

SENATE BILL 238

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2002 Regular Session
2lr0156
CF 2lr0157

By: **The President (Administration) and Senators Collins, Green, Hollinger,
Hughes, Kasemeyer, Lawlah, Sfikas, Stone, and Van Hollen**

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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; making
8 certain provisions of this Act severable; and generally relating to the rights,
9 protections, and benefits of members of the Maryland National Guard.

10 BY repealing

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

15 BY adding to

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

20 BY repealing and reenacting, with amendments,

21 Article - State Personnel and Pensions
22 Section 10-404
23 Annotated Code of Maryland
24 (1997 Replacement Volume and 2001 Supplement)

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27 Maryland be repealed.

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

3 **Article 65 - Militia**

4 32A.

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

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

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

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

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

29 **Article - State Personnel and Pensions**

30 10-404.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (iii) An individual who receives a death benefit under this
23 paragraph may not also receive a death benefit under paragraph (1) of this
24 subsection.

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

26 (i) workers' compensation benefits;

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

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

31 (IV) BENEFITS PAID TO A MEMBER OF THE MARYLAND NATIONAL
32 GUARD, THE MEMBER'S ESTATE, OR THE MEMBER'S BENEFICIARIES OR SURVIVORS
33 BY THE UNITED STATES.

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

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

3 (i) to the surviving spouse;

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

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

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

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

12 (1) is the final administrative decision; and

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

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

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

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