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WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1993

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ENROLLED

HOUSE BILL No. 101

(By ~~Delegate~~ *Mr. Speaker, Mr. Chambers,*
and Delegate Buck)
[By Request of the Executive]

Passed *May 21,* 1993

In Effect *July 1, 1993* ~~Passage~~

ENROLLED
H. B. 101

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed May 21, 1993; in effect July 1, 1993.]

AN ACT providing for the payment of the veterans bonus to veterans of the Persian Gulf, Panama, Grenada and Lebanon conflicts and for the administration thereof; definitions; prohibiting certain acts with respect thereto; and prescribing penalties for the violation of such provisions.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

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

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

16 The division of veterans affairs shall, insofar as
17 possible, utilize the personnel, supplies and equipment
18 of the division in the administration of this bill. The
19 division may employ such additional personnel as may
20 be necessary for the proper administration of this bill,
21 subject, however, to the approval of the secretary of the
22 department of military affairs and public safety who
23 must also approve the salaries and other compensation
24 for such personnel.

25 The governor may appoint a veterans advisory
26 committee, consisting of representatives of veterans
27 organizations chartered under acts of Congress and
28 operating in this state, to advise and counsel with the
29 director in the administration of this bill. Such commit-
30 tee shall meet on the call of the director at such times
31 and places as he or she may specify.

§2. Veterans entitled to bonus.

1 In grateful recognition of their services in time of
2 grave national emergency, a cash bonus as herein
3 provided shall be paid to veterans of the Persian Gulf,
4 Panama, Grenada and Lebanon conflicts. Such bonus
5 shall be paid to (1) all persons who served on active duty
6 in the armed forces of the United States or who were
7 members of reserve components called to active duty in
8 the armed forces of the United States by the President
9 of the United States under Title 10, United States Code
10 section 782(D), 783, or 783(B), during the Persian Gulf
11 conflict, Operation Desert Shield/Desert Storm, between
12 the first day of August, one thousand nine hundred
13 ninety and the eleventh day of April, one thousand nine
14 hundred ninety-one, both dates inclusive, and (2) all
15 veterans, active service members, or members of reserve
16 components, of the armed forces of the United States,
17 who served on active duty in one of the military
18 operations referred to herein for which he or she
19 received a campaign badge or expeditionary medal
20 during the periods hereinafter described. For purposes
21 of this bill, periods of active duty in a campaign or
22 expedition are designated as: The conflict in Panama,
23 between the twentieth day of December, one thousand
24 nine hundred eighty-nine, through the thirty-first day of

25 January, one thousand nine hundred ninety, both dates
26 inclusive; the conflict in Grenada, between the twenty-
27 third day of October, one thousand nine hundred eighty-
28 three, and the twenty-first day of November, one
29 thousand nine hundred eighty-three, both dates inclu-
30 sive; and the conflict in Lebanon, between the twenty-
31 fifth day of August, one thousand nine hundred eighty-
32 two, and the twenty-sixth day of February, one thousand
33 nine hundred eighty-four, both dates inclusive: *Pro-*
34 *vided*, That said bonus shall only be paid to the veterans
35 as described herein who were bona fide residents of the
36 state of West Virginia at the time of their entry into
37 such service and for a period of at least six months
38 immediately prior thereto, who have not been separated
39 from such armed forces under conditions other than
40 honorable and who within the periods specified above,
41 actively served in such armed forces for a period of at
42 least ninety days.

43 Such cash bonus shall also be paid to any disabled
44 veteran otherwise qualified, who was discharged within
45 ninety days after entering the armed forces because of
46 a service-connected disability.

47 As used in this bill, "armed forces" means the army,
48 navy, air force, marine corps and coast guard of the
49 United States.

50 As used in this bill, "active duty" means full-time
51 active service in the armed forces with full duty pay
52 status, but shall not include time absent from leave,
53 absent over leave, while in confinement or any other
54 time classified by the respective branches of the armed
55 forces as "bad" or "lost" time.

56 For purposes of this bill "active service" shall mean
57 the person's active duty as a member of one of the armed
58 forces during the periods of conflict referred to herein.

59 As used in this bill, "bona fide resident" shall mean
60 any person who, at the time of his or her entry into
61 active service as such is defined herein, was a legal
62 resident of the state of West Virginia. Evidence of legal
63 residence shall be shown by the presentation of evidence
64 that the person filed a West Virginia personal income

65 tax for the tax year immediately preceding his or her
66 entry into active service or proof that he or she
67 maintained a permanent place of abode in West
68 Virginia at the time of his or her entry into active
69 service and for a period of at least six months prior to
70 entry into active service.

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

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

22 As used in this bill, "unremarried widow" or "unremarried
23 widower" means the spouse of a deceased veteran,
24 legally married to the veteran at the time of his or her
25 death, who has not remarried at the time of making
26 application.

27 As used in this bill, "child" means the natural child,
28 adopted child or stepchild of the deceased veteran upon
29 whose service eligibility is derived and who has not
30 attained the age of eighteen years at the time of making
31 application.

32 As used in this bill, "parent" means either of the
33 natural, step, or adoptive father or mother of, or person

34 standing in loco parentis to, the deceased veteran upon
35 whose service eligibility is derived.

§4. Amount of bonus.

1 The amount of bonus shall be five hundred dollars per
2 eligible person who was in active service, inside the
3 combat zone designated by the President or Congress of
4 the United States at anytime during the dates specified
5 herein. In the case of the Persian Gulf conflict, the
6 amount of bonus shall be three hundred dollars per
7 eligible person who was in active service outside the
8 combat zone designated by the President or Congress of
9 the United States during the dates specified herein. For
10 purposes of this bill not more than one bonus shall be
11 paid to or on behalf of the service of any one veteran.
12 In the event any veteran is eligible to receive more than
13 one bonus, said veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

1 No bonus shall be paid to any person, otherwise
2 entitled thereto, unless application therefor shall be filed
3 with the division of veterans affairs on or before the
4 thirtieth day of June, one thousand nine hundred ninety-
5 four. Warrants for the payment of any bonus shall be
6 issued or reissued to any applicant on or before the
7 thirtieth day of June, one thousand nine hundred ninety-
8 five.

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

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

11 Any applicant who is aggrieved by any such determi-
12 nation of the director may demand that his or her claim
13 be reviewed as hereinafter provided. Such demand for

14 review shall be filed with the director, in writing, within
15 sixty days after the date on which the warrant of award
16 or notice of denial was mailed to the applicant. Upon
17 receipt of such demand for review the director shall
18 certify the demand, together with all files and records
19 relating to the application, to a board of review. Unless
20 such demand for review is duly filed with the director,
21 all findings and orders of the director with reference to
22 such claim shall be final and conclusive upon the
23 applicant.

§7. Review of board hearing.

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

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

25 Upon receipt from the director of the files and records
26 relating to any claim, the board, or a member or
27 members thereof as the case may be, shall fix a time
28 and place for a hearing thereon. The applicant shall be
29 notified of the time and place fixed and shall be

30 informed of his or her right to demand a public hearing
31 if he or she so desires. At the hearing the claim shall
32 be reexamined de novo and the submission of additional
33 evidence may be required or permitted. Upon the
34 conclusion of such hearing the board of review, on the
35 basis of the record and the recommendations, if any,
36 made by the member or members who conducted the
37 hearing, shall enter its order reversing, affirming or
38 modifying the determination made by the director.

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

45 All notices and correspondence shall be directed to the
46 applicant at the address listed on his or her application
47 and all notices and correspondence to the director shall
48 be addressed to him or her at his or her office in the
49 city of Charleston.

50 The director shall provide for each board of review
51 such clerical and stenographic assistants and such
52 supplies as may be necessary for the performance of its
53 duties.

54 Each member of a board of review shall receive as
55 compensation fifty dollars per day for each day actually
56 spent in the performance of his or her duties under the
57 provisions of this bill, and shall be reimbursed for all
58 reasonable and necessary expenses actually incurred by
59 him or her in the performance of such duties.

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

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

§9. Legislative appropriations paid into veterans bonus fund; expenditures; investment thereof; unexpended balance.

1 All money as appropriated by the Legislature for the
2 payment of a cash bonus to veterans as provided in the
3 veterans bonus amendment of 1992 shall be paid into the
4 veterans bonus fund which is hereby created in the
5 office of the state treasurer and such fund shall be
6 expended solely for the payment of such veterans bonus
7 and the cost of administration necessarily incident
8 thereto. Except for such sums necessary for current
9 operating balances, such fund shall be invested and
10 reinvested by the West Virginia state board of invest-
11 ments in accordance with the provisions of article six,
12 chapter twelve of the code of West Virginia, one
13 thousand nine hundred thirty-one, as amended: *Pro-*
14 *vided*, That no such investment or reinvestment shall
15 adversely affect the current operating balances of such
16 fund. Any unexpended balance remaining in this fund
17 after payment of all legal bonuses and other expenses
18 and costs have been made or adequately provided for
19 shall be available for appropriation by the Legislature.

§10. Penalty for making false statements.

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

§11. Penalty for filing more than one application.

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

8 thousand dollars, or by imprisonment in the peniten-
9 tiary for not less than one nor more than two years, or
10 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 bill is hereby declared to
2 be a gift or gratuity made as a token of appreciation for
3 the service rendered by the veteran to the people of West
4 Virginia in time of grave national emergency and is in
5 no sense compensation for such services. The money
6 received as such bonus shall be exempt from taxation
7 and such money, or any claim therefor, shall not be
8 subject to garnishment, attachment or levy of execution.
9 A claim for payment of a bonus under the provisions of
10 this bill shall not be assignable for any purpose
11 whatsoever.

§13. Collection of fees or charges; penalty.

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

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

19 Any person who violates any provision of this section
20 shall be guilty of a misdemeanor, and, upon conviction

21 thereof, shall be punished by fine of not less than
22 twenty-five dollars nor more than five hundred dollars,
23 or by imprisonment in the county jail for not less than
24 ten days nor more than twelve months, or by both such
25 fine and imprisonment.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

Narrett E. Helmes
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within is approved this the 28th
day of May 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/27/93

Time 9:45 am