

Regular Session, 2011

HOUSE BILL NO. 143

BY REPRESENTATIVE LORUSSO

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 La. National Guardsmen

1 AN ACT

2 To amend and reenact R.S. 23:1211, to enact R.S. 29:26.1, and to repeal R.S. 22:941(A)(5),  
3 relative to the Louisiana National Guard; to provide for death benefits; to provide for  
4 disability benefits; to provide definitions; to provide for eligibility of benefits; to  
5 provide for exceptions; to provide for rulemaking; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1211 is hereby amended and reenacted to read as follows:

8 §1211. Special compensation benefits for injury or death of member of national  
9 guard

10 A. Except as provided by ~~R.S. 22:941~~ R.S. 29:26.1, every member of the  
11 national guard who is accidentally injured, or his dependents if he is accidentally  
12 killed, while on active duty during a state of emergency declared by the governor and  
13 for the duration of such emergency as declared by the governor, shall be  
14 compensated by the state in accordance with the workers' compensation law,  
15 including but not limited to such medical, surgical, and hospital services and  
16 medicines and such disability and death benefits as are authorized by the workers'  
17 compensation law.

18 B. Except as provided by ~~R.S. 22:941~~ R.S. 29:26.1, no compensation shall  
19 be paid unless the injury or death arose out of and in the course of service while on  
20 active duty during a state of emergency declared by the governor and only for the

1 duration thereof and for no other kind of service whatsoever. Before any claim is  
2 certified for payment, proof that the applicant is entitled to payment shall be made  
3 in accordance with regulations prescribed by the adjutant general. The amount  
4 payable as compensation may be commuted to a lump-sum settlement by agreement  
5 of the parties. In computing the weekly benefit hereunder, either the weekly wages  
6 from the member's principal civilian employment or his weekly military wages,  
7 whichever is larger, will be used. Otherwise, the provisions of the workers'  
8 compensation law apply.

9 C. Except as provided in Subsection B of this Section and ~~R.S. 22:941~~ R.S.  
10 29:26.1, the provisions of this Section and of no other law shall govern the  
11 compensation benefits payable to members of the national guard.

12 Section 2. R.S. 29:26.1 is hereby enacted to read as follows:

13 §26.1. Death and disability benefits; Louisiana National Guard

14 A. For purposes of this Section, the following definitions shall apply:

15 (1) "Beneficiary" means the person designated by the guardsman on the DD  
16 Form 93 who receives the death benefit from the United States Department of  
17 Defense pursuant to 10 U.S.C. 1475, unless otherwise designated by the guardsman  
18 in a Death Benefit Beneficiary Designation form pursuant to administrative rule.

19 (2) "Federal active duty" means the period of time in which the president of  
20 the United States orders a guardsman to federal active duty pursuant to 10 U.S.C.  
21 12301, 12302, or 12303 or 32 U.S.C. 502(f)(2)(A).

22 (3) "Guardsman" means an officer or enlisted member of the Louisiana  
23 National Guard.

24 (4) "Qualifying disability" means a one hundred percent permanent total  
25 disability rating, or a permanent and total unemployability disability rating as  
26 determined by the United States Department of Veterans Affairs and certified by the  
27 secretary of the Louisiana Department of Veterans Affairs, or his designee, in a final  
28 adjudication of the initial rating decision, or as determined or certified by the proper

1 state entity that adjudicates such claims for guardsmen in accordance with worker's  
2 compensation laws of this state.

3 (5) "State active duty" means the period of time in which the governor of this  
4 state orders a guardsman to active duty pursuant to R.S. 29:7.

5 B.(1)(a) The beneficiary of a guardsman who is killed or has otherwise died  
6 in the line of duty while on state or federal active duty shall be entitled to benefits  
7 in the amount of two hundred fifty thousand dollars.

8 (b) A guardsman who has a qualifying disability due to injuries suffered in  
9 the line of duty while on state or federal active duty shall be entitled to benefits in  
10 the amount of one hundred thousand dollars.

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

13 (a) An investigation determines that a guardsman who is injured, killed, or  
14 has otherwise died was not in the line of duty at the time of death or injury.

15 (b) The guardsman is injured, killed, or has otherwise died while in any  
16 training status pursuant to Title 29 of the Louisiana Revised Statutes of 1950 or Title  
17 32 of the United States Code, except training pursuant to 32 U.S.C. 502(f)(2)(A).

18 C. Claims for benefits pursuant to the provisions of this Section shall be  
19 submitted in accordance with procedures established by administrative rule.

20 D. Eligibility determinations pursuant to the provisions of this Section shall  
21 be made as follows:

22 (1) Eligibility for death benefits shall be determined by the adjutant general  
23 or his designee.

24 (2) Eligibility for disability benefits shall be determined by the secretary of  
25 the Louisiana Department of Veterans Affairs.

26 E. The Military Department shall adopt rules in accordance with the  
27 Administrative Procedure Act to implement to the provisions of this Section.

28 Section 3. R.S. 22:941(A)(5) is hereby repealed in its entirety.

1 Section 4. The provisions of this Act shall apply to guardsmen activated on or after  
2 September 11, 2001.

3 Section 5. Any death or disability benefits distributed to guardsmen or their  
4 beneficiaries prior to the effective date of this Act shall not be affected by the provisions of  
5 this Act.

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lorusso

HB No. 143

**Abstract:** Provides for death and disability benefits, in the amount of \$250,000 and \$100,000 respectively, for members of the La. National Guard.

Proposed law provides for death benefits in the amount of \$250,000 for a guardsman who is killed or has otherwise died in the line of duty while on state or federal active duty. Provides for disability benefits in the amount of \$100,000 for a guardsman who is disabled due to injuries suffered in the line of duty while on state or federal active duty.

Proposed law provides for the following exceptions:

- (1) The guardsman was not in the line of duty when he was injured, killed, or died.
- (2) The guardsman was in a training status when he was injured, killed, or died.

Proposed law provides that eligibility determinations for death benefits shall be made by the adjutant general or his designee, and that eligibility determinations for disability benefits shall be made by the secretary of the La. Dept. of Veterans Affairs.

Proposed law defines "beneficiary", "federal active duty", "guardsman", "qualifying disability", and "state active duty".

(Amends R.S. 23:1211; Adds R.S. 29:26.1; Repeals R.S. 22:941(A)(5))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Judiciary to the original bill.

1. Changed the definition of "qualifying disability".
2. Clarified that proposed law applies when a guardsman is either killed or has otherwise died.