

Regular Session, 2010

SENATE BILL NO. 245

BY SENATORS ADLEY, MARIONNEAUX, N. GAUTREAUX, MURRAY, RISER AND
SHAW AND REPRESENTATIVES EDWARDS, ELLINGTON,
GISCLAIR, KATZ, MCVEA, MONICA AND SCHRODER

MILITARY AFFAIRS. Provides for death and disability benefits for Louisiana National Guardsmen activated by the governor or the president. (gov sig)

1 AN ACT
2 To enact R.S. 29:26.1, relative to death and disability benefits for Louisiana National
3 Guardsmen activated by the governor or the president; and to provide for related
4 matters.
5 Be it enacted by the Legislature of Louisiana:
6 Section 1. R.S. 29:26.1 is hereby enacted to read as follows:
7 **§26.1 National Guard death and disability benefits**
8 **A. Purpose. The purpose of this Section is:**
9 **(1) To establish an effective and efficient mechanism for providing death**
10 **and disability benefits for Louisiana National Guardsmen called to active duty**
11 **service by the governor or the president of the United States.**
12 **(2) To govern the submission, evaluation, and determination of claims**
13 **submitted pursuant to this Section.**
14 **B. Definitions. As used in this Section, the following terms shall have the**
15 **following meanings unless a different meaning is clearly required by context:**
16 **(1) "Beneficiary," unless otherwise designated by the deceased**
17 **guardsman as set forth in this Section, means the person or persons designated**

1 by the guardsman on DD Form 93, as eligible to receive the death gratuity from
2 DoD pursuant to 10 U.S.C. 1475 et seq.

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

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

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

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

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

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

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

15 (a) That period, subsequent to September 11, 2001, for which the
16 governor of the state of Louisiana orders a guardsman into state active service
17 pursuant to R.S. 29:7.1.

18 (b) That period, subsequent to September 11, 2001, for which the
19 president of the United States orders a guardsman into active military duty,
20 pursuant to 32 U.S.C. 501(f)(1).

21 (c) That period, subsequent to September 11, 2001, for which the
22 president of the United States orders a guardsman to federal active duty
23 pursuant to 10 U.S.C. 12301, 12302, or 12303.

24 (9) "Qualifying claim" means an application for benefits by a
25 guardsman or beneficiary for a qualifying death or disability incurred during
26 a period of activation in the line of duty, and meeting the documentation
27 requirements of this Section.

28 (10) "Qualifying disability" means a one hundred percent permanent
29 total disability rating, or a permanent and total unemployability disability

1 rating as determined by the United States Department of Veterans Affairs and
2 certified by the Louisiana secretary of veterans affairs in a final adjudication
3 of the initial rating decision or, as determined or certified by the proper state
4 entity that adjudicates such claims for guardsmen in accordance with the
5 workers' compensation law of this state. A qualifying disability shall be
6 certified by the Louisiana secretary of veterans affairs or his designee.

7 C. Claims for benefits. (1) All claims for death benefits provided for
8 under this Section shall be submitted to the Louisiana National Guard, attention
9 J-1, Casualty Branch, Building 496, 3rd Street, Camp Beauregard, Louisiana,
10 71360, or other location designated by the adjutant general. Claim forms may
11 be obtained from this agency.

12 (2) All claims for disability benefits provided for under this Section shall
13 be submitted to the Louisiana Department of Veterans Affairs, P.O. Box 94095,
14 1885 Wooddale Boulevard, Baton Rouge, Louisiana, 70804, or other location
15 designated by the secretary of the Louisiana Department of Veterans Affairs.

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

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

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

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

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

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

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

1 **(b) A disability rating decision reached by the United States Department**
2 **of Veterans Affairs and certified by the Louisiana secretary of veterans affairs**
3 **or his designee.**

4 **(c) A disability rating decision reached by the surgeon general of the**
5 **LANG for guardsmen in accordance with the workers' compensation law of this**
6 **state and certified by the Louisiana secretary of veterans affairs or his designee.**

7 **(d) 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. 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.**

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

20 **(2) A qualifying disability shall be determined by the United States**
21 **Department of Veterans Affairs or by the LANG state surgeon general for**
22 **guardsmen in accordance with the workers' compensation law of this state and**
23 **certified by the secretary of the Louisiana Department of Veterans Affairs or**
24 **his designee.**

25 **(3) Payment to an eligible recipient for a qualified claim for a death**
26 **benefit shall be made by the Military Department, State of Louisiana after**
27 **certification of eligibility and request for payment are made as required by this**
28 **Section.**

29 **(4) Payment to an eligible recipient of a qualified claim for a disability**

1 benefit shall be made by the Louisiana Department of Veterans Affairs after a
 2 determination by the LANG state surgeon general and certification of eligibility
 3 by the secretary of the Louisiana Department of Veterans Affairs, and request
 4 for payment as required by this Section.

5 F. Beneficiary designation by guardsmen. (1) Each member of LANG
 6 shall complete and execute a Death Benefit Beneficiary Designation Form which
 7 shall contain the name of the beneficiary or beneficiaries of the guardsman's
 8 death benefit under this Section to whom this benefit shall be paid in a lump
 9 sum. In the absence of the Death Benefit Beneficiary Designation form, a DD
 10 Form 93 shall be used.

11 (2) All designation forms shall be signed by the guardsman before a
 12 witness in the grade of E-7 or above in the LANG.

13 (3) All designation forms shall be kept in the personnel files of the
 14 LANG in the regular course of business

15 Section 2. This Act shall become effective upon signature by the governor or, if not
 16 signed by the governor, upon expiration of the time for a bill to become law without
 17 signature by the governor, as provided in Article III, Section 18 of the Constitution of
 18 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
 19 shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Heyward Jeffers.

DIGEST

Present law (R.S. 22:941(A)(5)) provides for the state to pay a \$250,000 death benefit and a \$100,000 permanent total disability benefit for the death or disability of a Louisiana National Guardsman. Specifies that such benefits shall be provided only during periods of activation ordered by the governor of Louisiana or by the president of the United States in the course of the business of the military forces of Louisiana.

Proposed law provides generally relative to the payment of benefits for the death or disability of a Louisiana National Guardsman called to active service by the governor or the president of the United States. Provides for purpose and definition of terms.

Proposed law provides that the Louisiana National Guard (LANG) adjutant general shall be the authority to whom death benefits claims shall be submitted for determination, and \$250,000 lump-sum payment for each qualified death claim shall be made by the Military Department, State of Louisiana.

Proposed law provides that disability claims shall be determined by the Department of Veterans Affairs or the LANG state surgeon for guardsmen in accordance with the workers' compensation law of this state and shall be certified by the Louisiana secretary of veterans affairs or his designee.

Proposed law provides for a lump-sum payment of \$100,000 for each qualified disability benefit claim to be made by the La. Department of Veterans Affairs after receipt of a request for payment.

Proposed law provides for documentation required for death and disability claims.

Proposed law provides that all members of the LANG shall complete and execute a Death Benefit Beneficiary Designation form which shall contain the name of the beneficiary or beneficiaries of the guardsman's death benefit. Provides that, in the absence of a Death Benefit Beneficiary Designation form, a DD Form 93 shall be used.

Proposed law provides that the Death Benefit Beneficiary form shall be signed by the guardsman in the presence of a LANG witness in the grade of E-7 or above.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 29:26.1)