

Regular Session, 2011

ACT No. 406

HOUSE BILL NO. 143

BY REPRESENTATIVES LORUSSO AND LANDRY

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

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

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

10 §26.1. National Guard death and disability benefits

11 A. Purpose. The purpose of this Section is:

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

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

17 B. Definitions. As used in this Section, the following terms shall have the
18 following meanings unless a different meaning is clearly required by context:

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

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

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

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

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

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

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

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

11 (a) That period, subsequent to September 11, 2001, for which the governor
12 of the state of Louisiana orders a guardsman into state active service pursuant to R.S.
13 29:7.

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

17 (c) That period, subsequent to September 11, 2001, for which the president
18 of the United States orders a guardsman to federal active duty pursuant to 10 U.S.C.
19 12301, 12302, or 12303.

20 (9) "Qualifying claim" means an application for benefits by a guardsman or
21 beneficiary for a qualifying death or disability incurred during a period of activation
22 in the line of duty, and meeting the documentation requirements of this Section.

23 (10) "Qualifying disability" means a one hundred percent permanent total
24 disability rating, or a permanent and total unemployability disability rating as
25 determined by the United States Department of Veterans Affairs and certified by the
26 Louisiana secretary of veterans affairs in a final adjudication of the initial rating
27 decision or as determined or certified by the proper state entity that adjudicates such
28 claims for guardsmen in accordance with the workers' compensation law of this state.
29 A qualifying disability shall be certified by the Louisiana secretary of veterans
30 affairs or his designee.

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

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

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

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

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

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

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

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

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

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

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

26 D.(1) Benefits available. During periods of activation, subsequent to
27 September 11, 2001, of a guardsman ordered by the governor or by the president of
28 the United States, benefits in a lump-sum amount of two hundred fifty thousand
29 dollars for a qualifying death and one hundred thousand dollars for a qualifying
30 disability shall be paid by the state to a guardsman or his beneficiary, when such

1 death or disability occurs during a period of activation in the line of duty as required
2 by this Section. Such benefits shall be paid only when funds are available, having
3 been appropriated for the purpose.

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

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

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

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

14 (2) A qualifying disability shall be determined by the United States
15 Department of Veterans Affairs or by the proper state entity that adjudicates such
16 claims for guardsmen in accordance with the workers' compensation law of this state
17 and certified by the secretary of the Louisiana Department of Veterans Affairs or his
18 designee.

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

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

27 F. Beneficiary designation by guardsmen. (1) Each member of LANG shall
28 complete and execute a Death Benefit Beneficiary Designation Form which shall
29 contain the name of the beneficiary or beneficiaries of the guardsman's death benefit

1 under this Section to whom this benefit shall be paid in a lump sum. In the absence
 2 of the Death Benefit Beneficiary Designation Form, a DD Form 93 shall be used.

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

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

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

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

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

13 Section 5. This Act shall become effective upon signature by the governor or, if not
 14 signed by the governor, upon expiration of the time for a bill to become law without
 15 signature by the governor, as provided in Article III, Section 18 of the Constitution of
 16 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
 17 shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____