

TO SAFEGUARD THE ESTATES OF VETERANS

MAY 13 (calendar day, JULY 11), 1935.—Ordered to be printed

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

REPORT

[To accompany H. R. 3979]

The Committee on Finance, to whom was referred the bill (H. R. 3979) to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes, having considered the same, report it to the Senate with amendments and recommend that the bill, as amended, do pass.

The committee amendments are as follows:

On page 1, line 6, insert after "compensation", the following: "adjusted compensation,".

On page 4, line 21, following the word "beneficiary", strike out the comma and insert in lieu thereof a period, and strike out the following language appearing in lines 21, 22, 23, 24, and 25, page 4, and lines 1 and 2, page 5: "to accumulate at such rate of interest as the Secretary of the Treasury may determine but at a rate never less than 2 per centum per annum, except that in those cases where a veteran with no dependent has been found insane by the Administrator and is being maintained by the United States or any political subdivision thereof, in an institution, no interest will be paid."

The Acting Director, Bureau of the Budget has advised that the proposed legislation would not be in conflict with the financial program of the President if amended so as to exclude the new provision for payment of not less than 2 percent interest on the trust fund known as the "fund due incompetent beneficiaries", which fund was authorized by the act of July 3, 1930. At the present time there is more than \$1,000,000 held in the trust fund. The amount of the fund to the credit of any individual beneficiary fluctuates materially from time to time due to accretions thereto and disbursements therefrom. This provision will, therefore, cause considerable administrative complication and involves practical difficulties. The position of the Bureau of the Budget is due also to the fact that it would be a departure from long established governmental procedure. On the other hand,

funds so held are not subject to the ordinary fees and expenses allowable to a fiduciary administering the estate of an incompetent or minor beneficiary and while on deposit in the "Fund" there is no hazard of investment.

On page 6, line 13, insert after "amended," the following: "Public Law Numbered 484, Seventy-third Congress,".

On page 6, line 14, strike out "thereto" and insert in lieu thereof "to such Acts".

On page 7, beginning after the word "committed", strike out the comma and the following language in lines 6 and 7: "or any action begun thereunder," and substitute in lieu thereof "before the enactment of this act".

On page 7, line 8, after "terms" strike out "thereof" and insert in lieu thereof "of said sections".

On page 8, line 11, after "passage", strike out the period and insert in lieu thereof a comma and the following language: "but the provisions hereof shall apply to payments made heretofore under any of the acts mentioned herein.".

In order to be entirely effective, the provisions of the new act should apply prospectively to the payments made heretofore under the various acts named in the bill.

With reference to this proposed legislation and in further explanation of the committee amendments, the following letter from the Administrator of Veterans' Affairs is attached:

VETERANS' ADMINISTRATION,
Washington, June 5, 1935.

HON. PAT HARRISON.

*Chairman Committee on Finance,
United States Senate, Washington, D. C.*

MY DEAR SENATOR HARRISON: This letter has reference to H. R. 3979, "A bill to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes", which passed the House of Representatives June 3, 1935, and which has been referred to the Committee on Finance, United States Senate.

This bill was prepared as a result of investigation and study of guardianship matters by the Committee on World War Veterans' Legislation in connection with House Resolution No. 409, Seventy-third Congress, adopted June 4, 1934. The Veterans' Administration, under date of May 2, 1935, informed Hon. John E. Rankin, Chairman Committee on World War Veterans' Legislation, House of Representatives, that the Acting Director Bureau of the Budget had advised that the expenditures contemplated by the proposed legislation would not be in conflict with the financial program of the President, if amended so as to exclude the new provision for payment of not less than 2 percent interest on the trust fund known as the "fund due incompetent beneficiaries" which fund was authorized by the act of July 3, 1930. As the bill passed the House, no change was made in this particular provision to meet the suggestion of the Bureau of the Budget.

In the letter of May 2, 1935, the Veterans' Administration proposed the following changes in the bill which were not adopted prior to its passage by the House of Representatives. Those proposed amendments are given as follows with the reasons supporting the suggested changes:

Section 1 of the bill as drafted does not cover adjusted compensation, and the insertion of "adjusted compensation", in line 6, page 1, after "compensation", is recommended. The reason for this proposed amendment is that the Veterans' Administration has the right insofar as State law is concerned to appear in the courts for the purpose of supervising the administration of beneficiaries' estates derived from adjusted compensation, but it does not have any authority under the acts of Congress to expend any Federal funds for that purpose. Such authority would be granted by the amendment.

It is recommended that section 2 of the bill be amended so as to include Public, No. 484, Seventy-third Congress, and any amendment which may be enacted thereto. This can be accomplished by adding the words "or Public, No. 484,

Seventy-third Congress", in line 14, page 6, after the comma following the word "amended" and by striking out the word "thereto" in line 15 and substituting the words "to such acts."

The Veterans' Administration desires to urge and impress the committee to the fullest extent with the importance of amending section 5 of the bill because of a question raised concerning its application to payments made prior to the approval of the act. It would seem that in order to be entirely effective the provisions of the new act should apply prospectively to payments made heretofore under the various acts named in the bill. For example, the provisions with respect to supervision of guardians, to escheat, and to embezzlement, should apply to payments made in the past, whereas the provisions of the bill as now drafted appear to apply only to payments made after the passage of the bill. The suggested change is that in line 10, page 8, of the bill after the word "passage", the period be eliminated and that the following words be added: "but the provisions hereof shall apply to payments made heretofore under any of the acts mentioned herein.

For your information, there is enclosed herewith a copy of an analysis of the bill as it passed the House of Representatives showing the changes in existing law which would result from enactment of the proposed measure.

This letter is dispatched for the purpose of furnishing full information concerning this proposed legislation which is of vital importance to the Veterans' Administration and in the spirit of helpful cooperation to assist as far as practicable in the considerations which your committee will give to this proposed legislation.

Very truly yours,

FRANK T. HINES, *Administrator.*

STATEMENT OF CHANGES CONTEMPLATED BY H. R. 3979

While the amendments proposed by the committee in the bill seem clear, it may be desirable for them to be set out somewhat in detail in order that there may be no misunderstanding as to the exact effect of the changes proposed to be made. Said changes in their order of appearance in the bill are as follows:

(1) Section 21 of the World War Veterans' Act at the present time applies only to payments made under said act, that is, to payments of compensation and insurance. It does not cover pension, adjusted compensation, or emergency officers' retirement pay. The bill as drafted specifically mentions all of these benefits except adjusted compensation, and as drafted will apply to such payments made on behalf of veterans or their dependents of any war, as well as those of peacetime enlistments. While the Administrator now has authority under the State law to appear in the courts in connection with all these various benefits paid to a guardian, their inclusion in section 21 would give congressional authority for the Administrator to expend appropriated funds for the purpose of supervising all of these benefits in the hands of fiduciaries. It will also permit payments to legal custodians—and, under certain circumstances, to custodians-in-fact—where such payments under the present law are not possible. This is accomplished by the omission in line 16, page 2, of the words, "for the purpose of payments of benefits under title II hereof", which in the present law confines such payments to compensation or pension paid under Public, No. 2, Seventy-third Congress, and amendments thereto. (See sec. 7 of said act, continuing sec. 21 in effect.) This change would modify section 313, World War Adjusted Compensation Act.

(2) Throughout the bill the words "Director" and "Veterans' Bureau" are changed respectively to the words "Administrator" and "Veterans' Administration."

(3) In line 6, page 2, the words "as to cases arising in the District of Columbia" of the present law are omitted. The effect of this

would be to give the Administrator authority to discontinue payments to any guardian if, in the opinion of the Administrator, such guardian was acting as fiduciary in so many cases as to make it impossible to conserve properly the estates or supervise the persons of the wards. Heretofore this authority was limited to appointments made in the District of Columbia. It will be realized that this places a responsibility upon the Administrator of Veterans' Affairs which must be exercised with the greatest discretion.

(4) The first change made in paragraph 2 of section 21 occurs in lines 24 and 25, page 2, and line 1, page 3, and is a clarification of the present language and adds no material duty or responsibility. The second change in said paragraph, lines 8 and 9, page 3, gives the Administrator specific authority to appear in courts having concurrent or appellate jurisdiction, in addition to those having original jurisdiction of guardianship matters. This is merely confirmatory of the Administration's policy to appeal any case which, in the opinion of the Administration, is not decided in accordance with the facts or the law by the court having original jurisdiction of the cause. Specifically, it authorizes the expenditure of Federal funds for such purpose, where heretofore such authority existed only by construction.

At the end of paragraph 2, lines 16 to 22, page 3, there is added the following, "or who shall neglect or refuse to administer the estate according to law: *Provided further*, That the Administrator is hereby authorized and empowered to appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary under this section." The first clause of the quoted language adds no additional duty and gives no additional authority inasmuch as this is contained by implication in the present law, but it does recognize the policy of the Veterans' Administration in this respect and specifically incorporates the same in the act itself. The proviso adds a new responsibility, namely, that of supervising investments made by guardians of administration beneficiaries and the duty of appearing or intervening in courts in connection therewith. A certain amount of such supervision may be implied in the present law, but no specific responsibility therefor is placed upon the Administrator. The amendatory act, however, will place this responsibility directly upon the Administrator. This will entail the expenditure of additional appropriations, the exact amount of which is not determinable at the present time. Under the guardianship program in effect up to the present time the cost of the guardianship supervision maintained by the Veterans' Administration has averaged \$17 per case per year. The additional duties imposed by the pending bill will probably increase this average annual expense to something over \$20 per case per year. It will be recalled that there are approximately 82,000 cases at the present time.

(5) In lines 5 and 6, page 4, of the same paragraph 2, authority is granted for the expenditure of appropriated funds in connection with the court appearances, above mentioned, when such expenditures are authorized by the Administrator.

(6) Paragraph 3 of section 21 is amended in several respects. The first consists in naming the various benefits comprised by the section. They are the same as mentioned in the first paragraph of section 21. However, the recommendation made as to including adjusted com-

pensation in the first paragraph of section 21, does not apply to this paragraph since adjusted compensation payments are made in such manner that they should not be affected by the provisions of said paragraph 3. Due to the nature of such payments too, it is thought that they should not be subject to the escheat provisions of said paragraph.

(7) The next change made in the said paragraph 3 makes the provisions thereof applicable to payments made to any beneficiary; whereas under the present law only payments to veterans are included.

(8) In lines 21 to 25, page 4, and lines 1 and 2, page 5, there occurs an amendment which is of considerable importance particularly when it is considered that the bill itself gives the Administrator greater authority with respect to the suspension of payments and further, that such authority is made to extend to benefits and beneficiaries of acts other than the World War Veterans' Act. The bill authorizes the Administrator, under the circumstances stated therein, to deposit payments due beneficiaries in the Treasury of the United States to the credit of such beneficiaries and with respect thereto the following is added: "To accumulate at such rate of interest as the Secretary of the Treasury may determine but at a rate, never less than 2 per centum per annum, except that in those cases where a veteran with no dependents has been found insane by the Administrator and is being maintained by the United States or any political subdivision thereof, in an institution, no interest will be paid". At the present time there is more than \$1,000,000 held in the trust fund known as the "fund due incompetent beneficiaries", which fund was authorized by the act of July 3, 1930. However, this fund at present consists largely of compensation payments deposited therein, as no authority exists under the present law for depositing in such manner payments of insurance or of pensions under acts prior to Public, No. 2, supra. Doubtless, therefore, the trust fund will be larger in the future and it would seem that, except in the cases of those veterans determined permanently insane, as provided in the bill, the beneficiaries should be allowed a reasonable rate of interest on their moneys so held in the Treasury. However, it may be worthy of consideration that the amount of the fund to the credit of any individual beneficiary fluctuates materially from time to time due to accretions thereto and disbursements made therefrom. In an active case this will involve considerable additional work on the part of the Treasury in calculating the amount of interest payable, and involves practical difficulties of some moment.

(9) The remaining changes in said paragraph 3 are merely the clarification of the provisions with respect to escheat. It will be noted that these provisions refer to the benefits which are either entirely gratuitous or partake largely of the character of a gratuity, and do not refer to benefits which are based solely upon contract.

(10) Section 2 of the bill is a penal statute to replace the penal provisions of the World War Veterans' Act and amendments thereto and those of the pension acts with respect to embezzlement and misappropriation of funds by fiduciaries. The section as drafted covers not only benefits payable under such laws but in addition, adjusted compensation. In the present law there is no penal provision with respect to embezzlement by guardians of adjusted compensation paid them on behalf of administration beneficiaries; while

the penal provisions concerning embezzlement with respect to other benefits have been construed by certain Federal courts in such manner as to render them practically ineffective. There is a further difficulty in the present laws which arise because of the many amendments enacted recently affecting the payment of various benefits such as compensation, insurance, pension, emergency officers' retirement pay, etc. There are several acts covering different periods of time referring to each of these various benefits; and since payments of one or more may be paid to the same fiduciary over different periods of time it is almost impossible to draft an indictment which would not be subject to successful attack. By placing all of these benefits in one section, and making the provisions thereof apply to actions of fiduciaries in the future concerning any and all of such payments regardless of when such payments may have been made, will result in a very desirable uniformity with respect to the application of the law. It is believed that the stricter provisions of the proposed bill will be very beneficial in restraining acts of embezzlement or misappropriation which might otherwise be committed. No comment is thought necessary on any particular language of the section other than to point out that it is entirely new and replaces in toto the respective penal sections mentioned therein.

(11) The next change is section 3 of the bill which proposes a new section to replace section 22 of the World War Veterans' Act, 1924, and section 4747 of the Revised Statutes. The purpose of this new section is twofold; first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. Under the present laws, as interpreted by the Secretary of the Treasury, beneficiaries receiving payments under the World War Veterans' Act and amendments thereto do not have to include such payments in their Federal income-tax returns because of the exemption contained in section 22; whereas those receiving pensions have to include such pensions in their income-tax returns; and, unless otherwise exempt, must pay a tax thereon. By virtue of the provisions of Public, No. 141, Seventy-third Congress this leads to rather unexpected results in that some pensioners can draw a pension only every other year under the interpretation of the law made by the Secretary of the Treasury.

The two sections have also been construed differently not only by the highest appellate courts of the States, but also by the Supreme Court of the United States. For example, it has been held that "payments due or to become due" of section 4747 Revised Statutes refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See *McIntosh v. Aubrey* (185 U. S. 122, 46 L. Ed. 834).) Some State supreme courts have held that the language of section 22 should be construed similarly. (See *State ex rel. Smith v. Bd. of Com. of Shawnee Co.* (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation. (See *Trotter v. Tenn.* (78 L. Ed. 128) and *Pagel v. Pagel* (78 L. Ed. 627).) The language of the proposed amendatory section will, it is believed, clarify these disputed points and will place the

law in conformity with the decisions of the Supreme Court on the subject. It will make the law uniform as to all beneficiaries.

(12) Section 4 of the bill is an entirely new section and being self-explanatory no comment would seem to be in order.

(13) Section 5 of the act is new and to be entirely clear should be amended by adding, "but the provisions hereof shall apply to payments made heretofore under any of the acts mentioned herein." Such amendment would show clearly the intent that as to embezzement, escheats, or supervision subsequent to the effective date of the act, its provisions would apply to payments made prior thereto as well as those made subsequently. Without such clarifying clause, the section would be subject to construction, and its application might be in doubt.

