

108TH CONGRESS
1ST SESSION

H. R. 1681

To amend title 38, United States Code, to allow for substitution of parties in the case of a claim for benefits provided by the Department of Veterans Affairs when the applicant for such benefits dies while the claim is pending, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2003

Mr. EVANS (for himself and Mr. MICHAUD) introduced the following bill;
which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to allow for substitution of parties in the case of a claim for benefits provided by the Department of Veterans Affairs when the applicant for such benefits dies while the claim is pending, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Claims Con-
5 tinuation Act”.

1 **SEC. 2. CONTINUATION OF CLAIM AND SUBSTITUTION OF**
2 **PARTIES UPON DEATH OF APPLICANT FOR**
3 **BENEFITS.**

4 (a) IN GENERAL.—Chapter 51 of title 38, United
5 States Code, is amended by adding at the end the fol-
6 lowing new section:

7 **“§ 5127. Deaths of applicants for benefits: continu-**
8 **ation of claims and substitution of parties**

9 “(a) In the case of a claim for compensation, depend-
10 ency and indemnity compensation, or pension that was
11 submitted to the Secretary by a claimant who dies on or
12 after the date of the enactment of the Veterans Claims
13 Continuation Act and before a decision on that claim be-
14 comes final in accordance with section 7291 of this title,
15 the claim shall not be extinguished if, within the time pe-
16 riod prescribed in subsection (c)(2), an eligible person sub-
17 mits an application to the Secretary, or submits a motion
18 to a court with jurisdiction over the claim, to be sub-
19 stituted as the claimant in order to continue prosecution
20 of that claim. The Secretary or the court, as the case may
21 be, shall approve any such application submitted by an
22 eligible person.

23 “(b)(1) For purposes of this section and section 7270
24 of this title, and subject to paragraphs (2) and (3), the
25 term ‘eligible person’ means any of the following individ-
26 uals:

1 “(A) The surviving spouse.

2 “(B) Surviving children who have attained the
3 age of 21.

4 “(C) A surviving parent.

5 “(D) The executor, administrator or other legal
6 representative of the deceased claimant’s estate.

7 “(E) The heirs of the veteran.

8 “(2) In a case where more than one individual re-
9 ferred to in paragraph (1) submits an application or mo-
10 tion under subsection (a) to be substituted as a claimant,
11 the eligible person shall be determined in the order listed
12 in subparagraphs (A) through (E) of paragraph (1). In
13 the case of individuals submitting an application or motion
14 under subsection (a) who are specified in the same sub-
15 paragraph of paragraph (1), the eligible person shall be
16 the first in time to submit such application or motion.

17 “(3) The Secretary may determine that an individual
18 who otherwise would be the ‘eligible person’ for purposes
19 of substitution for a deceased claimant under this section
20 is not competent or otherwise is not a proper representa-
21 tive of the estate. In such a case, the Secretary shall notify
22 the applicant of such determination in writing and shall
23 substitute another eligible person to represent the inter-
24 ests of the deceased claimant.

1 “(c)(1) Upon being notified of the death of a claim-
2 ant, the Secretary shall send a notice to the estate of the
3 decedent at the decedent’s last know address and to the
4 authorized representative of the decedent, if any, inform-
5 ing the estate and the representative that the claim will
6 be dismissed unless an application for substitution as the
7 claimant is received by the Secretary within one year of
8 the claimant’s death.

9 “(2) An application under this section for substi-
10 tution as the claimant on a claim must be filed not later
11 than the later of—

12 “(A) the end of the one-year period beginning
13 on the date of the claimant’s death; or

14 “(B) the end of the six-month period beginning
15 on the date of the notification under paragraph (1).

16 “(d) A person named as a substitute claimant under
17 section (a) shall be accorded all the rights and responsibil-
18 ities of the original claimant.

19 “(e) If benefits are payable as a result of a decision
20 on a claim by a substituted claimant named under this
21 section, such benefits shall be paid as follows:

22 “(1) If the deceased claimant was claiming ben-
23 efits as a veteran, to the living person first listed
24 below:

25 “(A) The veteran’s spouse.

1 “(B) The veteran’s children (in equal
2 shares).

3 “(C) The veteran’s dependent parents (in
4 equal shares).

5 “(2) If the deceased claimant was claiming ben-
6 efits as the surviving spouse of a veteran, to the sur-
7 viving children of the deceased veteran (in equal
8 shares).

9 “(3) If the deceased claimant was claiming ben-
10 efits under chapter 18 of this title as the child of a
11 veteran, to the surviving parents of the child (in
12 equal shares).

13 “(4) If there is no beneficiary who meets the
14 criteria of paragraphs (1), (2), and (3) and in all
15 other cases, to the decedent’s estate, unless the es-
16 tate will escheat.

17 “(f) Upon the appointment of a substitute claimant,
18 the Secretary shall notify the person substituted as the
19 claimant as to the evidence or information necessary to
20 substantiate the pending claim. If such information or evi-
21 dence is not received within one year from the date of such
22 notification, no benefits may be paid on the claim.

23 “(g) For purposes of section 5112(b) of this title, the
24 term ‘payee’ as used in such section shall be deemed to

1 include a deceased claimant for whom a substitute claim-
 2 ant is appointed under this section.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 at the beginning of such chapter is amended by adding
 5 at the end the following new item:

“5127. Deaths of applicants for benefits: continuation of claims and substi-
 tution of parties.”.

6 **SEC. 3. PAYMENT OF ACCRUED BENEFITS APPLICABLE TO**
 7 **DEATHS BEFORE DATE OF ENACTMENT.**

8 (a) IN GENERAL.—Subsection (a) of section 5121 of
 9 title 38, United States Code, is amended—

10 (1) in the matter preceding paragraph (1), by
 11 striking “periodic monetary benefits” and all that
 12 follows through “be paid” and inserting “accrued
 13 benefits of a deceased individual who died before the
 14 date of the enactment of the Veterans Claims Con-
 15 tinuation Act that are due and unpaid for a period
 16 not to exceed two years shall be paid”; and

17 (2) in paragraph (5), by striking “only so
 18 much” and all that follows through “burial” and in-
 19 serting “to the decedent’s estate, unless the estate
 20 will escheat”.

21 (b) DEFINITION OF ACCRUED BENEFITS.—Such sec-
 22 tion is further amended by adding at the end the following
 23 new subsection:

1 “(d) For purposes of this section and section 5122
 2 of this title, the term ‘accrued benefits’, with respect to
 3 a deceased individual, means periodic monetary benefits
 4 (other than insurance and servicemember’s indemnity)
 5 under laws administered by the Secretary to which the de-
 6 ceased individual was entitled at death under existing rat-
 7 ings or decisions or based on evidence in the file at date
 8 of death.”.

9 **SEC. 4. SUBSTITUTION OF SURVIVOR IN CASES PENDING**
 10 **BEFORE A COURT.**

11 (a) IN GENERAL.—(1) Subchapter II of chapter 72
 12 of title 38, United States Code, is amended by adding at
 13 the end the following new section:

14 **“§ 7270. Cases pending on death of claimant: substi-**
 15 **tution of parties**

16 “(a) If a claimant dies before filing an appeal under
 17 section 7266 of this title, an eligible person may file an
 18 appeal as a substituted claimant for the decedent within
 19 the time period specified under section 7266 of this title.
 20 If an appellant or respondent dies while a claim is pending
 21 before a court and before a final decision is rendered
 22 under section 7291 of this title, an eligible person may
 23 move the court for substitution of claimant in the pending
 24 action. Any such motion filed with the the United States
 25 Court of Appeals for Veterans Claims or to the United

1 States Court of Appeals for the Federal Circuit must be
2 filed within the time period prescribed by sections 7266
3 and 7292 of this title, respectively, or within one year of
4 the claimant's death, whichever is earlier.

5 “(b) In any case in which a final decision under sec-
6 tion 7291 of this title has not been made, an eligible per-
7 son may move a court to be substituted as the appellant
8 (or respondent as the case may be) for an appellant or
9 respondent who dies while an appeal is pending. The court
10 shall, upon filing of a timely motion, appoint an eligible
11 person to substitute as the claimant to continue prosecu-
12 tion or defense of that claim.

13 “(c) Nothing in this section shall require or authorize
14 substitution for a deceased claimant if a final decision
15 under section 7291 of this title has been entered before
16 the filing of a motion for substitution.

17 “(d) In this section, the term ‘eligible person’ has the
18 meaning given that term in section 5127(b) of this title.”.

19 (2) The table of sections at the beginning of such sub-
20 chapter is amended by adding at the end the following
21 new item:

“7270. Cases pending on death of claimant: substitution of parties.”.

22 (b) EFFECTIVE DATE.—Section 7270 of title 38,
23 United States Code, as added by subsection (a), shall

- 1 apply with respect to deaths of claimants on or after the
- 2 date of the enactment of this Act.

