

HOUSE BILL 292

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2002 Regular Session
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By: **The Speaker (Administration) and Delegates Rudolph and Hutchins**

Introduced and read first time: January 23, 2002

Assigned to: Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2002

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; and generally relating to the rights, protections, and benefits
10 of members of the Maryland National Guard.

11 BY repealing
12 Article 65 - Militia
13 Section 32A
14 Annotated Code of Maryland
15 (1998 Replacement Volume and 2001 Supplement)

16 BY adding to
17 Article 65 - Militia
18 Section 32A
19 Annotated Code of Maryland
20 (1998 Replacement Volume and 2001 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - State Personnel and Pensions
23 Section 10-404

1 Annotated Code of Maryland
2 (1997 Replacement Volume and 2001 Supplement)

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5 Maryland be repealed.

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

8 **Article 65 - Militia**

9 32A.

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

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

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

25 (B) ALL RIGHTS GRANTED TO MEMBERS OF THE MARYLAND NATIONAL
26 GUARD BY THIS SECTION SHALL BE IN ADDITION TO, AND HELD DISTINCT FROM, ANY
27 AND ALL RIGHTS GRANTED TO THEM BY FEDERAL LAW, INCLUDING THE SOLDIERS'
28 AND SAILORS' CIVIL RELIEF ACT OF 1940 (SSCRA), AS AMENDED, SECTIONS 501
29 THROUGH 593 OF TITLE 50 OF THE UNITED STATES CODE AND THE UNIFORMED
30 SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA), AS AMENDED,
31 SECTIONS 4301 THROUGH 4333 OF TITLE 38 OF THE UNITED STATES CODE.

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

34 **Article - State Personnel and Pensions**

35 10-404.

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

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

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

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

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

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

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

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

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

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

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

21 (2) (i) A death benefit in the amount of \$50,000 shall be paid to the
22 surviving spouse, children, or dependent parents of any State employee covered by
23 the provisions of Article 41, § 4-1002 of the Code who is killed in the performance of
24 duties on or after July 1, 2000.

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

27 (iii) An individual who receives a death benefit under this
28 paragraph may not also receive a death benefit under paragraph (1) OR (3) of this
29 subsection.

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

34 (II) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH
35 IF A MEMBER OF THE NATIONAL GUARD IS KILLED AS A RESULT OF THE MEMBER'S
36 NEGLIGENCE.

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

4 (IV) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH
 5 IF AN INDIVIDUAL IS ELIGIBLE TO RECEIVE DEPENDENCY AND INDEMNITY
 6 COMPENSATION UNDER RULES PRESCRIBED BY THE UNITED STATES DEPARTMENT
 7 OF VETERANS AFFAIRS.

8 ~~(3)~~ (4) A death benefit under this section shall be in addition to any:

9 (i) workers' compensation benefits;

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

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

14 (IV) EXCEPT AS PROVIDED IN PARAGRAPH (3)(IV) OF THIS
 15 SUBSECTION, BENEFITS PAID TO A MEMBER OF THE MARYLAND NATIONAL GUARD,
 16 THE MEMBER'S ESTATE, OR THE MEMBER'S BENEFICIARIES OR SURVIVORS BY THE
 17 UNITED STATES.

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

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

22 (i) to the surviving spouse;

23 (ii) if there is no surviving spouse, to the surviving children, in
 24 equal shares; or

25 (iii) if there is no surviving spouse or children, to the surviving
 26 parent or parents, if the parent was a dependent as defined in § 152 of the Internal
 27 Revenue Code.

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

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

31 (1) is the final administrative decision; and

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

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

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

10 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 2002.