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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2285

(By Mr. Speaker (Mr. Kiss) and Delegates Varner,
Michael, Leach, Kominar, H.K. White and L. Williams)



Passed February 21, 2005

In Effect from Passage

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FOR

H. B. 2285

(BY MR. SPEAKER (MR. KISS) AND DELEGATES VARNER, MICHAEL,
LEACH, KOMINAR, H.K. WHITE AND L. WILLIAMS)

[Passed February 21, 2005; In effect from passage.]

AN ACT providing for the payment of the veterans bonus to veterans of the Kosovo, Afghanistan, and Iraq conflicts, and for the administration thereof; designating the division of veterans affairs to administer provisions of act; providing powers and duties of the director of the division; authorizing adoption of rules and regulations; authorizing appointment of veterans advisory committee; setting forth qualifications to receive bonus; providing definitions; providing for payment of bonus to relatives of deceased veterans; specifying amounts of bonus; setting forth periods to apply and receive bonus; providing for determination of validity of each claim for bonus by director; providing for a certified list of eligible veterans and relatives of deceased veterans; providing for review of decision of director by board of review; authorizing appointment of additional boards of review and compensation for members; providing for judicial review of

decisions of board of review; creation of veterans bonus fund; exempting bonus from taxation; excluding bonus from certain debt collection actions; prohibiting claim for bonus from assignment; limiting charges for services provided in connection with application for bonus; and prohibiting certain acts and providing criminal penalties therefor.

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

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

22 The governor may appoint a veterans advisory committee,
23 consisting of representatives of veterans organizations chartered
24 under acts of Congress and operating in this state, to advise and
25 counsel the director in the administration of this act. Such
26 committee shall meet on the call of the director at such times
27 and places as he or she 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 be
3 paid to veterans of the Kosovo, Afghanistan, and Iraq conflicts.
4 The bonus shall be paid to (1) Veterans of the armed forces of
5 the United States who served on active duty in areas of conflict
6 in Iraq, or were members of reserve components called to active
7 duty by the President of the United States under Title 10,
8 United States Code section 12301, 12302, 12303 or 12304
9 during the Iraqi War, between the nineteenth day of March, two
10 thousand three and the date determined by the President or
11 Congress of the United States as the end of the involvement of
12 the United States armed forces in Iraq, both dates inclusive; or
13 (2) veterans, active service members, or members of reserve
14 components of the armed forces of the United States, who
15 served on active duty in one of the military operations for
16 which he or she received a campaign badge or expeditionary
17 medal during the periods hereinafter described. For purposes of
18 this act, periods of active duty in a campaign or expedition are
19 designated as: The conflict in Kosovo between the twentieth
20 day of November, one thousand nine hundred ninety-five and
21 the thirty-first day of December, two thousand, both dates
22 inclusive; and the conflict in Afghanistan, between the seventh
23 day of October, two thousand one and the date determined by
24 the President or Congress of the United States as the end of the
25 involvement of the United States armed forces in Afghanistan,
26 both dates inclusive. For purposes of this act, not more than one

27 bonus may be paid to or on behalf of the service of a veteran. In
28 order to be eligible to receive a bonus, a veteran must have been
29 a bona fide resident of the State of West Virginia at the time of
30 his or her entry into active service and for a period of at least
31 six months immediately prior thereto, and has not been sepa-
32 rated from service under conditions other than honorable.

33 The bonus shall also be paid to any veteran otherwise
34 qualified pursuant to this amendment, who was discharged
35 within ninety days after entering the armed forces because of a
36 service-connected disability.

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

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

44 For purposes of this act, "active service" shall mean the
45 person's active duty as a member of one of the armed forces
46 during the periods of conflict referred to herein.

47 As used in this act, "bona fide resident" shall mean any
48 person who, at the time of his or her entry into active service as
49 such is defined herein, was a legal resident of the state of West
50 Virginia. Evidence of legal residence shall be shown by the
51 presentation of evidence that the person filed a West Virginia
52 personal income tax for the tax year immediately preceding his
53 or her entry into active service or proof that he or she main-
54 tained a permanent place of abode in West Virginia at the time
55 of his or her entry into active service and for a period of at least
56 six months prior to entry into active service.

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

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

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

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

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

§4. Amount of bonus.

1 The amount of the bonus shall be six hundred dollars per
2 eligible veteran who was in active service, inside the combat
3 zone in Kosovo, Afghanistan or Iraq as designated by the
4 President or Congress of the United States at anytime during the
5 dates specified hereinabove. In the case of the Iraqi War and the
6 conflict in Afghanistan, the amount of bonus shall be four
7 hundred dollars per eligible veteran who was in active service
8 outside the combat zone designated by the President or Con-
9 gress of the United States during the dates specified
10 hereinabove. For purposes of this act, not more than one bonus
11 shall be paid to or on behalf of the service of any one veteran.
12 In the event any veteran is eligible to receive more than one
13 bonus, the veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

1 No bonus may be paid to any person, otherwise entitled
2 thereto, unless application therefor shall be filed with the
3 division of veterans affairs. No bonus may be paid to any
4 person, otherwise entitled thereto, for service periods of active
5 duty in a campaign or expedition in the conflict in Kosovo
6 within the time periods contained hereinabove, unless applica-
7 tion therefor shall be filed with the division of veterans affairs
8 on or before the thirtieth day of June, two thousand six. No
9 bonus may be paid to any person, otherwise entitled thereto, for
10 service periods of active duty in a campaign or expedition in the
11 conflict in Afghanistan within the time periods contained
12 hereinabove or for service on active duty in areas of conflict in
13 Iraq or for active duty service of reserve components called by
14 the President of the United States as described hereinabove,
15 unless application therefor shall be filed within one year of the
16 end of such veteran's service.

§6. Determination of 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. If the determination is made that an
4 applicant is eligible for a bonus, the director shall mail to the
5 applicant a notification of such determination. If the determina-
6 tion is made that no benefits hereunder are payable, then the
7 director shall mail to the applicant a notification denying
8 benefits and citing the reason or reasons for such denial.

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

20 If the director determines that an applicant is eligible for a
21 bonus, he or she shall certify that finding to the governor. The
22 governor shall then create a list of veterans and relatives of
23 deceased veterans eligible to receive such bonus and certify
24 such list to the Legislature at any regular or special session.

§7. Review of board hearing.

1 For the purposes of this act, the veterans council of the
2 division of veterans affairs is hereby designated as the "Veter-
3 ans Bonus Board of Review." Under rules and regulations
4 adopted by the veterans council, any one or more members of
5 the board of review may conduct hearings on a demand by an

6 applicant for review of the determination of the director, and
7 may report his or her or their findings thereon, together with the
8 entire record of the case, to the board of review for its final
9 determination and decision.

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

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

35 Any order so entered by the board shall be final and
36 conclusive upon the applicant and the director unless an
37 application is made for review to the West Virginia supreme
38 court of appeals as hereinafter provided. The board shall mail

39 to the applicant and to the director a copy of the order entered
40 by it in each case.

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

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

48 Each member of a board of review shall receive no salary,
49 but each member shall receive the same compensation and
50 expense reimbursement as is paid to members of the Legislature
51 for their interim duties as recommended by the citizens legisla-
52 tive compensation commission and authorized by law for each
53 day or portion thereof engaged in the discharge of official
54 duties.

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

1 Within thirty days after notification of the entry of any final
2 order of a board of review, the director or the applicant affected
3 may petition for review of such order by the West Virginia
4 supreme court of appeals.

**§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 Veterans
3 Bonus Amendment of 2004 shall be paid into the veterans
4 bonus fund which is hereby created in the office of the state
5 treasurer and such fund shall be expended solely for the
6 payment of such veterans bonus. Except for such sums neces-

7 sary for current operating balances, such fund shall be invested
8 and reinvested by the West Virginia state board of investments
9 in accordance with the provisions of article six, chapter twelve
10 of the code of West Virginia, one thousand nine hundred
11 thirty-one, as amended: *Provided*, That no such investment or
12 reinvestment shall adversely affect the current operating
13 balances of such fund. Any unexpended balance remaining in
14 this fund after payment of all eligible veterans and relatives of
15 deceased veterans as is from time to time established by the
16 certified list created by the Governor shall be available for
17 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, in
3 support of any claim for a bonus under the provisions of this
4 act, shall be guilty of a felony, and, upon conviction thereof,
5 shall be punished by imprisonment in a state correctional
6 facility for not less than 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 any
2 person who claims to be entitled to a share of the bonus payable
3 in the case of any deceased veteran. Any person who, with
4 intent to defraud, violates the provisions of this section shall be
5 guilty of a felony, and, upon conviction thereof, shall be
6 punished by a fine of not less than five hundred dollars nor
7 more than one thousand dollars, or by imprisonment in a state
8 correctional facility for not less than one nor more than two
9 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 a
2 gift or gratuity made as a token of appreciation for the service

3 rendered by the veteran to the people of West Virginia in time
4 of grave national emergency and is in no sense compensation
5 for such services. The money received as such bonus shall be
6 exempt from taxation and such money, or any claim therefor,
7 shall not be subject to garnishment, attachment or levy of
8 execution. A claim for payment of a bonus under the provisions
9 of this act shall not be assignable 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 of
5 official duties by a duly elected or appointed officer of this state
6 or a political subdivision thereof. No person shall, for a
7 consideration, discount or attempt to discount or advance
8 money upon any warrant issued for payment of any bonus
9 provided for in this act.

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

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

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



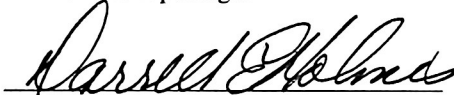
Chairman Senate Committee



Chairman House Committee

Originating in the House.

In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker of the House of Delegates

The within is approved this the 25th
day of February, 2005.



Governor

PRESENTED TO THE
GOVERNOR

Date 2/23/05

Time 3:20 pm