

SENATE BILL NO. 1

BY SENATORS ADLEY, ALARIO, APPEL, BROOME, CHABERT, CHEEK, CLAITOR, CROWE, DONAHUE, DORSEY, ERDEY, GAUTREAUX, GUILLORY, HEITMEIER, JACKSON, LAFLEUR, LONG, MARIONNEAUX, MARTINY, MICHOT, MILLS, MORRISH, MOUNT, MURRAY, NEVERS, PETERSON, QUINN, RISER, SHAW, SMITH, THOMPSON, WALSWORTH AND WILLARD-LEWIS AND REPRESENTATIVES ABRAMSON, ANDERS, ARMES, ARNOLD, AUBERT, AUSTIN BADON, BOBBY BADON, BALDONE, BARRAS, BARROW, BILLIOT, BISHOP, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, BURRELL, CARMODY, CARTER, CHAMPAGNE, CHANDLER, CHANEY, CONNICK, CORTEZ, CROMER, DIXON, DOERGE, DOVE, DOWNS, EDWARDS, ELLINGTON, FANNIN, FRANKLIN, GISCLAIR, GUILLORY, GUINN, HARDY, HARRISON, HAZEL, HENRY, HENSGENS, HILL, HINES, HONORE, HOWARD, HUTTER, HUVAL, MICHAEL JACKSON, JOHNSON, ROSALIND JONES, SAM JONES, KATZ, KLECKLEY, LABRUZZO, LAMBERT, LANDRY, LEBAS, LEGER, LIGI, LITTLE, LORUSSO, MONICA, MONTOUCET, MORENO, MORRIS, NORTON, NOWLIN, PEARSON, PONTI, POPE, RICHARD, RICHARDSON, RITCHIE, ROBIDEAUX, ROY, SCHRODER, SEABAUGH, SIMON, SMILEY, GARY SMITH, JANE SMITH, PATRICIA SMITH, ST. GERMAIN, STIAES, TALBOT, TEMPLET, THIBAUT, THIERRY, TUCKER, WHITE, WILLIAMS AND WOOTON

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

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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**

1 and disability benefits for Louisiana National Guardsmen called to active duty  
2 service by the governor or the President of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) That period, subsequent to September 11, 2001, for which the  
30 President of the United States orders a guardsman to federal active duty

1 pursuant to 10 U.S.C. 12301, 12302, or 12303.

2 (9) "Qualified claim" means an application for benefits by a guardsman  
3 or beneficiary for a qualifying death or disability incurred during a period of  
4 activation in the line of duty, and meeting the documentation requirements of  
5 this Section.

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

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

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

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

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

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

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

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

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

1           **(b) A disability rating decision reached by:**

2           **(i) The United States Department of Veterans Affairs and certified by the**  
3           **Louisiana secretary of veterans affairs or his designee; or**

4           **(ii) The proper state entity that adjudicates such claims for guardsmen**  
5           **in accordance with the workers' compensation law of this state and certified by**  
6           **the Louisiana secretary of veterans affairs or his designee.**

7           **(c) A disability benefit claim form signed by the claimant and certified**  
8           **by the secretary of the Louisiana Department of Veterans Affairs or his**  
9           **designee.**

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

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

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

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

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

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

1 of this state and certified by the secretary of the Louisiana Department of  
2 Veterans Affairs or his designee.

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

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

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

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

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

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

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

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

28 Section 5. This Act shall become effective upon signature by the governor or, if not  
29 signed by the governor, upon expiration of the time for a bill to become law without  
30 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.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_