

Calendar No. 1165

71ST CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1128

WORLD WAR VETERANS' ACT OF 1930

JUNE 28, 1930.—Ordered to be printed

Mr. WATSON, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 13174]

The Committee on Finance, to whom was referred the bill (H. R. 13174) to amend the World War veterans' act, 1924, as amended, having considered the same, report it back to the Senate with the following amendments and recommend that the bill do pass:

Amendment No. 1: Extending for one year time in which insurance suits may be instituted.

Amendment No. 2: Authorizing Attorney General to compromise insurance suits.

Amendment No. 3: Eliminating provision discontinuing payments of compensation to veterans who enlisted subsequent to November 11, 1918.

Amendment No. 4: Eliminating requirement that veteran be entitled to exemption from payment of Federal income tax before receiving disability allowance.

Certain typographical errors appearing in the House bill are corrected.

Following is an analysis of the bill, as amended, section by section:

Section 1: Section 1 of the bill amends section 5 of the act by directing that regulations relative to evidence shall provide that due regard be given to lay and other evidence not of a medical nature in connection with the adjudication of claims. It is the feeling of the committee that in certain border-line cases a more liberal evaluation of lay testimony would enable the bureau to grant relief under the law. Although under existing law the bureau has the authority to consider such evidence in its proper light, it is felt that this amendment will constitute the express will of Congress regarding such evidence, and will enable the director of the bureau to issue more elastic regulations with regard thereto.

Section 2: Section 2 of the bill amends section 10 of the act by adding thereto a paragraph authorizing the director to secure such

recreational facilities, supplies, and equipment for the use of patients in hospitals, and for employees at isolated stations, as he may deem necessary, and the appropriations made available for the carrying out of the present provisions of section 10, which relate to the furnishing of medical and hospital treatment, are authorized to be expended for this purpose. The bureau is authorized under existing legislation to provide recreational facilities for patients in hospitals, but has no authority to provide such facilities for employees. Many of the employees are stationed at isolated places, so far removed from facilities provided by municipalities or clubs that it is practically impossible for them to avail themselves thereof. The committee, therefore, believes that the director should be authorized to provide facilities as part of the hospital reservation where they are needed.

Section 3: Section 3 of the bill amends section 16 of the act and authorizes the refund of premiums paid beyond the date of maturity on war risk term insurance. The bureau has always refunded such premiums, but the Comptroller General recently held that the bureau appropriations were not available for such purpose. In view of the fact that no risk attached to the Government for the period covered by these premiums, and that it is the practice of commercial insurance companies under similar circumstances to refund premiums, it is believed that this amendment is proper.

Section 4: Section 4 of the bill amends section 19 of the act by authorizing the courts, as part of the judgment, to direct the refund of premiums. This amendment, which is in line with the preceding one, merely constitutes legislative approval of a practice carried on by the bureau prior to a recent decision of the Comptroller General.

Section 4 of the bill also amends section 19 of the act in the following respects:

(1) Extends the time for bringing suits on insurance claims for one year from the date of the approval of the amendatory act or the date the director disallows the claim, whichever is the later date.

(2) Authorizes the issuance of subpoenas for witnesses who are required to attend trials and who live at a greater distance than 100 miles from the place where the case is to be tried. This provision is extremely important from the point of view of both the veteran and the Government, as under existing law it is necessary that the testimony of such witnesses be taken by depositions, which is highly unsatisfactory.

(3) Authorizes the payment of regular travel and subsistence allowances to attorneys of the bureau when assigned to assist at the trials of cases, and to employees of the bureau when ordered in writing by the director to appear as witnesses.

(4) Authorizes the director to order part-time and fee-basis employees of the bureau to appear as witnesses in suits against the Government under this section and to pay them in his discretion a fee in an amount not to exceed \$20 a day.

(5) Authorizes official leave for bureau employees subpoenaed to attend trials as witnesses for veteran plaintiffs in suits under this section. At the present time these employees are required in answering subpoenas to take their time on annual leave. This is a hardship of which the committee believes they should be relieved.

(6) A paragraph is added to define the meaning of the term "claim" and the term "disagreement" as used therein. It has for its purpose

the establishment of a definite rule that before suit is brought a claimant must make a claim for insurance and prosecute his case on appeal through the appellate agencies of the bureau before he shall have the right to enter suit. Your committee felt that in view of the fact that the Government has set up in the bureau expensive machinery for hearing claims it was unfair for a veteran to disregard this machinery on the basis of the disallowance of his claim by some subordinate board and enter suit.

(7) A savings clause was added at the end to protect the suits already brought from adverse effect by any amendment included in this section.

(8) A new paragraph is added authorizing the Attorney General, with the approval of the court, to compromise suits. Your committee felt this would be beneficial to both ex-service men and the Government.

Section 5: Section 5 of the bill adds a subdivision to section 21 to place authority in the director to pay compensation to the person having custody and control of an incompetent or minor beneficiary during the time compensation payments to a guardian may be suspended or withheld under section 21 of the statute as it now stands. At the present time, when the director suspends payments to a guardian, there is no authority to pay any compensation unless the veteran is in a hospital, in which case all or any part of the compensation may be apportioned to his dependents, if any, and also to the medical officer in charge of the hospital for the benefit of the veteran himself under authority of section 202, subdivision (7). Section 23 of the war risk insurance act contained a provision similar to the one proposed by this bill, but it was eliminated by the act of June 7, 1924, apparently upon the assumption that these cases would be taken care of by section 202 (7). It has developed, however, that the provision of section 202 (7) is not adequate.

This section also authorizes the reestablishment of the fund known as "fund due incompetent beneficiaries," which was established under section 23 of the war risk insurance act and into which the bureau has always paid to the credit of an incompetent beneficiary any part of the fund not paid to the chief officer of the institution in which he is an inmate, or apportioned to his dependents under the provisions of section 202 (7). The Comptroller General has ruled, however, that subsequent to June 7, 1924, no legal authority existed for this fund and although he has permitted it to be continued until June 30, 1930, it will be necessary to amend the law to provide therefor subsequent to that date.

This section also provides that in case the incompetent veteran recovers and is found competent, the balance remaining in the fund may be paid to him, or, if he does not recover, to his guardian, or in the event of his death to his personal representative. In case, however, escheat would result upon death of the veteran, it is provided that the escheat shall be to the United States, as will also be the case with any funds derived from compensation or insurance that are in the hands of a guardian, curator, conservator, or other fiduciary at the time of the veteran's death.

Section 6: Section 6 of the bill proposes to amend section 28 of the World War veterans' act, as amended, to provide that said section,

as amended, shall be deemed to be in effect as of June 7, 1924. Section 28 of the World War veterans' act, as amended, authorizes the waiver of recovery of payments from any person, who, in the judgment of the director is without fault on his part, and where, in the judgment of the director such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience, and further provides that no disbursing officer shall be held liable for any amount paid by him to any person where the recovery of such amount is waived under this section. The last-mentioned provision, relieving the disbursing officers from liability, was inserted in the statute at the second session of the Seventieth Congress on recommendation of the Director of the United States Veterans' Bureau, it having been shown that the Comptroller General of the United States had held that, although recovery might be waived so far as the payee was concerned, the disbursing officer was nevertheless liable under his bond for any erroneous disbursement. Although the committee believed that the language was sufficiently clear and unambiguous to express the intention of Congress that these disbursing officers should no longer be liable, for amounts, the recovery of which had been waived prior to the amendments, as well as those which might be waived prior to the amendments, as well as those which might be waived subsequent thereto, the Comptroller General has ruled that there is no authority to apply this amendment retroactively so as to relieve disbursing officers for disallowances set up against their accounts prior to May 29, 1928. This amendment specifically declaring that section 28, as amended, shall be deemed to be in effect as of June 7, 1924, is therefore now included at the request of the director of the bureau.

Section 7: Section 7 of the bill contains new matter proposed by your committee and provides an amendment to section 30 to enable the director of the bureau, under such rules and regulations as he may prescribe, to permit the representatives of ex-service organizations mentioned in section 500 to inspect bureau records. As the members are aware, the provisions in the existing law makes confidential the records of bureau claimants, except in certain instances which are specified in the law. Section 500 of the act, however, authorizes the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans of the World War, the Veterans of Foreign Wars, and such other organizations as shall be approved by the director to represent claimants before the bureau, and to be recognized by the bureau in connection with this work. To effectively carry out this responsibility it is believed to be essential that representatives of these organizations be permitted to inspect the bureau records under appropriate regulations, with the understanding, of course, that the information thereby obtained will be kept absolutely confidential and be used only in presenting claims before the bureau.

Section 8: Section 8 of the bill provides that checks properly issued to beneficiaries which are undelivered for any reason shall be retained in the files of the bureau until such time as delivery may be accomplished or until three full fiscal years have elapsed after the end of the fiscal year in which issued. At the present time these checks are forwarded to the General Accounting Office when they are undelivered

and more than three months old. This is in accordance with the established regulations of the Comptroller General. It is believed that this amendment will facilitate the delivery of these checks, as the work of the bureau is now unduly complicated under existing procedure, especially in the supervision of awards to fiduciaries for minors and incompetent beneficiaries. In such cases, when the checks are remailed by the General Accounting Office, the bureau receives no notice thereof, unless certification is made to the payee other than the one in whose favor the checks were originally drawn. It will readily be seen therefore, that fiduciaries may receive payments of which the bureau will have no knowledge and will therefore be unable to require a proper accounting as contemplated by section 21 of the World War veterans' act, as amended.

Section 9: Section 9 adds a section to Title I of the World War veterans' act, as amended, to be known as section 38, to authorize the director to buy uniforms for all personnel employed as watchmen, elevator operators, and elevator starters in the Arlington Building, in order that they may present an appearance indicating the official capacity in which they serve. This follows the practice in other governmental departments.

Section 10: Section 10 adds a section to be known as section 39 to enable the Secretary of War to accumulate in the city of Washington all medical and service records now scattered throughout the United States in many Army stations. The records are with particular regard to veterans of the World War and are of inestimable value in enabling both the veterans and the Veteran's Bureau to determine if certain allegations made in connection with claim for compensation can be supported by the records, thus eliminating delay and the necessity for much affidavit evidence which must now be furnished in lieu of such records. The approximate cost of the enactment is not estimated but it has several times been recommended in connection with appropriation acts submitted for the War Department.

Section 11 also amends section 200 of the act by adding a paragraph authorizing the payment of a disability allowance to any honorably discharged ex-service man who entered the service prior to November 11, 1918, and served 90 days or more during the World War, and who is suffering from a 25 per cent or more permanent disability not the result of his own willful misconduct which was not acquired in the service during the World War, or for which compensation is not payable. The disability allowance is as follows: 25 per cent permanent disability, \$12 per month; 50 per cent permanent disability, \$18 per month; 75 per cent permanent disability, \$24 per month; total permanent disability, \$40 per month. The disability allowance provided by this paragraph is in no event to commence prior to the passage of the amendatory act; is to date only from the time of application therefor. The application for the benefit is to be made on such forms as the director shall prescribe. Provision is made whereby a person drawing either compensation or disability allowance, who later becomes entitled to the other in a greater amount than the one he is receiving, may elect to take the greater benefit, but in no event can one person draw the two benefits at the same time, and any payments previously made over the period covered by a new award are to be deducted from the amount payable under the new award.

The term "compensation" as used in Titles I and V is defined to include the disability allowance. This is for the purpose of making the guardianship provisions, the tax exemption provision, and other similar provisions in Title I applicable to the disability allowance and to make the penal provisions of Title V applicable to the disability allowance.

Section 12: Section 12 of the bill contains the provision changing the existing law regarding dependency allowance for fathers and mothers of deceased veterans. Your committee felt that an amendment to subdivision (f) should be adopted which would provide that where death compensation is payable to a widow and children and there is a dependent mother and father, the total amount payable to the dependent mother and father should not be less than \$20 per month. This amendment is made necessary because the present law provides that while the rate payable for a dependent mother or father is \$20, or both, \$30, the amount payable in such cases shall not exceed the difference between the total amount payable to the widow and children and the sum of \$75. It is possible under the present law that the dependent mother and father may receive nothing because of the fact that the veteran left a widow and several children.

Section 12: Section 12 of the bill also amends subdivision (1) of section 201 of the present law relating to burial expenses by authorizing burial and funeral expenses in the cases where death occurs in a national military home irrespective of whether the veteran is receiving compensation or other benefits, and in addition thereto the actual and necessary cost of transportation of the body of the person, including preparation of the body, to the place of burial within the continental limits of the United States, its Territories, or possessions, and including also, in the discretion of the director, the actual necessary cost of transportation of an attendant, and authorizes the furnishing of a flag to drape the casket of every deceased veteran of any war.

Section 13: Section 13 amends subdivisions (3) and (5) of section 202 of the act by providing compensation of \$25 per month, independent of any other compensation that may be payable under the World War veterans' act, 1924, as amended, to any person who suffered the loss of the use of a creative organ or one foot or one hand or both feet or both hands, in the active service in line of duty between April 6, 1917, and November 11, 1918, except if the veteran served with the United States military forces in Russia, in which event the time is extended to April 1, 1920. This section also removes the necessity for showing the constant need of a nurse or attendant where claim for a nurse or attendant allowance is made. Your committee felt that these men who suffered a disability in line of duty during the period of actual warfare are entitled to this additional amount. The purpose of the amendment with reference to nurse or attendant allowance is to overcome the bureau interpretation as applied to the provision in existing law. Under the regulations it is necessary that the claimant be "continuously" as well as "constantly" in need of such service; whereas, as a matter of fact, there are many cases in which the ill claimant for all practical purposes needs the services of either a nurse or attendant to enable him to carry out the medical regimen prescribed for the malady from which he is

suffering, and yet it can not be legally held that he needs such assistance "constantly."

Section 14: Section 14 of the bill amends subdivision (7) of section 202 of the act to provide that in any case where the estate of an insane veteran who has no dependents equals or exceeds \$3,000, further payment of compensation shall be suspended until the estate is reduced below that amount, in which event payment will again be resumed up to \$3,000. The purpose of this amendment is to avoid the building up of large estates for these insane veterans who have no dependent relatives and whose estates will otherwise escheat. The interest of the veteran is fully protected for the reason that in the event he recovers his competency the amount suspended will be paid to him.

Section 14: Section 14 of the bill also amends subdivision (7) of section 202 of the act by providing that the director shall insert in the schedule of disability ratings a minimum rating of permanent partial 25 per cent for arrested or apparently cured tuberculosis. This provision will not be of particular effect where the only service connected disability is that of active tuberculosis and the veteran is entitled to the statutory award of \$50 per month, since that award is in excess of the 25 per cent rating established by this amendment. If, however, the veteran has in addition to a service-connected tubercular disability another disability of service origin, he will be enabled to obtain a combined rating, and in such rating the disability resulting from the service-connected tubercular condition will be evaluated in the degree specified. The combined total disability rating may thus entitle the veteran to an amount in excess of \$50 per month. It is further noted that the medical council of the bureau has advised the director that persons with arrested tuberculosis have a minimum industrial handicap of 25 per cent if such arrested tuberculosis follows a period of activity.

Section 15: Section 15 of the bill authorizes the hospitalization of contract surgeons who served overseas in the Spanish-American War under the provisions of subdivision (10), section 202, when facilities are available. Under the present law, these persons are not able to obtain such hospitalization as they are not veterans. It came to the attention of your committee that there are a small number of these contract surgeons who are in need of this hospitalization and who served with troops in Cuba, in the Philippines, or in foreign waters during the Spanish-American War, in similar capacities to that of the Regular Army commissioned medical personnel. Accordingly an amendment to the section as contained in H. R. 10381 has been inserted to enable these surgeons to obtain hospital treatment from the bureau if service was rendered overseas during the Spanish-American War and if facilities are available.

Section 15: Section 15 of the bill also amends section 202 of the act by defining the term "Spanish-American War" for the purposes of the section to mean the period between April 21, 1898, and July 4, 1902, and the term "veteran" is deemed to include those persons retired or not dishonorably separated from the active list of the Army or Navy. The purpose of defining the Spanish-American War is to fix the same period for the term Spanish-American War as used in connection with the hospital provisions as is accepted for pensions.

The defining of the term "veteran" is for the purpose of overcoming a decision of the Comptroller General to the effect that men on the retired list of the Army and Navy are not veterans of the World War, although they served in the World War, because they have not been separated from the military or naval service.

Section 16: Section 16 amends subdivision (15) of section 202, which provides that any person who is now receiving a gratuity or pension from the United States shall not receive compensation under this section unless he shall first surrender all claim to further payments of such gratuity or pension, by providing that where such surrender of pension is made, any disability incurred in the military service of the United States, by reason of which said pension would be payable, shall be evaluated in accordance with the provisions of subdivision (4), section 202, and shall be payable as compensation under this act. Provision is also made for the combining of such rate with other ratings. The purpose of this amendment is to permit a person to receive adequate compensation for all disabilities incurred in the service.

Section 17: Section 17 of the bill repeals section 206 of the act, which requires the filing of proof in certain cases prior to April 6, 1930.

Section 18: Section 18 of the bill repeals section 209 of the act, which requires the filing of claims prior to April 6, 1930, in certain cases.

Section 19: Section 19 amends section 210 of the World War veterans' act, as amended, by the addition of a proviso to the effect that nothing therein shall be construed to permit the payment of compensation under the World War veterans' act, as amended, for any period prior to June 7, 1924. This amendment is designed to place the stamp of approval on the interpretation of the World War veterans' act, 1924, by the bureau to the effect that in cases first brought within the purview of the statute by the act of June 7, 1924, no compensation could be paid for any period prior to that date.

Section 20 of the bill amends section 212 of the World War veterans' act, 1924, by adding a proviso indicating that an application for compensation under the war risk insurance act, as amended, shall be deemed to be a claim for compensation under this act, and an application for compensation under the provisions of this act shall be deemed to be a claim for compensation under all subsequent amendments to this act. The proviso is effective June 7, 1924, and is designed to overcome the ruling of the Comptroller General to the effect that a claim which has been disallowed under an earlier statute can not be reviewed and paid, under a subsequent amendment bringing the case within the purview of the law, without the filing of a new claim. The bureau has always followed the practice of reviewing these cases without requiring another application, on the theory that section 305 of the war risk insurance act, as amended, and section 205 of the World War veterans' act, 1924, as amended, which authorize the bureau at any time, upon its own motion or upon application, to review disallowed cases, permitted such action. The committee believes the practice of the bureau to be legally sound, administratively advisable, and reasonable from the point of view of both the veteran and the Government.

Section 21 adds a new section to the World War veterans' act, 1924, as amended, to be known as section 214 and to authorize the director, in his discretion, to pay to the dependents of a compensable incompetent veteran who disappears the same amount of compensation as is provided in section 201 of the World War veterans' act, 1924, as amended, for dependents of veterans. When a veteran disappears it is necessary for the bureau to suspend all payments of compensation pending his reappearance or proof of his death. This works great hardship upon the dependents and it is the opinion of the committee that there should be legal authority for paying an allowance to the dependents under such circumstances.

Section 22 proposes a slight amendment to paragraph 3 of section 301 of the statute. This section now provides that where an insured whose yearly renewable term insurance has matured by reason of permanent and total disability is found and declared to be no longer permanently and totally disabled and is required to renew payment of premiums on said term insurance, and this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given an additional period of two years in which to renew payment of premiums and to convert said term insurance. The amendment provides that during the same two years he shall also have the right to reinstate his term insurance should it lapse. There are a number of cases in which the insured has permitted his insurance to lapse either by failure to pay the first premium at the required time, or, having once renewed the payment of premiums and before conversion, has permitted the insurance to lapse. In such cases the insured, unless in a state of health which would meet the requirements for direct application for converted insurance under section 310 of the World War veterans' act, as amended, is precluded from carrying Government insurance. This amendment would, within the 2-year period prescribed, permit him to reinstate his old term insurance and convert it under less rigid requirements as to good health. The records of the bureau show that there are at present 100 cases in which insurance has been allowed to lapse after recovery from a disability rated permanent and total, 48 of which lapsed for the nonpayment of the first premium due after the rating and 52 for the nonpayment of premiums subsequent to the first. In a number of cases the remittance to cover the monthly premium was only a few days late. The fourth paragraph of this section is also amended, the purpose being merely to carry through the entire act the amendment included in section 3 of this bill, which, as explained heretofore, amends section 16 of the World War veterans' act, as amended, to authorize specifically refund of unearned premiums on yearly renewable term insurance.

Section 23 of the bill amends section 304 of the World War veterans' act, as amended, by changing the language of the last proviso thereof, which now states that no yearly renewable term insurance shall be reinstated after July 2, 1927, to provide an exception in favor of those who will reinstate term insurance during the 2-year period allowed in section 301 for those who have recovered from permanent and total disability.

Section 24 amends section 307, which relates to the incontestability of insurance contracts. The purpose is to make all contracts

or policies of insurance incontestable from date of issuance, reinstatement, or conversion, for all reasons except fraud, nonpayment of premiums, or that the applicant was not a member of the military or naval forces of the United States. This incontestability would protect contracts where they were not applied for within the time limit required, where the applicant was not in the required state of health, or was permanently and totally disabled prior to the date of application, or for any other reasons except those specifically mentioned in the statute. It is appreciated that this is a broad provision, but it was felt that it was necessary in order to do justice to the veterans, to place this insurance on a parity with commercial insurance companies from a stability standpoint, and to overcome decisions of the Comptroller General which practically nullify the section as it now exists. Further provision is made permitting the insured to elect after a reinstatement or conversion to go back to some prior contract and claim rights thereunder; and if he proves himself entitled to such rights, upon surrender of the latter contract or contracts, to be paid under the prior contract. The purpose is to prohibit the raising of estoppel against the claimant either in or out of the courts because of his reinstatement or conversion of his insurance. Provision is also contained whereby suit may be brought either in the original action, or by alternative plea in the same suit with a subsequent contract or policy. Recovery, however, can only be effected upon one of the contracts or policies. The effect of the present practice of the bureau in raising estoppel is to penalize the man who pays his premiums or tries to continue all or a part of his insurance in force. This amendment is specifically made retroactive in order that in any case where the claim has been heretofore disallowed on the ground of estoppel, or because of the policy not being incontestable, the insured, or the beneficiary under such contract or policy may, if he/she so elects, have the benefit thereof. It is contemplated that payments in cases of contracts or policies incontestable under this section will begin from date of maturity of such contracts or policies.

Section 25 proposes to amend section 311 of the statute, which was added to the law at the last Congress (Public, No. 585, 70th Cong.), and was designed to authorize the director to include in the present United States Government life (converted) insurance policy a clause providing a new maturing factor. This amendment provided that where an insured was totally disabled for a period of 12 consecutive months he should receive disability benefits as if he were permanently and totally disabled, thus authorizing the payment of disability benefits of \$5.75 for each \$1,000 of insurance, the face of the policy being depleted by such payments. Prior to this amendment the man must have been permanently and totally disabled before any disability benefit was payable under his policy. The amendment in the present bill, however, provides for a disability benefit of \$5.75 per \$1,000 upon application of the insured, which, upon the happening of the contingency on which it is based, i. e., total disability for a period of four months or more, shall be paid independent of the present permanent and total disability clause in the policy and shall not deplete the face value of the policy. Payments begin on the first day of the fifth consecutive month. In the event the insured becomes actually

permanently and totally disabled within the meaning of the present provision in the converted insurance policy, he is, under the amendment, to receive payments under the new total disability clause concurrently with the payments under the permanent and total disability clause now in the converted policy, payments under the latter only depleting the face value. This new disability feature is limited to a rate of \$5.75 on each \$1,000 of insurance carried and may be less than the total amount carried but not more. It is to be handled as a separate liability from the present provision for a permanent and total disability and will be so shown on the records, so that the present United States Government life insurance fund shall not be assessed for any losses to be paid under this provision. This insurance will be paid for by the insured and will not result in any increased cost to the Government except so far as the cost of administration is concerned.

