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STATE OF WISCONSIN, DEPARTMENT OF VETERANS AFFAIRS

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December 10, 2003

Speaker John Gard
Room 211 West, State Capitol
MADISON WI 53708

Majority Leader Mary Panzer
Room 211 South, State Capitol
MADISON WI 53707-7882

Dear Speaker Gard and Majority Leader Panzer:

I am requesting that a Legislative Legal Counsel Committee be set up to include both chairs of the Assembly and Senate Committees on Veterans Affairs. The Committee's purpose would be to revise Chapter 45, which affects the Wisconsin Department of Veterans Affairs and all veterans of the State of Wisconsin. Chapter 45 is in dire need of revisions. My agency could take on this task, but we believe a Legislative Legal Counsel Committee is the most appropriate way to correct this situation and allows our veterans advocates and veterans service organizations to work with us in an equitable way to create Chapter 45 for the 21st Century.

I would like to meet with you or a member of your staff to talk about assisting us in this task. If you concur with the establishment of such a committee, I would like to begin this process in February of 2004.

Please feel free to contact me if you have any questions. I look forward to working with you on key issues for veterans in the 21st Century.

Sincerely,
DEPARTMENT OF VETERANS AFFAIRS

JOHN A. SCOCOS
Secretary

cc: Senator Ron Brown
Representative Terry Musser

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FEDERAL VETERANS LAWS, RULES AND REGULATIONS

2001 EDITION

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 38 — VETERANS' BENEFITS

PART I. GENERAL PROVISIONS

CHAPTER 1. GENERAL

Section

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§ 101. Definitions

For the purposes of this title [38 USCS §§ 101 et seq.]—

(1) The terms "Secretary" and "Department" mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(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 "surviving spouse" means (except for purposes of chapter 19 of this title [38 USCS §§ 1901 et seq.]) a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with

another person and held himself or herself out openly to the public to be the spouse of such other person.

(4)(A) The term "child" means (except for purposes of chapter 19 of this title [38 USCS §§ 1901 et seq.] and section 8502(b) of this title) a person who is unmarried and—

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

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

(iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three 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 Secretary 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 before August 26, 1961, or within two years after the veteran's death; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward the person's support from some individual other than the veteran or the veteran's spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under

such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

(B) For the purposes of subparagraph (A) of this paragraph, in the case of an adoption under the laws of any jurisdiction other than a State (as defined in section 101(20) of this title [para. (20) of this section] and including the Commonwealth of the Northern Mariana Islands)—

(i) a person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of such veteran (including the purposes of this subparagraph a Commonwealth Army veteran or new Philippine Scout, as defined in section 3566 of this title unless such person—

(I) was less than eighteen years of age at the time of adoption;

(II) is receiving one-half or more of such person's annual support from such veteran;

(III) is not in the custody of such person's natural parent, unless such natural parent is such veteran's spouse; and

(IV) is residing with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution; and

(ii) a person shall not be considered to have been a legally adopted child of a veteran as of the date of such veteran's death and thereafter unless—

(I) at any time within the one-year period immediately preceding such veteran's death, such veteran was entitled to and was receiving a dependent's allowance or similar monetary benefit under this title for such person; or

(II) for a period of at least one year prior to such veteran's death, such person met the requirements of clause (i) of this subparagraph.

(5) The term "parent" means (except for purposes of chapter 19 of this title [38 USCS §§ 1901 et seq.]) 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 the veteran's 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 [38 USCS §§ 3100 et seq. and 3701 et seq.]) 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, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the 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 Secretary to a veteran because of service-connected disability, or to a surviving spouse, 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 Secretary to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or non-service-connected disability, or to a surviving spouse 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.

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(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 (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(19) The term "State home" means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans.

(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. For the purpose of section 2303 and chapters 34 and 35 of this title [38 USCS §§ 2303, 3451 et seq., and 3500 et seq.], such term also includes the Canal Zone.

(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 [38 USCS §§ 1301 et seq.];

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) 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 [38 USCS §§ 1301 et seq.];

(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 [38 USCS §§ 1301 et seq.];

(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) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 [10 USCS §§ 2101 et seq.] for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) 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 206 of title 37 or any other provision of law;

(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; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10 [10 USCS §§ 2101 et seq.].

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—

(A) active duty;

(B) 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

(C) any period of inactive duty training during

which the individual concerned was disabled or died—

(i) from an injury incurred or aggravated in line of duty; or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

(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 Transportation, with respect to matters concerning the Coast Guard;

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

(F) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

(26) The term "Reserve" means a member 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 Army National Guard of the United States; and

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

(28) The term "nursing home care" means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

(29) The term "Vietnam era" means the following:

(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(30) The term "Mexican border period" means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(31) The term "spouse" means a person of the opposite sex who is a wife or husband.

(32) The term "former prisoner of war" means a

person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty—

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(33) The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Sept. 2, 1958, P. L. 85-857, § 1, 72 Stat. 1106; Aug. 25, 1959, P. L. 86-195, 73 Stat. 424; Sept. 19, 1962, P. L. 87-674, § 1, 76 Stat. 558; Oct. 15, 1962, P. L. 87-815, § 3, 76 Stat. 927; Aug. 19, 1964, P. L. 88-450, § 4(c), (d), 78 Stat. 504; Oct. 31, 1965, P. L. 89-311, § 2(c)(1), 79 Stat. 1155; March 3, 1966, P. L. 89-358, § 4(d), 80 Stat. 24; Aug. 31, 1967, P. L. 90-77, Title II, § 201, 81 Stat. 181; June 11, 1969, P. L. 91-24, §§ 1(a), (b), 16, 83 Stat. 33; May 21, 1970, P. L. 91-262, § 1, 84 Stat. 256; Dec. 24, 1970, P. L. 91-588, § 9(a), (b), 84 Stat. 1584; Dec. 31, 1970, P. L. 91-621, § 6(a)(1), (2), 84 Stat. 1864; Dec. 15, 1971, P. L. 92-198, § 5(a), 85 Stat. 664; Oct. 24, 1972, P. L. 92-540, Title IV, § 407, 86 Stat. 1092; Dec. 23, 1975, P. L. 94-169, Title I, § 101(1), 89 Stat. 1013; Sept. 21, 1976, P. L. 94-417, § 1(b), 90 Stat. 1277; Oct. 8, 1977, P. L. 95-126, § 3, 91 Stat. 1108; Nov. 23, 1977, P. L. 95-202, Title III, § 309(a), 91 Stat. 1446; Nov. 4, 1978, P. L. 95-588, Title III, § 301, 92 Stat. 2506; June 13, 1979, P. L. 96-22, Title IV, § 401, 93 Stat. 62; Aug. 14, 1981, P. L. 97-37, § 3(a), 95 Stat. 936; Oct. 12, 1982, P. L. 97-295, § 4(2), (95)(A) in part, 96 Stat. 1304, 1313; Oct. 14, 1982, P. L. 97-306, Title I, Part B, § 113(a), 96 Stat. 1432; March 2, 1984, P. L. 98-223, Title II, § 201, 98 Stat. 41; Oct. 28, 1986, P. L. 99-576, Title VII, § 702(1), 100 Stat. 3301; May 20, 1988, P. L. 100-322, Title I, Part A, § 103(a), Title III, Part B, § 311, 102 Stat. 493, 534; Sept. 29, 1988, P. L. 100-456, Div A, Title VI, Part D, § 633(c), 102 Stat. 1987; Dec. 18, 1989, P. L. 101-237, § 2(a), 103 Stat. 2062; April 6, 1991, P. L. 102-25, Title III, Part C, § 332, 105 Stat. 88; May 7, 1991, P. L. 102-40, Title IV, § 402(d)(1), 105 Stat. 239; June 13, 1991, P. L. 102-54, § 14(a)(1), 105 Stat. 282; Aug. 6, 1991, P. L. 102-83, §§ 4(a)(3), (b)(1), (2)(E)(i), 5(c)(1), 105 Stat. 404-406; Nov. 2, 1994, P. L. 103-446, Title XII, § 1201(a)(1), 108 Stat. 4682; Oct. 9, 1996, P. L. 104-275, Title V, § 505(a), 110 Stat. 3342; Nov. 1, 2000, P. L. 106-419, Title III, Subtitle A, § 301(a), 114 Stat. 1852; June 5, 2001, P. L. 107-14, § 4(a)(2), 115 Stat. 26.)

§ 102. Dependent parents

(a) Dependency of a parent, which may arise before or after the death of a veteran, shall be determined in accordance with regulations pre-

Eligibility for Benefits from the Department of Veterans Affairs

- 1.) General Eligibility: Programs, which use the definition of “veteran”, found at s.45.001(4), Stats.
 - A.) Tuition and Fee Reimbursement Grant: s.45.25, Stats.
 - B.) Economic Assistance-Health Care Aid Grant and Subsistence Aid Grant: s.45.51, Stats.*
 - C.) Part Time Study Grant: s.45.396, Stats.*
 - D.) Retraining Grant: s.45.397, Stats.
 - *These programs include the term “dependents” in the body of the statute.
- 2.) Programs using the definition of “veteran” found at s.45.001(4), Stats. but adding additional individuals as “eligible” for the program.
 - A.) Personal Loan Program: s.45.356, Stats./Adds surviving spouse and children of deceased veterans as eligible individuals.
 - B.) Wisconsin Veterans’ Home: s.45.37, Stats./Adds individuals who served on active duty for training during a war period (except for the Vietnam era) for at least 90 days and also adds spouses, surviving spouses and parents of eligible veterans as eligible individuals.
 - C.) Primary Mortgage Loan Program (and Home Improvement Loan Program): ss.45.70-79, Stats./ Adds honorably discharged individuals who served for at least 6 months on active duty (other than for training) between February 1, 1955 and August 4, 1964 and unremarried spouses and the minor or disabled children of deceased veterans are also included under the eligibility section.
- 3.) Programs that have unique definitions of “veteran”.
 - A.) Veterans Assistance Program: s.45.357, Stats./ “Veteran” is anyone who served in U.S. Armed Forces or forces incorporated therein and were not dishonorably discharged therefrom.
 - B.) Wisconsin Veterans Cemeteries: s.45.358, Stats./“Veteran” is defined as someone who has served on active duty, except for active duty for training, in the U.S. Armed Forces.*
 - *This program includes eligibility for various dependents in the body of the statute.
- 4.) Surviving spouses and minor and dependent children: s.45.348, Stats.
 - A.) “The benefits available to veterans are also available to the unremarried surviving spouses and minor or dependent children of deceased veterans if the unremarried surviving spouses or minor or dependent children are residents of and living in the state at the time of making application.”