

Public Law 95-479  
95th Congress

An Act

Oct. 18, 1978

[H.R. 11886]

To amend title 38, United States Code, to provide increases in the rates of disability and dependency and indemnity compensation for disabled veterans and their survivors, to provide for the payment of benefits to surviving spouses and children of certain totally disabled service-connected disabled veterans, to increase the amounts paid for funeral and burial expenses of deceased veterans, and for other purposes.

Veterans'  
Disability  
Compensation  
and Survivors'  
Benefits Act of  
1978.  
38 USC 101 note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) this Act may be cited as the "Veterans' Disability Compensation and Survivors' Benefits Act of 1978".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS' DISABILITY COMPENSATION  
BENEFITS

RATES OF DISABILITY COMPENSATION

38 USC 314.

SEC. 101. (a) Section 314 is amended—

(1) by striking out "\$41" in subsection (a) and inserting in lieu thereof "\$44";

(2) by striking out "\$75" in subsection (b) and inserting in lieu thereof "\$80";

(3) by striking out "\$113" in subsection (c) and inserting in lieu thereof "\$121";

(4) by striking out "\$155" in subsection (d) and inserting in lieu thereof "\$166";

(5) by striking out "\$216" in subsection (e) and inserting in lieu thereof "\$232";

(6) by striking out "\$272" in subsection (f) and inserting in lieu thereof "\$292";

(7) by striking out "\$322" in subsection (g) and inserting in lieu thereof "\$346";

(8) by striking out "\$373" in subsection (h) and inserting in lieu thereof "\$400";

(9) by striking out "\$419" in subsection (i) and inserting in lieu thereof "\$450";

(10) by striking out "754" in subsection (j) and inserting in lieu thereof "\$809";

(11) by striking out "\$937" and "\$1,312" in subsection (k) and inserting in lieu thereof "\$1,005" and "\$1,408", respectively;

(12) by striking out "\$937" in subsection (l) and inserting in lieu thereof "\$1,005";

(13) by striking out "\$1,032" in subsection (m) and inserting in lieu thereof "\$1,107";

(14) by striking out "\$1,172" in subsection (n) and inserting in lieu thereof "\$1,258";

(15) by striking out "\$1,312" each place it appears in subsections (o) and (p) and inserting in lieu thereof "\$1,408"; and  
 (16) by striking out "\$843" in subsection (s) and inserting in lieu thereof "\$905".

(b) Subsection (p) of section 314 (as amended by clause (15) of subsection (a) of this section) is further amended by inserting before the semicolon a period and the following new sentence: "In the event the veteran has suffered the anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities, the Administrator shall allow the next higher rate or intermediate rate, but in no event in excess of \$1,408". 38 USC 314.

(c) Section 314 (r) is amended by striking out the first sentence and inserting in lieu thereof the following new sentences: "Subject to section 3203 (e) of this title, if any veteran, otherwise entitled to the compensation authorized under subsection (o) of this section or at the maximum rate authorized under subsection (p) of this section, is in need of regular aid and attendance, then, in addition to such compensation under subsection (o) or (p) of this section— 38 USC 3203.

"(1) the veteran shall be paid a monthly aid and attendance allowance at the rate of \$604; or

"(2) if the veteran, in addition to such need for regular aid and attendance, is in need of a higher level of care, such veteran shall be paid a monthly aid and attendance allowance at the rate of \$900, in lieu of the allowance authorized in clause (1) of this subsection, if the Administrator finds that the veteran, in the absence of the provision of such care, would require hospitalization, nursing home care, or other residential institutional care.

For the purposes of clause (2) of this subsection, need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. The existence of the need for such care shall be determined by a physician employed by the Veterans' Administration or, in areas where no such physician is available, by a physician carrying out such function under contract or fee arrangement based on an examination by such physician."

(d) Section 314 is amended by adding at the end thereof the following new subsection: 38 USC 314.

"(t) (1) If the veteran (A) is entitled to receive compensation at any rate provided for under subsections (a) through (i) of this section and compensation under subsection (k) of this section, (B) has suffered the loss or loss of use of an extremity as a result of a service-connected disability ratable at 40 per centum or more, and (C) has suffered the loss or loss of use of the paired extremity as a result of a non-service-connected disability, not the result of the veteran's own willful misconduct, that would be rated, if service-connected, at 40 per centum or more, the monthly rate of compensation payable to such veteran shall be increased by \$175.

"(2) If a veteran described in paragraph (1) of this subsection receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the non-service-connected disability described in such paragraph, the increase in the rate

Rates of  
compensation.  
38 USC 314 note.  
38 USC prec. 101  
note.  
38 USC 301 *et*  
*seq.*

of compensation otherwise payable under this subsection shall not be paid for any month following a month in which any such money or property is received until such time as the total of the amount of such increase that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received.”

(e) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by the amendments made by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

#### RATES OF ADDITIONAL COMPENSATION FOR DEPENDENTS

38 USC 315.

SEC. 102. (a) Section 315(1) is amended—

(1) by striking out “\$46” in clause (A) and inserting in lieu thereof “\$49”;

(2) by striking out “\$77” in clause (B) and inserting in lieu thereof “\$83”;

(3) by striking out “\$98” in clause (C) and inserting in lieu thereof “\$110”;

(4) by striking out “\$120” and “\$22” in clause (D) and inserting in lieu thereof “\$137” and “\$27”, respectively;

(5) by striking out “\$30” in clause (E) and inserting in lieu thereof “\$34”;

(6) by striking out “\$52” in clause (F) and inserting in lieu thereof “\$61”;

(7) by striking out “\$77” and “\$22” in clause (G) and inserting in lieu thereof “\$88” and “\$27”, respectively;

(8) by striking out “\$37” in clause (H) and inserting in lieu thereof “\$40”;

(9) by striking out “\$83” in clause (I) and inserting in lieu thereof “\$89”; and

(10) by striking out “\$70” in clause (J) and inserting in lieu thereof “\$75”.

(b) Section 315 is further amended by striking out “50 per centum” in the matter preceding paragraph (1) and in paragraph (2) and inserting in lieu thereof “30 per centum”.

#### CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS

38 USC 362.

SEC. 103. Section 362 is amended by striking out “\$203” and inserting in lieu thereof “\$218”.

### TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

#### RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES

38 USC 411.

SEC. 201. (a) Subsection (a) of section 411 is amended to read as follows:

“(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the persons upon whose

death entitlement is predicated, at monthly rates set forth in the following table:

<i>"Pay grade:</i>	<i>Monthly rate</i>	<i>"Pay grade:</i>	<i>Monthly rate</i>
E-1 -----	\$297	W-4 -----	\$426
E-2 -----	307	O-1 -----	376
E-3 -----	314	O-2 -----	388
E-4 -----	334	O-3 -----	416
E-5 -----	343	O-4 -----	439
E-6 -----	351	O-5 -----	484
E-7 -----	368	O-6 -----	544
E-8 -----	388	O-7 -----	590
E-9 -----	406	O-8 -----	646
W-1 -----	376	O-9 -----	694
W-2 -----	391	O-10 -----	760
W-3 -----	402		

<sup>1</sup> If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be \$437.

<sup>2</sup> If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force or Commandant of the Marine Corps, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be \$814.

(b) Subsection (b) of such section is amended by striking out "\$33" and inserting in lieu thereof "\$35".

(c) Subsection (c) of such section is amended by striking out "\$83" and inserting in lieu thereof "\$89".

(d) Such section is further amended by adding at the end thereof the following new subsection:

"(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by \$45 if the surviving spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For the purposes of this subsection, the requirement of 'permanently housebound' will be considered to have been met when the surviving spouse is substantially confined to such surviving spouse's home (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities which it is reasonably certain will remain throughout such surviving spouse's lifetime."

#### RATES OF DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 202. Section 413 is amended—

38 USC 413.

(1) by striking out "\$140" in clause (1) and inserting in lieu thereof "\$150";

(2) by striking out "\$201" in clause (2) and inserting in lieu thereof "\$216";

(3) by striking out "\$259" in clause (3) and inserting in lieu thereof "\$278"; and

(4) by striking out "\$259" and "\$52" in clause (4) and inserting in lieu thereof "\$278" and "\$56", respectively.

#### RATES OF SUPPLEMENTAL DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN

SEC. 203. Section 414 is amended—

38 USC 414.

(1) by striking out "\$83" in subsection (a) and inserting in lieu thereof "\$89";

- (2) by striking out “\$140” in subsection (b) and inserting in lieu thereof “\$150”; and  
 (3) by striking out “\$71” in subsection (c) and inserting in lieu thereof “\$76”.

BENEFITS FOR SURVIVING SPOUSES AND CHILDREN OF CERTAIN  
 TOTALLY DISABLED VETERANS

38 USC 410.

SEC. 204. Section 410 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection (b):

“(b) (1) Notwithstanding the provisions of subsection (a) of this section, when any veteran dies, not as the result of the veteran’s own willful misconduct, if the veteran was in receipt of (or but for the receipt of retired or retirement pay was entitled to receive) compensation at the time of death for a service-connected disability that either (A) was continuously rated totally disabling for a period of ten or more years immediately preceding death, or (B) if so rated for a lesser period, was so rated continuously for a period of not less than five years from the date of such veteran’s discharge or other release from active duty, the Administrator shall pay benefits under this chapter to the veteran’s surviving spouse, if such surviving spouse was married to such veteran for not less than two years immediately preceding such veteran’s death, and to such veteran’s children, in the same manner as if the veteran’s death were service connected.

“(2) If a surviving spouse or a child receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the death of a veteran described in paragraph (1) of this subsection, benefits under this chapter payable to such surviving spouse or child by virtue of this subsection shall not be paid for any month following a month in which any such money or property is received until such time as the total amount of such benefits that would otherwise have been payable equals the total of the amount of the money received and the fair market value of the property received.

“(3) For purposes of sections 1448 (d) and 1450 (c) of title 10, eligibility for benefits under this chapter by virtue of this subsection shall be deemed eligibility for dependency and indemnity compensation under section 411 (a) of this title.”.

38 USC 411.

TITLE III—MISCELLANEOUS PROVISIONS

NONTAXABLE STATUS OF CERTAIN RETIRED PAY RECEIVED IN LIEU  
 OF VETERANS’ BENEFITS

38 USC 3101.

SEC. 301. Section 3101 is amended by adding at the end thereof the following new subsection:

“(d) In the case of a person who—

“(1) has been determined to be eligible to receive pension or compensation under laws administered by the Veterans’ Administration but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

“(2) files a waiver of such pay in accordance with section 3105 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Veterans’ Administration of such person’s eligibility for such pension or compensation, the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.”.

#### RATE OF SPECIAL PENSION FOR MEDAL OF HONOR RECIPIENTS

SEC. 302. Section 562(a) is amended by striking out “\$100” and inserting in lieu thereof “\$200”. 38 USC 562.

#### BURIAL BENEFITS

SEC. 303. (a) Section 902(a) and section 903(a) (1) are amended by striking out “\$250” and inserting in lieu thereof “\$300”. 38 USC 902, 903.

(b) Section 906(b) is amended by striking out “dying in the service, and”. 38 USC 906.

(c) The first sentence of section 907 is amended by inserting “the greater of (1) \$1,100, or (2)” after “not exceeding”. 38 USC 907.

#### AUTOMOBILE ALLOWANCE FOR CERTAIN DISABLED VETERANS

SEC. 304. Section 1902(a) is amended by striking out “\$3,300” and inserting in lieu thereof “\$3,800”. 38 USC 1902.

#### STUDY OF HEALTH-CARE AND COMPENSATION NEEDS OF FORMER PRISONERS OF WAR

SEC. 305. (a) The Administrator of Veterans’ Affairs, in consultation with the Secretary of Defense, shall carry out a comprehensive study of the disability compensation awarded to, and the health-care needs of, veterans who are former prisoners of war. The Administrator shall include in such study— 38 USC 301 note.

(1) descriptions and analyses of the repatriation procedures, including physical examinations, for former prisoners of war and the adequacy of such procedures and the resultant medical records of former prisoners of war;

(2) the types and severity of disabilities that are particularly prevalent among former prisoners of war in various theaters of operation at various times;

(3) a description and analysis of procedures used with respect to former prisoners of war in determining eligibility for health-care benefits and in adjudicating claims for disability compensation, including an analysis of the current use of statutory and regulatory provisions specifically relating to former prisoners of war; and

(4) a survey and analysis of the medical literature on the health-related problems of former prisoners of war.

“(b) The Administrator shall transmit to the Congress and to the President a report on the results of such study not later than February 1, 1980. Such report shall include recommendations for such administrative and legislative action as the Administrator considers

Report to  
Congress and  
President.

may be necessary to assure that former prisoners of war receive compensation and health-care benefits for all disabilities which may reasonably be attributed to their internment.

REQUIREMENT OF UNITED STATES CITIZENSHIP FOR SUPERINTENDENTS AND ASSISTANT SUPERINTENDENTS OF CEMETERIES OPERATED BY THE AMERICAN BATTLE MONUMENTS COMMISSION

SEC. 306. The third paragraph of the first section of the Act entitled "An Act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes", approved March 4, 1923 (36 U.S.C. 121), is amended by adding after the last sentence thereof the following new sentence: "No individual may be employed as the superintendent, or as an assistant superintendent, of a cemetery operated by the Commission unless such individual is a citizen of the United States."

MEMORIAL TO HONOR VETERANS OF THE VIETNAM CONFLICT IN MEMORIAL AMPHITHEATER OF ARLINGTON NATIONAL CEMETERY

24 USC 295a  
note.

SEC. 307. The Secretary of Defense shall have placed in the Trophy Hall of the Memorial Amphitheater at Arlington National Cemetery a memorial plaque which shall bear the following inscription: "The people of the United States of America pay tribute to those members of the Armed Forces of the United States who served honorably in Southeast Asia during the Vietnam conflict." To further honor those members of the Armed Forces who lost their lives in hostile action in Southeast Asia during the Vietnam conflict, the Secretary of Defense shall have placed near such plaque in a suitable repository a display of the Purple Heart Medal and other medals, ribbons, and decorations associated with service in Southeast Asia during the Vietnam conflict.

TITLE IV—EFFECTIVE DATES

38 USC 314 note.

SEC. 401. (a) Except as provided in subsection (b), the amendments made by this Act shall take effect on October 1, 1978.

(b) The amendment made by section 302 shall take effect on January 1, 1979.

Approved October 18, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1226 (Comm. on Veterans' Affairs).

SENATE REPORT No. 95-1054 accompanying S. 2828 (Comm. on Veterans' Affairs).  
CONGRESSIONAL RECORD, Vol. 124 (1978):

June 28, considered and passed House.

Aug. 7, considered and passed Senate, amended in lieu of S. 2828.

Sept. 26, House concurred in Senate amendments with amendments.

Oct. 2, Senate agreed to House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 42:

Oct. 18, Presidential statement.