

Regular Session, 2011

SENATE BILL NO. 1

BY SENATORS ADLEY, ALARIO, BROOME, CHEEK, CROWE, DONAHUE,
JACKSON, LAFLEUR, LONG, MARIONNEAUX, MICHOT,
MURRAY, THOMPSON AND WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MILITARY AFFAIRS. Provides for death and disability benefits for Louisiana National Guardsmen activated by the governor or the president. (gov sig)

AN ACT

To enact R.S. 29:26.1 and to repeal R.S. 22:941(A)(5), relative to death and disability benefits for Louisiana National Guardsmen activated by the governor or the president; to remove authority for certain lump sum payments of death and permanent disability benefits for Louisiana National Guardsmen activated by the governor or the President of the United States; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 29:26.1 is hereby enacted to read as follows:

§26.1. National Guard death and disability benefits

A. Purpose. The purpose of this Section is:

(1) To establish an effective and efficient mechanism for providing death and disability benefits for Louisiana National Guardsmen called to active duty service by the governor or the President of the United States.

(2) To govern the submission, evaluation, and determination of claims submitted pursuant to this Section.

B. Definitions. As used in this Section, the following terms shall have the

1 following meanings unless a different meaning is clearly required by context:

2 (1) "Beneficiary", unless otherwise designated by the deceased
3 guardsman as set forth in this Section, means the person or persons designated
4 by the guardsman on DD Form 93, as eligible to receive the death gratuity from
5 DoD pursuant to 10 U.S.C. 1475 et seq.

6 (2) "Course of business" means the performance of the business of the
7 military forces of the state of Louisiana or the United States.

8 (3) "DD Form 93" means the record of emergency data executed by
9 every member of the LANG pursuant to DoD policies and regulations.

10 (4) "Disabled or disability" means a physical condition affecting the
11 ability of a guardsman to secure and follow a substantial and gainful occupation
12 by reason of a service-connected injury or illness.

13 (5) "DoD" means the United States Department of Defense.

14 (6) "Guardsman or guardsmen" means an officer or enlisted member
15 of the Louisiana National Guard.

16 (7) "LANG" means the Louisiana National Guard.

17 (8) "Period of activation" means any of the following:

18 (a) That period, subsequent to September 11, 2001, for which the
19 governor of the state of Louisiana orders a guardsman into state active service
20 pursuant to R.S. 29:7.

21 (b) That period, subsequent to September 11, 2001, for which the
22 President of the United States orders a guardsman into active military duty,
23 pursuant to 32 U.S.C. 502(f)(1).

24 (c) That period, subsequent to September 11, 2001, for which the
25 President of the United States orders a guardsman to federal active duty
26 pursuant to 10 U.S.C. 12301, 12302, or 12303.

27 (9) "Qualifying claim" means an application for benefits by a
28 guardsman or beneficiary for a qualifying death or disability incurred during
29 a period of activation in the line of duty, and meeting the documentation

1 requirements of this Section.

2 (10) "Qualifying disability" means a one hundred percent permanent
3 total disability rating, or a permanent and total unemployability disability
4 rating as determined by the United States Department of Veterans Affairs and
5 certified by the Louisiana secretary of veterans affairs in a final adjudication
6 of the initial rating decision or as determined or certified by the proper state
7 entity that adjudicates such claims for guardsmen in accordance with the
8 workers' compensation law of this state. A qualifying disability shall be
9 certified by the Louisiana secretary of veterans affairs or his designee.

10 C. Claims for benefits. (1) All claims for death or disability benefits
11 provided for under this Section shall be submitted to the Louisiana National
12 Guard.

13 (2) Each death benefit claim request shall include all of the following
14 documentation:

15 (a) The guardsman's signed LANG death beneficiary designation form,
16 or in the absence thereof, a signed DD Form 93.

17 (b) DD Form 1300 Department of Defense Report of Casualty, or a valid
18 death certificate issued by the state of the guardsman's domicile.

19 (c) A copy of the guardsman's state or federal orders or a copy of the
20 guardsman's DD Form 214.

21 (d) A death benefit claim form signed by the claimant and certified by
22 the adjutant general or his designee.

23 (3) Each claim for a disability benefit shall include all of the following
24 documentation:

25 (a) A copy of the guardsman's state or federal orders or a copy of the
26 guardsman's DD Form 214.

27 (b) A disability rating decision reached by the United States Department
28 of Veterans Affairs and certified by the Louisiana secretary of veterans affairs
29 or his designee.

1 (c) A disability rating decision reached by the proper state entity that
2 adjudicates such claims for guardsmen in accordance with the workers'
3 compensation law of this state and certified by the Louisiana secretary of
4 veterans affairs or his designee.

5 (d) A disability benefit claim form signed by the claimant and certified
6 by the secretary of the Louisiana Department of Veterans Affairs or his
7 designee.

8 D.(1) Benefits available. During periods of activation, subsequent to
9 September 11, 2001, of a guardsman ordered by the governor or by the
10 President of the United States, benefits in a lump sum amount of two hundred
11 fifty thousand dollars for a qualifying death and one hundred thousand dollars
12 for a qualifying disability shall be paid by the state to a guardsman or his
13 beneficiary, when such death or disability occurs during a period of activation
14 in the line of duty as required by this Section. Such benefits shall be paid only
15 when funds are available, having been appropriated for the purpose.

16 (2) No guardsman shall be eligible to receive benefits pursuant to the
17 provisions of this Section if any of the following occur:

18 (a) An investigation determines that a killed or injured guardsman was
19 not in the line of duty at the time of death or injury.

20 (b) The guardsman is killed or injured while in any training status
21 pursuant to Title 29 of the Louisiana Revised Statutes of 1950 or Title 32 of the
22 United States Code, except training pursuant to 32 U.S.C. 502(f)(2)(A).

23 E. Determination of eligibility for payment of benefits. (1) A qualifying
24 death benefit eligibility and certification shall be made by the adjutant general
25 of LANG, or his designee.

26 (2) A qualifying disability shall be determined by the United States
27 Department of Veterans Affairs or by the proper state entity that adjudicates
28 such claims for guardsmen in accordance with the workers' compensation law
29 of this state and certified by the secretary of the Louisiana Department of

Veterans Affairs or his designee.

(3) Payment to an eligible recipient for a qualified claim for a death benefit shall be made by the Military Department, state of Louisiana after certification of eligibility and request for payment are made as required by this Section.

(4) Payment to an eligible recipient of a qualified claim for a disability benefit shall be made by the Louisiana Department of Veterans Affairs after a determination by the United States Department of Veterans Affairs and certification of eligibility by the secretary of the Louisiana Department of Veterans Affairs, and request for payment as required by this Section.

F. Beneficiary designation by guardsmen. (1) Each member of LANG shall complete and execute a Death Benefit Beneficiary Designation Form which shall contain the name of the beneficiary or beneficiaries of the guardsman's death benefit under this Section to whom this benefit shall be paid in a lump sum. In the absence of the Death Benefit Beneficiary Designation Form, a DD Form 93 shall be used.

(2) All designation forms shall be signed by the guardsman before a witness in the grade of E-7 or above in the LANG who shall also sign the form.

(3) All designation forms shall be kept in the personnel files of the LANG in the regular course of business.

Section 2. The provisions of this Act shall apply to guardsmen activated on or after September 11, 2001.

Section 3. Any death or disability benefits distributed to guardsmen or their beneficiaries prior to the effective date of this Act shall not be affected by the provisions of this Act.

Section 4. R.S. 22:941(A)(5) is hereby repealed.

Section 5. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for a bill to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of

- 1 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
2 shall become effective on the day following such approval.

The original instrument was prepared by Heyward Jeffers. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Adley (SB 1)

Present law (R.S. 22:941(A)(5)) provides for the state to pay a \$250,000 death benefit and a \$100,000 permanent total disability benefit for the death or disability of a Louisiana National Guardsman. Specifies that such benefits shall be provided only during periods of activation ordered by the governor of Louisiana or by the President of the United States in the course of the business of the military forces of Louisiana.

Proposed law provides generally relative to the payment of benefits for the death or disability of a Louisiana National Guardsman called to active service by the governor or the President of the United States. Provides for purpose and definition of terms.

Proposed law provides that the Louisiana National Guard (LANG) adjutant general shall be the authority to whom death benefits claims shall be submitted for determination, and \$250,000 lump sum payment for each qualified death claim shall be made by the Military Department, State of Louisiana.

Proposed law provides that death or disability claims shall be determined by the Department of Veterans Affairs and a disability rating decision will be reached by the proper state entity that adjudicates such claim for guardsmen in accordance with the workers' compensation law of this state and shall be certified by the Louisiana secretary of veterans affairs or his designee.

Proposed law provides for a lump sum payment of \$100,000 for each qualified disability benefit claim to be made by the La. Department of Veterans Affairs after receipt of a request for payment.

Proposed law provides for documentation required for death and disability claims.

Proposed law provides that all members of the LANG shall complete and execute a Death Benefit Beneficiary Designation form which shall contain the name of the beneficiary or beneficiaries of the guardsman's death benefit. Provides that, in the absence of a Death Benefit Beneficiary Designation form, a DD Form 93 shall be used.

Proposed law provides that the Death Benefit Beneficiary form shall be signed by the guardsman in the presence of a LANG witness in the grade of E-7 or above in the LANG who shall also sign the form.

Proposed law provides that no guardsmen shall be eligible to receive benefits if one of the following occurs: (a) a guardsmen is killed or injured and not in the line of duty at the time of death or injury or (b) a guardsmen is killed or injured while in any training status.

Proposed law provides that a qualifying disability shall be determined by the U.S. Dept. of V.A. or by the proper state entity that adjudicates such claims for guardsmen in accordance with state worker's compensation law.

Proposed law removes authority for certain lump sum payments of death and permanent disability benefits for Louisiana National Guardsmen activated by the governor or the

President of the United States.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 29:26.1; repeals R.S. 22:941(A)(5))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Technical amendments made by the Legislative Bureau.
2. Provides that disability claims be submitted to LANG instead the Dept. of V.A.
3. Provides that a disability rating decision will be reached by a proper state entity that adjudicates claims for guardsmen instead of the LANG state surgeon.
4. Adds that no guardsman shall be eligible to receive benefits if one of the following occurs: (a) the guardsmen was not in the line of duty at the time of death or injury, or (b) the guardsmen was killed or injured while in any training status.
5. Allows a qualifying disability shall be determined by the U.S. Dept. of V.A. or by a proper state entity that adjudicates such claims for guardsmen instead of the LANG state surgeon.
6. Requires payment to an eligible recipient for disability benefits be made after a certification of eligibility determination is made by the U.S. Dept. of V.A. instead of the LANG state surgeon.
7. Adds applicability to guardsmen activated on or after 9-11-2001.
8. Adds that any death or disability benefit distributed to guardsmen or their beneficiaries prior to the effective date of proposed law shall not be affected by the provisions of proposed law.