time
6 payment is made: Any unremarried widow or widower, or,
7 if none, any child or children under the age of eighteen, or
8 if none, any parent or parents. The categories of persons
9 listed shall be treated as separate categories listed in order
10 of entitlement and where there be more than one member
11 of a class, the bonus shall be paid to each member according
12 to his proportional share. Where a deceased veteran's death
13 was connected with such service and resulted from such
14 service during the time period specified, however, the sur-
15 viving relatives shall be paid, in accordance with the same
16 order of entitlement, the sum of five hundred dollars in lieu
17 of any bonus to which the deceased might have been entitled
18 if living.

19 As used in this act, "unremarried widow" or "unremarried
20 widower" means the spouse of a deceased veteran, legally
21 married to the veteran at the time of his death, who has
22 not remarried at the time of making application.

23 As used in this act, "child" means the natural child,
24 adopted child or stepchild of the deceased veteran upon whose
25 service eligibility is derived and who has not attained the
26 age of eighteen years at the time of making application.

27 As used in this act, "parent" means either the natural, step,
28 or adoptive father or mother of, or person standing in loco
29 parentis to, the deceased veteran upon whose service eligibility
30 is derived.

§4. Amount of bonus.

1 The amount of such bonus shall be calculated on the basis

2 of twenty dollars per month for each month of active service,
3 or major fraction thereof, for veterans who received the
4 Vietnam armed forces expeditionary medal or the Vietnam
5 service medal, up to four hundred dollars, and ten dollars
6 per month for each month of active service, or major fraction
7 thereof, for veterans who have not received the Vietnam
8 armed forces expeditionary medal or the Vietnam service
9 medal, up to three hundred dollars. Not more than one
10 bonus shall be paid to or on behalf of the service of any one
11 veteran.

§5. Limitation on time of filing application.

1 No bonus shall be paid to any person, otherwise entitled
2 thereto, unless application therefor shall be filed with the
3 department of veterans affairs on or before the thirty-first
4 day of December, one thousand nine hundred seventy-six.
5 No warrant for the payment of any bonus shall be issued or
6 reissued to any applicant after the thirty-first day of December,
7 one thousand nine hundred seventy-eight.

§6. Determination by director of the validity of claims.

1 Upon receipt of an application for benefits hereunder, the
2 director shall, as soon as may be practicable, determine the
3 validity of the claim. As soon as such determination has
4 been made, the director shall mail to the applicant a warrant
5 in the amount of the bonus payment he finds to be due. If
6 the determination is made that no benefits hereunder are
7 payable then the director shall mail to the applicant a
8 notification denying benefits and citing the reason or reasons
9 for such denial.

10 Any applicant who is aggrieved by any such determination
11 of the director may demand that his claim be reviewed as
12 hereinafter provided. Such demand for review shall be filed
13 with the director, in writing, within sixty days after the date
14 on which the warrant of award or notice of denial was
15 mailed to the applicant. Upon receipt of such demand for
16 review the director shall certify the demand, together with
17 all files and records relating to the application, to a board
18 of review. Unless such demand for review is duly filed
19 with the director, all findings and orders of the director with

20 reference to such claim shall be final and conclusive upon
21 the applicant.

§7. Review board hearing.

1 For the purposes of this act, the veterans council of the
2 department of veterans affairs is hereby designated as the
3 "Vietnam Veterans Bonus Board of Review." Under rules and
4 regulations adopted by the veterans council, any one or more
5 members of the board of review may conduct hearings on a
6 demand by an applicant for review of the determination of
7 the director, and may report his or their findings thereon,
8 together with the entire record of the case, to the board of
9 review for its final determination and decision.

10 If the number of demands for review hereunder shall
11 become too numerous to be handled expeditiously by the
12 veterans council, the governor, upon the recommendation of
13 the council, may appoint one or more additional boards of
14 review. Additional boards shall consist of not more than
15 three members, one of whom shall be a lawyer, who shall have
16 the same qualifications as the members of the veterans council,
17 and who shall serve at the will and pleasure of the governor
18 for such time as may be necessary for the purposes of this
19 act. Each such additional board of review shall have the same
20 authority and its final decision shall have the same force
21 and effect as that of the veterans council under the provisions
22 of this act.

23 Upon receipt from the director of the files and records
24 relating to any claim, the board, or a member or members
25 thereof as the case may be, shall fix a time and place for a
26 hearing thereon. The applicant shall be notified of the time
27 and place fixed and shall be informed of his right to demand
28 a public hearing if he so desires. At the hearing the claim
29 shall be reexamined de novo and the submission of additional
30 evidence may be required or permitted. Upon the con-
31 clusion of such hearing the board of review, on the basis
32 of the record and the recommendations, if any, made by the
33 member or members who conducted the hearing, shall enter its
34 order reversing, affirming or modifying the determination
35 made by the director.

36 Any order so entered by the board shall be final and
37 conclusive upon the applicant and the director unless an
38 application is made for review to the West Virginia supreme
39 court of appeals as hereinafter provided. The board shall mail
40 to the applicant and to the director a copy of the order entered
41 by it in each case.

42 All notices and correspondence shall be directed to the
43 applicant at the address listed on his application and all
44 notices and correspondence to the director shall be addressed
45 to him at his office in the city of Charleston.

46 The director shall provide for each board of review such
47 clerical and stenographic assistants and such supplies as may
48 be necessary for the performance of its duties.

49 Each member of a board of review shall receive as com-
50 pensation twenty-five dollars per day for each day actually
51 spent in the performance of his duties under the provisions
52 of this act, and shall be reimbursed for all reasonable and
53 necessary expenses actually incurred by him in the performance
54 of such duties.

§8. Court review of final orders of review board.

1 Within thirty days after notification of the entry of any
2 final order of a board of review, the director or the applicant
3 affected may petition for review of such order by the West
4 Virginia supreme court of appeals in the same manner and
5 within the same period of time as is provided by section four,
6 article five, chapter twenty-three of the code, for judicial review
7 of final decisions by the workmen's compensation appeal board.

§9. Payments from Vietnam veterans bonus fund; balance to Vietnam veterans bonus sinking fund.

1 All bonus payments and other expenses and costs of ad-
2 ministering this act shall be paid from the Vietnam veterans
3 bonus fund, otherwise established by law. Any balance re-
4 maining in such fund after all such bonus payments and other
5 expenses and costs have been made shall be transferred to the
6 Vietnam Veterans bonus sinking fund and used solely for
7 the payment of the bonus bonds.

§10. Penalty for making false statements.

1 Any person who shall knowingly make any false or mis-
2 leading statement or representation, oral or written, in support
3 of any claim for a bonus under the provisions of this act, shall
4 be guilty of a felony, and, upon conviction thereof, shall be
5 punished by imprisonment in the penitentiary for not less than
6 one nor more than five years.

§11. Penalty for filing more than one application.

1 Only one application shall be filed by any veteran or by
2 any person who claims that he is entitled to a share of the
3 bonus payable in the case of any deceased veteran. Any person
4 who, with intent to defraud, violates the provisions of this
5 section shall be guilty of a felony, and, upon conviction
6 thereof, shall be punished by a fine of not less than five
7 hundred dollars nor more than one thousand dollars, or by
8 imprisonment in the penitentiary for not less than one nor
9 more than two years, or by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

1 The bonus provided by this act is hereby declared to be
2 a gift or gratuity made as a token of appreciation for the
3 service rendered by the veteran to the people of West
4 Virginia in time of grave national emergency and is in no
5 sense compensation for such services. The money received
6 as such bonus shall be exempt from taxation and such money,
7 or any claim therefor, shall not be subject to garnishment,
8 attachment or levy of execution. A claim for payment of a
9 bonus under the provisions of this act shall not be assignable
10 for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

1 No fee or charge shall be made by any person, attorney,
2 agent or representative for any service in connection with the
3 filing of an application for payment of a bonus hereunder,
4 except such fees as are provided by law for the performance
5 of official duties by a duly elected or appointed officer of
6 this state or a political subdivision thereof. No person shall,
7 for a consideration, discount or attempt to discount or ad-

8 vance money upon any warrant issued for payment of any
9 bonus provided for in this act.

10 If an applicant shall employ an attorney to represent him
11 in connection with the prosecution of his claim before a
12 board of review, or before the supreme court of appeals, the
13 attorney shall file with the director an executed copy of
14 his contract of employment, and the total amount of the fee
15 therein provided shall not exceed twenty-five percent of the
16 amount under dispute.

17 Any person who violates any provision of this section
18 shall be guilty of a misdemeanor, and, upon conviction there-
19 of, shall be punished by a fine of not less than twenty-five
20 dollars nor more than five hundred dollars, or by imprisonment
21 in the county jail for not less than ten days nor more than
22 twelve months, or by both such fine and imprisonment.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. David Daryl
Chairman Senate Committee

James C. Chubbuck
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Haward Watson
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

H. P. Brotherton, Jr.
President of the Senate

Lewis J. M. Means
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Arch A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/74
Time 4:55 p.m.