

SENATE BILL 238
EMERGENCY BILL

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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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 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; making
8 certain provisions of this Act severable; making this Act an emergency measure;
9 and generally relating to the rights, protections, and benefits of members of the
10 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

1 Section 10-404
2 Annotated Code of Maryland
3 (1997 Replacement Volume and 2001 Supplement)

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6 Maryland be repealed.

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

9 **Article 65 - Militia**

10 32A.

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

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

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

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

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

35 **Article - State Personnel and Pensions**

36 10-404.

37 (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) of this subsection, a death
16 benefit in the amount of \$100,000 shall be paid to the surviving spouse, children, or
17 dependent parents of any employee subject to this section who is killed in the
18 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 (III) A DEATH BENEFIT MAY NOT BE PAID UNDER THIS PARAGRAPH
22 IF A MEMBER OF THE MARYLAND NATIONAL GUARD WHO IS KILLED IN THE
23 PERFORMANCE OF DUTIES IS ELIGIBLE TO RECEIVE DEPENDENCY AND INDEMNITY
24 COMPENSATION UNDER RULES PRESCRIBED BY THE UNITED STATES DEPARTMENT
25 OF VETERANS AFFAIRS.

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

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

32 (iii) An individual who receives a death benefit under this
33 paragraph may not also receive a death benefit under paragraph (1) of this
34 subsection.

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

36 (i) workers' compensation benefits;

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

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

5 (IV) EXCEPT AS PROVIDED IN PARAGRAPH (1)(III) OF THIS
6 SUBSECTION, BENEFITS PAID TO A MEMBER OF THE MARYLAND NATIONAL GUARD,
7 THE MEMBER'S ESTATE, OR THE MEMBER'S BENEFICIARIES OR SURVIVORS BY THE
8 UNITED STATES.

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

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

13 (i) to the surviving spouse;

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

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

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

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

22 (1) is the final administrative decision; and

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

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

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

34 SECTION 6. AND BE IT FURTHER ENACTED, That this Act ~~shall take~~
35 ~~effect July 1, 2002~~ is an emergency measure, is necessary for the immediate
36 preservation of the public health or safety, has been passed by a yea and nay vote

1 supported by three-fifths of all the members elected to each of the two Houses of the
2 General Assembly, and shall take effect from the date it is enacted.