

## AMENDING DEFINITION OF THE TERM "CHILD" IN VETERANS LAWS

August 12, 1959.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted  
the following

### R E P O R T

[To accompany H.R. 2405]

The Committee on Finance, to whom was referred the bill (H.R. 2405) to amend section 101 of title 38, United States Code, to provide that a child shall be deemed to be the adopted child of a veteran where the child was a member of the veteran's household and is adopted by the spouse of the veteran within 2 years of the veteran's death, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

#### GENERAL STATEMENT

This bill amends section 101(4) of title 38, United States Code, to enlarge the definition of the term "child."

The bill proposes to include in this term, as an adopted child of a veteran, one who was a member of the household when the veteran died and who was adopted by the veteran's spouse within 2 years after the death, unless—at the time of the veteran's death—an individual other than the veteran or his spouse was regularly contributing to the child's support.

The present definition of the term "child" is as indicated below:

The term "child" means (except for purposes of chapter 19 of this title and section 5202(b) of this title) a person who is unmarried and—

- (A) who is under the age of eighteen years;
- (B) who, before attaining the age of eighteen years, became permanently incapable of self-support; or
- (C) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-one years), is pursuing a course of instruction at an approved educational institution;

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and who is a legitimate child, a legally adopted child, a step-child who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father of such child,

The proposed liberalization would extend such benefits programs as compensation and pension, dependency and indemnity compensation, and the War Orphans' Educational Assistance Act.

A similar liberalization of the definition of "child" for purposes of social security benefits was made by section 302, Public Law 85-840.

The bill was amended by the House Committee on Veterans' Affairs in the manner suggested by the Veterans' Administration, so as to provide that the new definition not only makes it inapplicable where the child was receiving regular contributions toward his support from some person other than the veteran or his spouse, but also where regular contributions were being received from any public or private welfare organization which furnishes services or assistance for children.

The following report was submitted by the Veterans' Administration:

VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,  
*Washington, D.C., June 3, 1959.*

HON. OLIN E. TEAGUE,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, D.C.*

DEAR MR. TEAGUE: The following comments on H.R. 2405, 86th Congress, are submitted in response to your request.

The bill would amend section 101(4) of title 38, United States Code, to enlarge the definition of the term "child." In its amended form the term would include, as an adopted child of a veteran, one who was a member of the household when the veteran died and who was adopted by the veteran's spouse within 2 years after the death, unless at the time of the veteran's death an individual other than the veteran or his spouse was regularly contributing to the child's support.

The term "child" is defined in section 101(4) for all purposes under title 38 except for insurance purposes under chapter 19, and for disposition of personal property of a decedent left upon the premises of a Veterans' Administration facility (sec. 5202(b)). Consequently, the proposed definition would extend to such benefit programs as death compensation and pension, dependency and indemnity compensation, and war orphans' educational assistance.

A similar liberalization of the definition of "child" for purposes of social security benefits was made by section 302, Public Law 85-840. That section of the law, however, contains an additional provision which is considered desirable. The definition is not only made inapplicable where the child was receiving regular contributions toward his support from some persons other than the insured individual and his spouse (as in H.R. 2405), but also where regular contributions were being received from any public or private welfare organization which furnishes services or assistance for children.

If a veteran and spouse had assumed the duties and obligations of parents and were supporting a child at the time of the veteran's death it would be reasonable for the Government to assume a part of the obligation. However, the same obligations do not attach if the family were being paid by a public or private welfare organization to board and care for the child.

In the case first mentioned it is reasonable to assume that had the veteran lived he would have continued to support and care for the child. No such assumption attaches where the welfare organization continues to have control over and supports the child. In such cases the welfare organization usually reserves the right to remove the child from its foster home whenever it pleases. This child should not be placed in a better position than other unfortunate children in the same group merely by reason of the fact that it happened to be in a veteran's home at the time of the veteran's death.

It is noted that the social security amendment provides that the adoption must have taken place before the end of 2 years after the individual's death or the date of enactment of the amendment. It is believed that the alternate period of time is desirable and equitable with respect to situations arising prior to enactment of the liberalizing legislation. It is therefore suggested that similar language be added to H.R. 2405.

There are no data available to indicate the number of children who would become eligible for benefits under this bill. However, it is apparent that it would be relatively small.

From an equitable standpoint and for the reasons stated, the Veterans' Administration favors enactment of the bill if it is amended as suggested in this report.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to the committee.

Sincerely yours,

SUMNER G. WHITTIER,  
*Administrator.*

#### CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

#### SECTION 101, TITLE 38, UNITED STATES CODE

##### § 101. Definitions

For the purposes of this title—

(1) The term "Administrator" means the Administrator of Veterans' Affairs.

(2) The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term "widow" means (except for the purposes of chapter 19 of this title) a woman who was the wife of a veteran at the time of his death, and who lived with him continuously from the date of marriage to the date of his death (except where there was a separation which was due to the misconduct of, or procured by, the veteran

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without the fault of the wife) and who has not remarried (unless the purported remarriage is void).

(4) The term "child" means (except for purposes of chapter 19 of this title and section 5202(b) of this title) a person who is unmarried and—

(A) who is under the age of eighteen years;

(B) who, before attaining the age of eighteen years, became permanently incapable of self-support; or

(C) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-one years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father of such child. *A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse within two years after the veteran's death or the date of enactment of this sentence; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward his support from some individual other than the veteran or his spouse, or from any public or private welfare organization which furnishes services or assistance for children.*

(5) The term "parent" means (except for purposes of chapter 19 of this title) a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at any time before his entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service.

(6) The term "Spanish-American War" (A) means the period beginning on April 21, 1898, and ending on July 4, 1902, (B) includes the Philippine Insurrection and the Boxer Rebellion, and (C) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

(7) The term "World War I" (A) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (B) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917 and ending on April 1, 1920.

(8) The term "World War II" means (except for purposes of chapters 31 and 37 of this title) the period beginning on December 7, 1941, and ending on December 31, 1946.

(9) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(10) The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(11) The term "period of war" means the Spanish-American War, World War I, World War II, the Korean conflict, and the period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(12) The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.

(13) The term "compensation" means a monthly payment made by the Administrator to a veteran because of service-connected disability, or to a widow, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

(14) The term "dependency and indemnity compensation" means a monthly payment made by the Administrator to a widow, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a widow, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly payment made by the Administrator to a veteran because of service, age, or non-service-connected disability, or to a widow or child of a veteran because of the non-service-connected death of the veteran.

(16) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(17) The term "non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(18) The term "discharge or release" includes retirement from the active military, naval, or air service.

(19) The term "State home" means a home established by a State (other than a possession) for veterans of any war (including the Indian Wars) disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living.

(20) The term "State" means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(21) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (a) while on transfer to one of the Armed Forces, or (b) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed

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Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (c) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law; and

(D) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 301 of title 37 or any other provision of law; and

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

In the case of a member of the National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

(24) The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

(25) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of the Treasury, with respect to matters concerning the Coast Guard;

(E) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(F) the Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey.

(26) The term "Reserves" means members of a reserve component of one of the Armed Forces.

(27) The term "reserve component" means, with respect to the Armed Forces—

(A) the Army Reserve;

(B) the Naval Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

(E) the Coast Guard Reserve;

(F) the National Guard of the United States; and

(G) the Air National Guard of the United States.

