

HOUSE BILL 292
EMERGENCY BILL

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P1

2002 Regular Session
(2r0157)

ENROLLED BILL
-- Appropriations/Education, Health, and Environmental Affairs --

Introduced by **The Speaker (Administration) and Delegates Rudolph and Hutchins**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Maryland National Guard Readiness Act**

3 FOR the purpose of granting certain members of the Maryland National Guard the
4 same rights and protections as those granted under certain federal laws with
5 regard to certain reemployment rights and civil protections; providing for a
6 certain death benefit for certain members of the Maryland National Guard who
7 are killed in the performance of their duties on or after a certain date; providing
8 for the application of certain provisions of this Act; making certain provisions of
9 this Act severable; making this Act an emergency measure; and generally
10 relating to the rights, protections, and benefits of members of the Maryland
11 National Guard.

12 BY repealing

13 Article 65 - Militia

14 Section 32A

15 Annotated Code of Maryland

1 (1998 Replacement Volume and 2001 Supplement)

2 BY adding to

3 Article 65 - Militia

4 Section 32A

5 Annotated Code of Maryland

6 (1998 Replacement Volume and 2001 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - State Personnel and Pensions

9 Section 10-404

10 Annotated Code of Maryland

11 (1997 Replacement Volume and 2001 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That Section(s) 32A of Article 65 - Militia of the Annotated Code of
14 Maryland be repealed.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
16 read as follows:

17 **Article 65 - Militia**

18 32A.

19 (A) (1) THE FOLLOWING PROVISIONS OF FEDERAL LAW SHALL BE ADOPTED
20 AS STATE LAW AND APPLIED TO MEMBERS OF THE MARYLAND ARMY NATIONAL
21 GUARD AND THE MARYLAND AIR NATIONAL GUARD.

22 (2) THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 (SSCRA), AS
23 AMENDED, SECTIONS 501 THROUGH 593 OF TITLE 50 OF THE UNITED STATES CODE,
24 SHALL APPLY ONLY WHEN MEMBERS OF THE MARYLAND ARMY NATIONAL GUARD
25 AND THE MARYLAND AIR NATIONAL GUARD ARE ORDERED TO MILITARY DUTY
26 UNDER THIS ARTICLE, OR UNDER TITLE 10 OR TITLE 32 OF THE UNITED STATES
27 CODE, FOR A PERIOD OF 14 CONSECUTIVE DAYS OR LONGER.

28 (3) THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT
29 RIGHTS ACT (USERRA), AS AMENDED, SECTIONS 4301 THROUGH 4333 OF TITLE 38 OF
30 THE UNITED STATES CODE, SHALL APPLY WHEN MEMBERS OF THE MARYLAND ARMY
31 NATIONAL GUARD AND THE MARYLAND AIR NATIONAL GUARD ARE ORDERED TO
32 MILITARY DUTY UNDER THIS ARTICLE, OR UNDER TITLE 10 OR TITLE 32 OF THE
33 UNITED STATES CODE, FOR ANY PERIOD OF TIME.

34 (B) ALL RIGHTS GRANTED TO MEMBERS OF THE MARYLAND NATIONAL
35 GUARD BY THIS SECTION SHALL BE IN ADDITION TO, AND HELD DISTINCT FROM, ANY
36 AND ALL RIGHTS GRANTED TO THEM BY FEDERAL LAW, INCLUDING THE SOLDIERS'
37 AND SAILORS' CIVIL RELIEF ACT OF 1940 (SSCRA), AS AMENDED, SECTIONS 501
38 THROUGH 593 OF TITLE 50 OF THE UNITED STATES CODE AND THE UNIFORMED

1 SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA), AS AMENDED,
2 SECTIONS 4301 THROUGH 4333 OF TITLE 38 OF THE UNITED STATES CODE.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article - State Personnel and Pensions**

6 10-404.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) "Child" means any natural, adopted, or posthumous child, or
9 stepchild, or the decedent who is:

10 (i) 18 years of age or under; or

11 (ii) over 18 years of age and incapable of self-support because of a
12 physical or mental disability.

13 (3) "Stepchild" means any child of the surviving spouse who was living
14 with or dependent for support on the decedent at the time of death.

15 (b) This section applies to all [employees in]:

16 (1) EMPLOYEES IN the State Personnel Management System; [and]

17 (2) EMPLOYEES IN any other authorized personnel system established
18 for a unit of State government; AND

19 (3) MEMBERS OF THE MARYLAND NATIONAL GUARD SERVING ON
20 ORDERS ISSUED IN ACCORDANCE WITH ARTICLE 65 OF THE ANNOTATED CODE OF
21 MARYLAND OR TITLE 32 OF THE UNITED STATES CODE.

22 (c) (1) (i) Except as provided in ~~paragraph (2) PARAGRAPHS (2) AND (3)~~
23 PARAGRAPH (2) of this subsection, a death benefit in the amount of \$100,000 shall be
24 paid to the surviving spouse, children, or dependent parents of any employee subject
25 to this section who is killed in the performance of duties on or after July 1, 2000.

26 (ii) A death benefit may not be paid under this paragraph if an
27 employee is killed as a result of the employee's negligence.

28 (III) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH
29 IF A MEMBER OF THE MARYLAND NATIONAL GUARD WHO IS KILLED IN THE
30 PERFORMANCE OF DUTIES IS ELIGIBLE TO RECEIVE DEPENDENCY AND INDEMNITY
31 COMPENSATION UNDER RULES PRESCRIBED BY THE UNITED STATES DEPARTMENT
32 OF VETERANS AFFAIRS.

33 (2) (i) A death benefit in the amount of \$50,000 shall be paid to the
34 surviving spouse, children, or dependent parents of any State employee covered by

1 the provisions of Article 41, § 4-1002 of the Code who is killed in the performance of
2 duties on or after July 1, 2000.

3 (ii) A death benefit may not be paid under this paragraph if an
4 employee is killed as a result of the employee's negligence.

5 (iii) An individual who receives a death benefit under this
6 paragraph may not also receive a death benefit under paragraph (1) ~~OR (3)~~ of this
7 subsection.

8 ~~(3) (I) A DEATH BENEFIT IN THE AMOUNT OF \$50,000 SHALL BE PAID~~
9 ~~TO THE SURVIVING SPOUSE, CHILDREN, OR DEPENDENT PARENTS OF ANY MEMBER~~
10 ~~OF THE MARYLAND NATIONAL GUARD SUBJECT TO THIS SECTION WHO IS KILLED IN~~
11 ~~THE PERFORMANCE OF DUTIES.~~

12 ~~(II) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH~~
13 ~~IF A MEMBER OF THE NATIONAL GUARD IS KILLED AS A RESULT OF THE MEMBER'S~~
14 ~~NEGLIGENCE.~~

15 ~~(III) AN INDIVIDUAL WHO RECEIVES A DEATH BENEFIT UNDER THIS~~
16 ~~PARAGRAPH MAY NOT ALSO RECEIVE A DEATH BENEFIT UNDER PARAGRAPH (1) OR~~
17 ~~(2) OF THIS SUBSECTION.~~

18 ~~(IV) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH~~
19 ~~IF AN INDIVIDUAL IS ELIGIBLE TO RECEIVE DEPENDENCY AND INDEMNITY~~
20 ~~COMPENSATION UNDER RULES PRESCRIBED BY THE UNITED STATES DEPARTMENT~~
21 ~~OF VETERANS AFFAIRS.~~

22 ~~(3) (4) (3)~~ A death benefit under this section shall be in addition to
23 any:

24 (i) workers' compensation benefits;

25 (ii) proceeds of any form of life insurance, regardless of who paid
26 the premiums on the insurance; [and]

27 (iii) benefit provided to a State employee covered by the provisions
28 of Article 41, § 4-1002 of the Code; AND

29 (IV) ~~EXCEPT AS PROVIDED IN PARAGRAPH (3)(IV) (1)(III) OF THIS~~
30 ~~SUBSECTION, BENEFITS PAID TO A MEMBER OF THE MARYLAND NATIONAL GUARD,~~
31 ~~THE MEMBER'S ESTATE, OR THE MEMBER'S BENEFICIARIES OR SURVIVORS BY THE~~
32 ~~UNITED STATES.~~

33 (d) (1) On notification by the head of the unit that employed the decedent,
34 the Secretary shall determine whether a death benefit will be paid under this section.

35 (2) If the Secretary determines that a death benefit is payable, payment
36 shall be made:

- 1 (i) to the surviving spouse;
- 2 (ii) if there is no surviving spouse, to the surviving children, in
3 equal shares; or
- 4 (iii) if there is no surviving spouse or children, to the surviving
5 parent or parents, if the parent was a dependent as defined in § 152 of the Internal
6 Revenue Code.

7 (e) A death benefit under this section shall be paid out of funds which the
8 Governor may appropriate for that purpose in the State budget.

9 (f) A decision of the Secretary under this section:

10 (1) is the final administrative decision; and

11 (2) is not subject to appeal under Title 10, Subtitle 2 of the State
12 Government Article.

13 SECTION 4. AND BE IT FURTHER ENACTED, That the provisions of
14 Section 3 of this Act shall be construed retroactively and applied to any member of the
15 Maryland National Guard who died on or after September 11, 2001.

16 SECTION 5. AND BE IT FURTHER ENACTED, That if any provision of this
17 Act or the application thereof to any person or circumstance is held invalid for any
18 reason in a court of competent jurisdiction, the invalidity does not affect other
19 provisions or any other application of this Act which can be given effect without the
20 invalid provision or application, and for this purpose the provisions of this Act are
21 declared severable.

22 SECTION 6. AND BE IT FURTHER ENACTED, That this Act ~~shall take~~
23 ~~effect July 1, 2002~~ is an emergency measure, is necessary for the immediate
24 preservation of the public health or safety, has been passed by a yea and nay vote
25 supported by three-fifths of all the members elected to each of the two Houses of the
26 General Assembly, and shall take effect from the date it is enacted.