

FEES FOR ATTORNEYS IN SUITS INVOLVING WAIVERS OF PREMIUMS

JULY 12 (legislative day, JULY 11), 1955.—Ordered to be printed

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

R E P O R T

[To accompany H. R. 6832]

The Committee on Finance, to whom was referred the bill (H. R. 6832) to provide for payment of a reasonable attorney's fee by the insured in a suit brought by him or on his behalf during his lifetime for waiver of premiums on account of total disability, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the House Committee on Veterans' Affairs, which is as follows:

This bill amends section 500 of the World War Veterans' Act of 1924, as amended, to provide that in any suit brought by an insured during his lifetime for waiver of premiums on account of total disability, the court as a part of its judgment or decree shall determine and allow a reasonable fee to be paid by the insured to his attorney.

The present law bars the payment of any fee in excess of 10 percent of the amount recovered and provides that this amount shall be paid by the Veterans' Administration out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each such payment until paid. For example, an insured bringing a successful suit and receiving benefits at the rate of \$50 a month would have \$5 deducted from such payments each month that the payments continued.

Legislation to provide for a lump-sum payment of attorney fees in this type of suit was introduced in this Congress as H. R. 1622, and considered by the Subcommittee on Insurance. The subcommittee, after considering the matter, rejected that bill with the recommendation that the present bill, H. R. 6832, be approved. The former bill would have provided for the payment by the Government of a lump sum direct to counsel, where the plaintiff was successful but did not specify whether such payment should be made from appropriations of

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the Department of Justice, or national service life insurance appropriation or the national service life insurance fund. Payment from any of such sources would be objectionable.

The Veterans' Administration representative, in testifying on this measure before the subcommittee, conceded "the difficulty in securing the services of an attorney to bring suit in this type of case." The representative also indicated that the Veterans' Administration "would not object to the enactment of legislation to authorize the court to allow a reasonable attorney's fee to be paid by the plaintiff, whether successful or not, if suit is brought during his lifetime."

There would be no additional cost for attorneys' fees to the Government by the enactment of this legislation and the report of the Veterans' Administration on the predecessor bill, H. R. 1622, follows:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., February 8, 1955.

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

DEAR MR. TEAGUE: Reference is made to your letter of January 14, 1955, requesting a report by the Veterans' Administration on H. R. 1622, 84th Congress, a bill to provide for the payment in a lump sum direct to counsel of a reasonable attorney's fee in a suit brought by or on behalf of an insured during his lifetime for waiver of premiums on account of total disability.

The purpose of the bill is to amend section 617 of the National Service Life Insurance Act of 1940, as amended, to provide for the payment in a lump sum direct to counsel of a reasonable attorney's fee in a suit brought by or in behalf of an insured during his lifetime for waiver of premiums on account of total disability, such fee to be determined by the court and to be paid by the insured in an unsuccessful action and paid by the Government where the judgment is entered in the insured's behalf.

H. R. 1622 is identical with H. R. 6929, 83d Congress, on which a report was furnished to your committee by the Veterans' Administration on June 4, 1954 (Committee Print No. 264), a copy of which is enclosed. The report on H. R. 6929 is equally applicable to the present bill.

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

Sincerely yours,

JOHN S. PATTERSON,
For H. V. HIGLEY,
Administrator.

[No. 264]

COMMITTEE ON VETERANS' AFFAIRS, HOUSE OF REPRESENTATIVES

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D. C., June 4, 1954.

HON. EDITH NOURSE ROGERS,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, D. C.*

DEAR MRS. ROGERS: This is in reply to your request for a report on H. R. 6929, 83d Congress, a bill to provide for the payment in a lump sum direct to counsel of a reasonable attorney's fee in a suit brought by or on behalf of an insured during his lifetime for waiver of premiums on account of total disability.

The purpose of the bill is to amend section 617 of the National Service Life Insurance Act of 1940, as amended, to provide for the payment in a lump sum direct to counsel of a reasonable attorney's fee in a suit brought by or in behalf of an insured during his lifetime for waiver of premiums on account of total disability, such fee to be determined by the court and to be paid by the insured in an unsuccessful action and paid by the Government where the judgment is entered in the insured's behalf.

Section 617 of the National Service Life Insurance Act of 1940, as amended, provides:

"In the event of disagreement as to any claim arising under this Act, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to the United States Government life (converted) insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended."

Section 500 of the World War Veterans' Act, 1924, as amended, provides:

"Except in the event of legal proceedings under section 19 of Title I of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed \$10 in any one case: *Provided, however,* That wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper; said fees, not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than \$500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment."

It will be noted that section 500 limits the fee that may be allowed by the court to an amount not to exceed 10 percent of the amount recovered and to be paid by the Veterans' Administration out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each such payment until paid.

In a suit by the insured based on denial of a claim for waiver of premiums on account of total disability, the judgment could not provide for payment of any monetary amount to a successful claimant except the amount of premiums paid subsequent to the commencement of total disability, which, in most instances, would be inadequate to provide a reasonable attorney's fee under the limitations contained in section 500 above noted. The limitations in section 500 make it impractical for an insured, unless acting as his own lawyer, to bring a suit to secure court determination of his claim for waiver of premiums on account of total disability.

The United States is a sovereign and cannot be sued without its consent and, when such consent is given, the United States generally is not liable for costs unless specifically so provided by statute. It would be a departure from long-established policy to provide as proposed by the bill that the Government be required to pay attorneys' fees of a successful plaintiff. Such proposal, if enacted, could be cited as a precedent for requiring the Government to pay attorneys' fees to all successful plaintiffs in suits brought under section 617 of the National Service Life Insurance Act of 1940, as amended, and perhaps under other unrelated consent statutes.

With no limitation on the amount of the fee, this bill, if enacted, could be very expensive. The bill does not provide any appropriation from which attorneys' fees would be payable, and it is not clear whether it is intended that fees should be payable from the appropriations for the Department of Justice, the national service life insurance appropriation, or the national service life insurance fund. It would seem unjust and of questionable validity to burden the national service life insurance fund with such liability.

The Veterans' Administration concedes that the difficulty in securing services of an attorney to bring suit in the event of disagreement as to claim for waiver of premiums on account of total disability while the veteran is alive presents a problem and, if deemed desirable, would not object to the enactment of legislation amending section 500 to authorize the court to allow a reasonable attorney's fee to be paid by the plaintiff (whether successful or not in the court) in suits brought during his lifetime for waiver of premiums on account of total disability. However, this could prevent, in some instances, appeals to the Board of Veterans' Appeals.

The Veterans' Administration recommends unfavorable consideration of the bill in its present form.

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

Sincerely yours,

H. V. HIGLEY, *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):

{SECTION 500. WORLD WAR VETERANS ACT OF 1924, AS AMENDED.

SEC. 500. Except in the event of legal proceedings under section 19 of Title I of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the Administrator of Veterans' Affairs shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the Veterans' Administration shall not exceed \$10 in any one case: *Provided, however,* That wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the Veterans' Administration out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid []; *except that in a suit brought by or on behalf of an insured during his lifetime, for waiver of premiums on account of total disability, the court, as part of its judgment or decree, shall determine and allow a reasonable fee to be paid by the insured to his attorney.* Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than \$500 or by imprisonment at hard labor for not more than 2 years, or by both such fine and imprisonment.

