

RESTORATION OF WIDOW'S BENEFITS

August 6, 1962.—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. 5234]

The Committee on Finance, to whom was referred the bill (H.R. 5234) to amend title 38, United States Code, to provide for the restoration of certain widows and children to the rolls upon annulment of their marriages or remarriages, and for other purposes, having considered the same, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

COMMITTEE AMENDMENT

The committee's amendment relates to the effective date of one of the two major provisions of the bill, and is described in the following explanation.

EXPLANATION OF THE BILL

Under existing law, payments of benefits to the widow of a veteran are terminated upon her remarriage unless the remarriage is "void."

In some States, annulment of some marriages are considered to relate back to the date the relationship was entered into; however, in such cases no benefits become payable under Veterans' Administration laws unless the marriage was void. Because of the diversity of State laws on the question of which marriages are "void" and which marriages are "voidable" (i.e., require judicial action to declare their non-existence), identical factual situations can lead in some cases to restoration of widow's benefits and in other cases to continued denial thereof.

The bill provides a uniform rule, under which widow's benefits may be restored in such cases if (1) the remarriage is "void," or (2) the remarriage is annulled, unless the annulment is procured by fraud or collusion.

Additionally, the bill provides an identical rule for recognition of a veteran's child as "unmarried" for Veterans' Administration benefit purposes (pursuant to definition in existing 38 U.S.C. 101(4)) as are specified for widows. The desirability of uniformity respecting the two classes of beneficiaries is obvious.

Aside from resolution of the problem respecting treatment of cases involving causes for annulment which are generally recognized as void, the bill permits restoration of benefits following annulment of a merely voidable remarriage or marriage.

Recognition of annulment decrees in the manner proposed would be consistent with the maintenance and promotion of good Federal-State relationships. It would also remove the possible occasion for doubt in the minds of the parties regarding their marital status which might result from a denial of benefits by the Veterans' Administration under the present law. Incidentally, it has been reported to the committee that the restoration provision would permit more simplified administrative procedures, and would accordingly involve less administrative expense than current practices.

The bill also deals with an area in which there have been some abuses. In some cases, in order to avoid the "remarriage" bar to payment of widow's benefits, women have entered into illicit relationships with men, holding themselves out to the public to be their wives, while drawing benefits as the widow of a veteran. The Veterans' Administration has adopted a rule under which it is presumed where certain facts exist that a remarriage has occurred; however, the validity of this practice has been questioned recently in the case *Sinlao v. United States* (271 F. 2d 846). The bill establishes a statutory test to be applied by the Administrator in such cases, providing for the termination of benefits where the widow of a veteran lives with another man and holds herself out to the public to be the wife of the other man. Enactment of this provision would amount to statutory confirmation of the Veterans' Administration rule, with the addition of two more restrictive factors. Under the administrative standard, a reputation of marriage is necessary to warrant termination of benefits; and the standard does not apply where it is established that there is a legal impediment to a valid marriage between the widow and her male cohabitant. The matters of reputation and impediment are not material under the bill's provision.

The committee does not believe that the U.S. Government should continue payment of gratuities to a claimant who after her veteran husband's death lives with a man and hold herself out openly to the public as the wife of such man. Accordingly, the more restrictive statutory provision appears proper. The Veterans' Administration has reported that this provision would also permit more simplified administrative procedures, with a consequent lessening of administrative expense.

In order to avoid harsh results which might result from application of the new standard to relationships terminated prior to enactment, the committee has adopted the recommendation of the Veterans' Administration that the bill be amended so that the statutory provision will apply only to the actions of a veteran's widow after enactment. It is understood that the Veterans' Administration will continue to apply the present administrative rule to prior relationships.

The Veterans' Administration has advised that the annulment feature of the bill would increase benefit costs, whereas the "lived with

another man" provision would result in savings. It is also stated that there are no adequate data available upon which to base an estimate of the fiscal effect of the bill, but that it is believed that the number of cases affected and the resulting net additional benefit cost would be relatively small.

The report of the Veterans' Administration, which recommends favorable consideration of both features of the bill, follows:

JULY 30, 1962.

HON. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is responsive to your request for a report regarding H.R. 5234, 87th Congress, as passed by the House of Representatives on April 2, 1962.

The first section of the bill would repeal the present "void" standard of section 101(3), title 38, United States Code, respecting restoration of a widow to the benefit rolls following a remarriage. In lieu thereof, section 2 would enact a new subsection (d) to section 103 of title 38, specifying certain conditions under which a widow who has remarried could be restored to the status of unremarried for Veterans' Administration benefit purposes. Said proposed conditions are:

(a) That the remarriage was void; or

(b) That the remarriage "has been annulled by a court with basic authority to render annulment decrees unless the Veterans' Administration determines that the annulment was secured through fraud by either party or collusion."

The foregoing proposed standards would allow resumption of benefits where the remarriage was void, as is presently the case, as well as where a voidable remarriage is annulled in the above-stated manner.

We favor the proposed liberalized standards for resumption of benefits to a veteran's widow. One effect of such action would be that certain annulment grounds, such as bigamy and insanity, which are not "void" causes in all States, would uniformly be a basis for restoration, after annulment. Furthermore, the provisions of H.R. 5234 would permit more simplified administrative procedures, and would accordingly involve less administrative expense than current practices. Investigations in annulment cases would generally be limited to instances of receipt of evidence indicating possible fraud or collusion.

Another point in support of the proposed standards for recognition of annulments relates to the doubt regarding marital status which can logically result from a refusal of the Veterans' Administration to recognize a widow as unremarried following an annulment. Although such a denial relates only to the specific question as to entitlement to gratuitous benefits—and is not intended to raise any question regarding the legal effect of an annulment as to termination of the subject marriage—we can see that such a denial could raise doubt in the minds of the parties as to whether their marriage had legally been dissolved. Moreover, we feel that the recognition of annulment decrees in the manner proposed would be consistent with the maintenance and promotion of good Federal-State relationships.

Section 2 would also add to 38 U.S.C. 103 a subsection (e) relating to children. The subsection would provide identical standards for

recognition of a veteran's child as "unmarried" for Veterans' Administration benefit purposes (pursuant to definition in existing 38 U.S.C. 101(4)) as are specified for widows. We believe that this uniform approach to the two types of cases is desirable.

Section 3 of H.R. 5234 provides that an award upon annulment of a marriage shall be effective the date the judicial decree of annulment becomes final if a claim is filed within 1 year from said date, and in all other cases, the date of claim. This section, of course, would have only prospective application and would not permit any award or increase to be made thereunder for any period prior to the date of enactment.

Currently the Veterans' Administration will recognize the invalidity of a clearly void marriage in a case in which no annulment decree has been obtained and will make an award in such case effective as of the date of receipt of evidence establishing the void nature of the marriage, but not earlier than the date the parties ceased to cohabit. Section 3 does not appear to apply to this type of case and accordingly would not affect the described present practice.

The first section of H.R. 5234 would also resolve another matter relating to marital status, by amendment of section 101(3) of title 38. The provision of law requiring discontinuance of payment of gratuitous benefits to a veteran's widow upon her remarriage (presently in section 101(3)) has been in effect for many years and has presented various problems of administration. The most troublesome area is that of cases in which we do not know whether there has been a remarriage, since the woman denies that she has remarried but lives, or has lived, with a man in a relationship that gives rise to an inference of remarriage. In such circumstances, she seeks gratuitous benefits while maintaining a status rendering her eligibility at least seriously questionable.

Recognition of this situation led the Veterans' Administration to adopt the rule that if there is evidence indicative of remarriage, the claimant is immediately placed under the burden of establishing by clear and convincing evidence that she has not remarried, as a condition to the continuing receipt of gratuitous death benefits. Currently a presumption of remarriage is held to exist when there is proof of each of the following:

- (1) A cohabitation by the widow with a man as man and wife; and
- (2) A "holding out" by the two persons to the general community in which they reside that they are husband and wife (which generally is embraced in the requisite cohabitation); and
- (3) A general reputation in such community that they are married to each other.

The presumption is not applied where there is evidence that there could not be a legal marriage between the claimant widow and her cohabitant because of an impediment, such as a prior subsisting marriage of the cohabitant or consanguinity.

We feel that there is justification for the described rule. Information that will lead to evidence to prove a marital status, or to disprove an allegation of marital status, is peculiarly within the possession of the parties involved. It is, as a practical matter, frequently difficult and sometimes impossible for others, such as the Veterans' Administration, to obtain such information. The problem is made more

difficult by virtue of the fact that our beneficiaries reside throughout the world.

The Veterans' Administration has followed an "inference of remarriage" (or "presumption of remarriage") rule for many years. We believe that our practice is fair and sound, and in conformity with legislative intention. We do not believe that Congress has intended or desires that the Government assume any obligation to continue payment of gratuities to a claimant who after her veteran husband's death enters into a relationship giving rise to an inference of remarriage. From time to time this situation has raised questions. One of our appellate courts (*Sinlao v. United States*, 271 F. 2d 846) by way of dictum, has questioned our interpretation of the law, stating that it could not be reconciled with "the intention Congress has expressed." Under these circumstances, we favor confirmation of our practice by statutory enactment.

The pertinent provision of H.R. 5234 on this point would add after the phrase "and who has not remarried" in the definition of "widow" (38 U.S.C. 101(3)) a new statutory bar to benefits as follows: "or (in cases not involving remarriage) has not since the death of the veteran, lived with another man and held herself out openly to the public to be the wife of such other man". A relationship which is secretive, or which consists of occasional short interludes (such as overnight or over a weekend), or which is otherwise ostensibly illicit in nature is not considered within the scope of the proposed statutory restriction. However, in any case in which the restriction is properly found to require denial or discontinuance of benefits to a widow, such determination would constitute a permanent bar to benefits; and termination of the proscribed relationship, either before or after the determination, would be immaterial.

This proposal is in substantial conformance with other presumption of remarriage test and we favor its enactment. Two variations are noted. Under the bill, reputation is not a requirement for application of the bar to benefits and the existence of an impediment to marriage is likewise immaterial.

In the interest of complete understanding, comment is indicated on the phrase "(in cases not involving remarriage)" appearing in line 7, page 1, of the bill. We do not consider that language as requiring a definite determination of lack of marriage as a predicate for applying the proposed bar.

Currently, there are widows on the Veterans' Administration benefit rolls who have lived in a husband-and-wife relationship with a man since the death of a veteran, but who have continued to receive benefits because of a Veterans' Administration determination, under the presumption of remarriage rule, of lack of a reputation of marriage, or existence of a legal impediment to a valid marriage. Possibly the relationship has been terminated in some such cases. In view of the phrase "since the death of the veteran," in lines 7 and 8, page 1, of the bill, and owing to the two restrictive variations mentioned above, enactment of H.R. 5234 in its present form could result in discontinuance of benefits in some terminated relationship cases of the described sort.

Upon reconsideration of this aspect of the proposed legislation, we have concluded that it would be inequitable to apply the new, more restrictive, test to relationships terminated prior to approval of H.R. 5234. Accordingly, we recommend that the bill be amended

to apply the proposed statutory limitation only to actions of a widow after enactment. It is suggested that this could be accomplished by inserting immediately before "lived" in line 8, page 1, the phrase, "and after enactment of the 1962 amendment to this paragraph,".

If the suggested amendment is adopted, the Veterans' Administration will continue to apply the presumption of remarriage rule to cases of husband and wife relationships which existed before enactment of the bill, notwithstanding any termination thereof before enactment. In the event a presumption of remarriage is not warranted in any such case, the widow of course, would be subject to the proposed statutory bar if the relationship continues after enactment.

The annulment feature of H.R. 5234 would increase benefit costs, whereas the "lived with another man" provision would result in savings. Our suggested amendment would limit, to some degree, the amount of such savings. There are no adequate data available upon which to base an estimate of the fiscal effect of the bill in its present, or suggested amended, form. It is believed, however, that the number of cases affected and the resulting net additional benefit cost would be relatively small in either event.

In summary we recommend favorable consideration of H.R. 5234 by your committee, with our suggested amendment.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

J. S. GLEASON, Jr., *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, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

CHAPTER I—GENERAL

§ 101. Definitions

For purposes of this title—

* * * * *

(3) The term "widow" means (except for 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 without the fault of the wife) and who has not remarried [(unless the purported remarriage is void)] or *(in cases not involving remarriage) has not since the death of the veteran, and after enactment of the 1962 amendment to this paragraph, lived with another man and held herself out openly to the public to be the wife of such other man.*

§ 103. Special provisions relating to marriages

* * * * *

(d) The remarriage of the widow of a veteran shall not bar the furnishing of benefits to her as the widow of the veteran if the remarriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Veterans' Administration determines that the annulment was secured through fraud by either party or collusion.

(e) The marriage of a child of a veteran shall not bar recognition of such child as the child of the veteran for benefit purposes if the marriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Veterans' Administration determines that the annulment was secured through fraud by either part or collusion.

CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

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§ 3010. Effective dates of awards

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(f) The effective date of the award of benefits to a widow or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.