

HOUSE No. 3319

The Commonwealth of Massachusetts

PRESENTED BY:

Tricia Farley-Bouvier

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to veterans' agents.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>

HOUSE No. 3319

By Ms. Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 3319) of Tricia Farley-Bouvier and others relative to veterans’ agents. Veterans and Federal Affairs.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to veterans’ agents.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The second paragraph of section 46A of chapter 114 of the General Laws,
2 as appearing in the 2012 Official Edition, is hereby amended by striking out the first 2 sentences
3 and inserting in place thereof the following 2 sentences:- A certified copy of the affidavit shall
4 be transmitted by the undertaker or other person authorized to make the burial or disposition,
5 within 30 days of the burial or disposition, to the veterans' agent of the district, as defined in
6 section 1 of chapter 115, within which the burial or other disposition of the body occurs. Upon
7 receipt of the certified copy, the veterans' agent shall transmit the certified copy to the veterans'
8 graves officer, appointed under section 9 of said chapter 115, of the city or town within which
9 the burial or other disposition of the body occurs.

10 SECTION 2. Chapter 115 of the General Laws is hereby amended by striking out section
11 1 and inserting in place thereof the following section:-

12 Section 1. As used in this chapter, the following words shall, unless the context
13 otherwise requires, have the following meaning:-

14 “Commissioner” or “secretary”, the secretary of veterans’ services.

15 “Department”, the department of veterans’ services.

16 “Dependent”, the wife, husband, widow, widower, child, mother or father of a veteran, as
17 hereinafter defined, including any person who stood in the relationship of a parent to such
18 veteran for the 5 years next preceding the commencement of his wartime service; provided, that
19 no child of a veteran who is more than 18 years of age shall be deemed a dependent, unless such
20 child is attending school for the purpose of completing a regulation high school course or its
21 equivalent, or unless he is mentally or physically unable to support himself, and his disability
22 existed before he attained that age, or unless he is under 23 years of age, and is a full-time
23 student at an educational institution which maintains a regular faculty and curriculum and has a
24 regularly organized body of students in attendance at the place where its educational activities
25 are carried on.

26 “District”, a geographical district established by the commissioner pursuant to section 6.

27 “Institution”, any hospital, sanatorium or wayfarer's lodge, boarding or rest home, or
28 convalescent or nursing home, for the operation of which a license is required by law, any
29 facility conducted by an agency incorporated under chapter 180 or any special act as a charitable
30 corporation and any facility operated by municipal, county, state or federal government.

31 “Reside”, to be present within a city or town of the commonwealth, notwithstanding the
32 lack of a present abode, with no present intention of definite and early removal, but not
33 necessarily with the intention of remaining permanently; provided, however, that any such
34 person who enters the commonwealth solely for the purpose of obtaining benefits under this
35 chapter shall not be considered to reside in the commonwealth; and, provided further, that an

36 applicant lacking a present abode shall be required to provide an affidavit stating his identity, his
37 last place of residence and his intention to establish an abode within the district in which he
38 applies.

39 “Veteran”, any person who (a) is a veteran as defined in clause Forty-third of section 7 of
40 chapter 4; or (b) meets all the requirements of said clause Forty-third except that instead of
41 performing wartime service as so defined he has served on active duty in the Mexican border
42 service, between June 30, 1916, and February 3, 1917; or (c) is entitled to the Civil War, Indian
43 Campaign, Spanish Campaign, or Spanish War Service Medal; or (d) meets all the requirements
44 of said clause Forty-third except that instead of performing 90 days active service, at least one
45 day of which was for wartime service, he has performed active service in the armed forces of the
46 United States at any time between April 6, 1917 and November 11, 1918, inclusive; or (e) meets
47 all the requirements of said clause Forty-third, except that instead of performing wartime service
48 as so defined he is entitled to any of the following campaign badges: First Nicaraguan, Haitian,
49 Dominican, Yangtze River, Second Yangtze River, Second Nicaraguan, Vera Cruz, Mexican
50 Service; provided, that in any case the service of such person was credited to Massachusetts, or
51 such person has resided in the commonwealth for 1 day.

52 “Veterans’ agent” or “Deputy veterans’ agent”, a veteran, as defined in clause Forty-third
53 of section 7 of chapter 4, appointed pursuant to section 3 to disburse veterans’ benefits in any
54 district.

55 “Veterans’ benefits”, the benefits provided by this chapter. When used in any statute,
56 ordinance, by-law, rule or regulation, the phrases “state aid”, “military aid”, “soldiers’ relief”,
57 “soldiers’ burial”, or any words or phrases connoting the same, shall mean veterans’ benefits.

58 SECTION 3. Section 2 of said chapter 115, as so appearing, is hereby amended by
59 striking out, in lines 11 and 12, the words “city and town” and inserting in place thereof the
60 following words:- veterans’ agent.

61 SECTION 4. Said section 2 of said chapter 115, as so appearing, is hereby further
62 amended by striking out, in line 18, the word “towns” and inserting in place thereof the
63 following word:- districts.

64 SECTION 5. Said section 2 of said chapter 115, as so appearing, is hereby further
65 amended by striking out, in lines 29 and 39, the words “city or town” and inserting in place
66 thereof, in each instance, the following words:- veterans’ agent.

67 SECTION 6. Said section 2 of said chapter 115, as so appearing, is hereby further
68 amended by striking out the fourth paragraph.

69 SECTION 7. Said section 2 of said chapter 115, as so appearing, is hereby further
70 amended by striking out the sixth paragraph.

71 SECTION 8. Said section 2 of said chapter 115, as so appearing, is hereby further
72 amended by striking out, in lines 120 and 121, the following words:- of the various cities and
73 towns and of the directors of veterans' services of the various cities, towns and districts.

74 SECTION 9. Said section 2 of said chapter 115, as so appearing, is hereby further
75 amended by striking out the tenth paragraph.

76 SECTION 10. Section 2A of said chapter 115, as so appearing, is hereby further amended
77 by striking out the first paragraph and inserting in place thereof the following paragraph:-

78 If the commissioner decides a controversy between an applicant and a veterans' agent
79 relative to the validity or amount of a claim for veterans' benefits, as provided in section 2, in
80 favor of the applicant, the said veterans' agent shall, forthwith, make payment to the applicant in
81 accordance with said decision notwithstanding any appeal therefrom by the veterans' agent. If the
82 governor and council sustain the appeal of said veterans' agent as to the validity of such claim,
83 payment to the applicant shall thereupon cease. If the governor and council sustain the appeal of
84 said veterans' agent as to the amount of such claim, payment to the applicant of any amount in
85 excess of the amount approved by the governor and council shall thereupon cease

86 SECTION 11. Said chapter 115 is hereby further amended by striking out section 3 and
87 inserting in place thereof the following:-

88 Section 3. The commissioner shall appoint 1 veterans' agent within each district to act
89 for the department in the disbursement of veterans' benefits. Each veterans' agent shall be
90 appointed for a term of 2 years. Each veterans' agent shall appoint at least 2 deputy veterans'
91 agents for each district, who shall perform all of the duties of the veterans' agent in the case of
92 incapacity or absence, and may appoint assistant veterans' agents for each district as necessary;
93 provided, however, that all such appointments shall be subject to the final approval of the
94 commissioner. The commissioner may, in the commissioner's discretion, require that each
95 assistant veterans' agent shall be a veteran, as defined in clause Forty-third of section 7 of
96 chapter 4. A veterans' agent may employ support and administrative staff to assist in the
97 administration of veterans' benefits, as necessary.

98 Veterans' agents, deputy veterans' agents, assistant veterans' agents, and support or
99 administrative staff, shall be employees of the department.

100 Veterans' agents shall provide such information, advice and assistance to veterans and
101 their dependents as may be necessary to enable them to procure the benefits to which they are or
102 may be entitled relative to employment, vocational or other educational opportunities,
103 hospitalization, medical care, pensions, and other veterans' benefits. Veterans' agents shall
104 acquire and maintain current booklets and other printed or electronic materials pertaining to the
105 statutory rights of veterans under local, state and federal laws, and may call at any time upon any
106 department, board, division or commission of the commonwealth for such assistance as may be
107 necessary in carrying out their functions. Veterans' agents shall work in close coordination with
108 those federal agencies established to aid veterans, work in close coordination with the officials of
109 all towns and cities within their respective districts, and coordinate with hospitals in their
110 respective districts.

111 Veterans' agents shall, from time after the original allowance of any claim for veterans'
112 benefits, make such investigations of the necessities and qualifications of the claimant as to
113 prevent the payment of any benefits contrary to any provision of this chapter.

114 Upon the request of any veteran, the veterans' agent for the district in which the veteran
115 resides shall record his discharge or release papers, without charge, in books kept by the
116 veterans' agent for that purpose. Said agent shall keep an index of papers so recorded, and copies
117 thereof, if attested by him, shall be admissible in evidence to the same extent and with the same
118 effect as the originals.

119 SECTION 12. Said chapter 115 is hereby further amended by striking out section 3B, as
120 appearing in section 24 of chapter 62 of the acts of 2014, and inserting in place thereof the
121 following section:-

122 Section 3B. (a) The secretary of veterans' services shall establish standards and
123 promulgate regulations for the mandatory training and certification of veterans' agents, which
124 shall, for the purposes of this section, include deputy veterans' agents, and may include assistant
125 veterans' agents. The mandatory training shall be approved by the Massachusetts Veterans'
126 Service Officers Association, and shall be administered annually by the secretary. A veterans'
127 agent shall be trained and certified within 6 months of the agent's appointment pursuant to
128 section 3. A veterans' agent shall attend a mandatory training once every calendar year shall
129 take and pass the certification test offered at each training once every 3 years. The secretary of
130 veterans' services shall consider veterans' agents who complete the requirements of this section
131 certified veterans' agents.

132 (b) The secretary shall, in conjunction with the Massachusetts Veterans' Service Officers
133 Association, formulate a certification test, which shall ensure that veterans' agents possess the
134 core knowledge to effectively serve veterans. The secretary shall administer the test at the
135 mandatory annual training and shall provide a reasonable schedule of make-up training and
136 testing. The certification test shall assess areas of knowledge including, but not limited to, the
137 following: veterans' benefits contained in this chapter; federal and local benefits, including
138 employment, education, health care, retirement and other veterans' benefits; and alternative
139 resources, including those partially or wholly subsidized by the federal government, such as
140 Medicaid, Supplemental Security Income and Social Security Disability benefits and federal
141 pension and compensation entitlements. The secretary may, by regulation, establish exemptions
142 to the requirements of this section.

143 (c) Veterans' agents shall not disclose any information transmitted in confidence by and
144 between a veteran and the veterans' agents, except when the disclosure is: (i) made for the

145 benefit of the veteran; (ii) reasonably necessary to assist the veteran; or (iii) under a lawful order
146 to make such disclosure. For the purposes of this subsection, information received by a veterans'
147 agent which arises out of and in the course of providing assistance shall include, but not be
148 limited to, communications, reports, records, working papers or memoranda.

149 SECTION 13. Chapter 115 is hereby further amended by striking out section 4, as
150 appearing in the 2012 Official Edition, and inserting in place thereof the following:-

151 Section 4. Every application for veterans' benefits shall be in writing, signed by the
152 applicant under the penalties of perjury, and shall contain: (i) a statement of the name, age and
153 residence of the applicant and his relationship to the veteran upon whose wartime service his
154 application is based, if applicable; (ii) such information as the commissioner may require relative
155 to the commencement, duration, extent and termination of the veteran's wartime service; and (iii)
156 any other representations, concerning the needs of the applicant and his reasons for applying for
157 such benefits, as the commissioner may require. Every application shall be submitted to the
158 veterans' agent for the district within which the applicant resides. The veterans' agent shall
159 recommend a particular action on each application and shall forthwith transmit the same to the
160 commissioner for review and approval or amendment.

161 Veterans' agents shall complete applications authorized by the executive office of health
162 and human services for any veteran, widow or dependent applying for veterans' benefits or for
163 medical assistance under chapter 118E, if agreed to by an applicant. The veterans' agent shall
164 file the application for the veteran if the veteran selects assistance under said 118E. The
165 application shall be processed through the appropriate department, and the veterans' agent shall

166 coordinate with the appropriate department to advise an applicant of his or her entitlement to
167 veterans' benefits or benefits from public assistance.

168 SECTION 14. Said chapter 115 is hereby further amended by striking out section 5 and
169 inserting in place thereof the following section:-

170 Section 5. Veterans' benefits shall be paid to a veteran or dependent by the
171 commonwealth; provided, that no benefits shall be paid to a veteran unless he or she has actually
172 resided within the commonwealth for 1 day preceding the date of the application for such
173 benefits, nor to any dependent of a veteran unless the veteran has actually resided within the
174 commonwealth continuously for 3 years next preceding the date of the application for such
175 benefits, nor unless the veteran of whom he or she is a dependent has actually resided within the
176 commonwealth continuously for 3 years next preceding the date of such dependent's application
177 for such benefits. If the veteran is deceased at the time of the dependent's application for benefits,
178 and the veteran died while a resident of the commonwealth, the commissioner may,
179 notwithstanding the foregoing proviso, authorize benefits to such dependent actually residing in
180 the commonwealth at the time of the veteran's death; provided, however, any veteran who
181 actually resided in the commonwealth at the time of his entry into or continuance in active
182 military or naval service of the United States and the dependents of such veteran shall be eligible
183 for benefits without any waiting period.

184 Veterans' benefits shall not be subject to trustee process, and no assignment thereof shall
185 be valid. Only such amount shall be paid to or for any veteran or dependent as may be necessary
186 to afford him sufficient relief or support and such benefits shall not be paid to any person who is
187 able to support himself or who is in receipt of income from any source sufficient for his support.

188 The applicant's receipt of income from any source in an amount insufficient for his support shall
189 not bar him from receiving veterans' benefits to supplement the same, if determined necessary by
190 the commissioner. No payment of benefits shall be made for any period of time prior to the date
191 of application; provided, however, that the commissioner may, on the recommendation of a
192 veterans' agent, authorize the payment of benefits for not more than 60 days prior to the date of
193 the application if the necessity therefor has been caused by serious accident or illness to the
194 applicant or to 1 or more dependents of the veteran upon whose service the application is made.

195 No veterans' benefits shall be paid to or for any veteran who has been dishonorably
196 discharged from any national soldiers' or sailors' home or from a soldiers' home in this
197 commonwealth, or to or for his dependents, unless expressly allowed by the commissioner; nor
198 to or for any applicant convicted of a crime, if the veterans' agent and the commissioner shall so
199 rule; and, unless the commissioner, at his discretion, shall otherwise determine, no veterans'
200 benefits shall be paid to or for any veteran who neglects to support his dependents nor to or for
201 any dependents of such veteran, nor to or for any veteran or applicant if the necessity therefor is
202 caused by his voluntary idleness or continuous vicious habits nor to or for any dependents of
203 such veteran or applicant; but dependents of a deceased veteran shall not be deemed ineligible to
204 receive such benefits by reason of any negligence of such veteran, when alive, to support them.
205 No veteran who is or shall otherwise be entitled to veterans' benefits shall lose his right thereto
206 by reason of his absence from the commonwealth while receiving hospital treatment, under
207 orders of the United States Veterans' Administration, at any hospital located outside the
208 commonwealth, nor shall the right of his dependents thereto be lost while he is actually receiving
209 such hospital treatment by reason of their absence from the commonwealth to accompany him.

210 No veteran or dependent shall be compelled to receive veterans' benefits without his
211 consent. He shall receive such benefits at home, or at such other place as the veterans' agent may
212 deem proper, but he shall not be compelled to receive the same at an infirmary or public
213 institution unless his physical or mental condition so requires, or, if a minor, unless his parents or
214 guardians so elect. A veterans' agent or the commissioner may require a person to whom
215 veterans' benefits are granted to pay over his United States pension or compensation to them to
216 be expended for his relief before receiving such benefits. In the event that the necessity for the
217 granting of veterans' benefits to any veteran or any dependent of a veteran is caused by
218 unemployment, accident or illness of or to such veteran or dependent and monetary remuneration
219 is provided therefor whether by workers' compensation, accident or health insurance, or
220 otherwise, or by legal responsibility of a tortfeasor liable for financial damages to such veteran or
221 dependent therefor, a veterans' agent or the commissioner may require such veteran or dependent
222 to assign to him the whole or any portion of the financial proceeds to be realized from such
223 workers' compensation, accident or health insurance, or otherwise, or the whole or any portion of
224 the financial damages to be recovered from such tortfeasor whether by settlement, arbitration,
225 court action, or otherwise. Such assignment shall operate as a lien on such financial proceeds or
226 financial damages to an amount equivalent to the total expenditures of veterans' benefits allowed
227 to such veteran or dependent, and said lien may be enforced by petition to any district court
228 within the jurisdiction of which the district of payment is located.

229 Nothing in this chapter shall be deemed to prohibit the granting of veterans' benefits in
230 excess of the amount originally authorized or approved by the commissioner in any particular
231 case, or the paying of such benefits as may be necessary to meet the emergency needs of any
232 applicant prior to the date of the approval by the commissioner of the payment of benefits under

233 any such application if the veterans' agent making such grant or payment forthwith furnishes the
234 commissioner with a written statement of his reasons for taking such action.

235 All benefits available to dependents of veterans as provided by this chapter shall be
236 extended to the mother of any member of the armed forces of the United States whose death
237 occurred as the result of injury sustained or disease contracted during active service in time of
238 war or insurrection, including active service in the said armed forces under the flag of the United
239 Nations; provided, that such a mother qualifies in her own right as to the requirements of
240 residence notwithstanding the failure of the deceased veteran to so qualify at the time of his
241 death and notwithstanding lack of proof of the actual dependency of such a mother upon such a
242 veteran at the time of his death. Such benefits shall include payment of reasonable medical and
243 hospital expenses in accordance with regulations adopted by the commissioner and directives
244 issued and promulgated by him; provided, that no back benefits shall be paid beyond the date of
245 application.

246 Effective July 1 of every year, subject to appropriation, the commissioner shall increase
247 the basic budget of each eligible recipient, before taking into consideration any available income
248 and resources, by a percentage amount equal to the percentage rise in the United States
249 Consumer Price Index for January 1 of that year over the level of said index for January 1 of the
250 previous year plus such additional percentage amount as is recommended annually by the
251 commissioner and appropriated by the general court.

252 The benefits provided herein shall include an amount for fuel in the winter months for
253 eligible veterans and dependents if they pay their own heating costs.

254 SECTION 15. Section 5A of said chapter 115, as appearing in the 2012 Official Edition,
255 is hereby amended by striking out, in line 6, the words “town granting such benefits” and
256 inserting in place thereof the following words:- district or districts within which each parcel of
257 real estate lies.

258 SECTION 16. The second paragraph of said section 5A of said chapter 115, as so
259 appearing, is hereby further amended by striking out the fourth sentence and inserting in place
260 thereof the following sentence:- Proceeds realized through any such enforcement shall be
261 retained by the commonwealth.

262 SECTION 17. Said second paragraph of said section 5A of said chapter 115, as so
263 appearing, is hereby further amended by striking out the sixth sentence and inserting in place
264 thereof the following sentence:- If the veterans' agent neglects or refuses promptly to refer the
265 enforcement of a lien under this section to the commissioner for his approval, or to bring a
266 petition within the period specified by the commissioner, the commissioner shall thereupon bring
267 the petition in his own name.

268 SECTION 18. Said chapter 115 is hereby further amended by striking out section 6 and
269 inserting in place thereof the following section:-

270 Section 6. The commissioner shall establish, at a minimum, 25 districts for the purpose
271 of administering veterans' benefits under this chapter. Each district shall be comprised of
272 adjoining municipalities, which may be towns or cities; provided, however, that a city with a
273 population of 100,000 or more on the date of the most recent federal census may be divided into
274 more than 1 district. Each district shall be overseen by a veterans' agent and other department
275 employees, as provided in section 3.

276 A veterans' agent shall maintain the following records with respect to the administration
277 of veterans' benefits within his or her district: (1) the amounts expended by the commonwealth
278 for veterans' benefits; (2) the names of the recipients of such benefits; (3) the amounts paid to or
279 for each applicant for such benefits and the reasons for granting them; (4) the names of the
280 veterans on account of whose services such benefits were granted; (5) the names, if any, of the
281 companies, regiments, stations, organizations or vessels in which veterans on account of whose
282 services benefits were granted respectively enlisted, or to which they were appointed, and in
283 which they last served; (6) the relationship of each dependent to the veteran on account of whose
284 service such benefits were granted; and (7) any other details that the commissioner may require.
285 Each veterans' agent shall, within 30 days following the month in which an expenditure of
286 veterans' benefits are made, provide all records related to the payment of such benefits to the
287 commissioner on blank forms provided, and in a manner approved, by the commissioner, under
288 the penalties of perjury. The commissioner shall examine such records, shall allow and endorse
289 thereon such amounts as he finds have been paid and reported in accordance with the provisions
290 of this chapter, and shall transmit the certificates to the comptroller. The commissioner may
291 decide upon the necessity of the amount paid in each case, and may allow any part thereof which
292 he deems proper and lawful. If the commissioner shall refuse to allow and endorse the payment
293 of certain benefits, the commissioner shall provide notice of such refusal to the appropriate
294 veterans' agent, with an explanation of the reason for the refusal. Such veterans' agent shall
295 thereafter reduce the veterans' benefits to those amounts allowed by the commissioner; provided,
296 however, that the veterans' agent shall not require the reimbursement of any such benefits
297 already paid.

298 SECTION 19. Section 7 of said chapter 115, as appearing in the 2012 Official Edition, is
299 hereby amended by striking out the first sentence and inserting in place thereof the following:-

300 Each veterans' agent shall act as the burial agent for their district.

301 SECTION 20. Section 8 of said chapter 115, as so appearing, is hereby amended by
302 striking out the third sentence.

303 SECTION 21. Said section 8 of said chapter 115, as so appearing, is hereby further
304 amended by striking out, in lines 26 and 27, the following words:- and the treasurer of the city or
305 town expending the amount.

306 SECTION 22. Said section 8 of said chapter 115, as so appearing, is hereby further
307 amended by striking out the eighth sentence.

308 SECTION 23. Sections 10 to 15, inclusive, of said chapter 115 are hereby repealed.

309 SECTION 24. Chapter 471 of the acts of 1972 is hereby repealed.

310 SECTION 25. Chapter 128 of the acts of 1982 is hereby repealed.

311 SECTION 26. Chapter 69 of the acts of 1984 is hereby repealed.

312 SECTION 27. The secretary of veterans' affairs shall promulgate rules and regulations to
313 facilitate the restructuring of the department of veterans' services and the provision of veterans'
314 benefits as required by this act on or before July 1, 2016.