

107TH CONGRESS  
2D SESSION

# H. R. 3733

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2002

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

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## 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 monetary benefits  
10 (other than insurance and servicemember’s indemnity)  
11 under laws administered by the Secretary that was sub-  
12 mitted to the Secretary by a claimant who dies on or after  
13 the date of the enactment of the Veterans’ Claims Con-  
14 tinuation Act and before a decision on that claim becomes  
15 final in accordance with section 7291 of this title, the  
16 claim shall not be extinguished if, within one year of the  
17 claimant’s death, an eligible person submits an application  
18 to the Secretary, or submits a motion to a court with juris-  
19 diction over the claim, to be substituted as the claimant  
20 in order to continue prosecution of that claim. The Sec-  
21 retary or the court, as the case may be, shall approve any  
22 such application submitted by an eligible person.

23 “(b)(1) For purposes of this section and section 7270  
24 of this title, subject to paragraph (2), the term ‘eligible  
25 person’ means any of the following individuals:

26 “(A) The surviving spouse.

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

3           “(C) A surviving parent.

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

6           “(E) The next of kin of the veteran.

7           “(2) In a case where more than one individual re-  
8           ferred to in paragraph (1) submits an application or mo-  
9           tion under subsection (a) to be substituted as a claimant,  
10          the eligible person shall be determined in the order listed  
11          in subparagraphs (A) through (E) of paragraph (1).

12          “(c) Upon being notified of the death of a claimant,  
13          the Secretary shall send a notice to the estate of the dece-  
14          dent at the decedent’s last know address and to the au-  
15          thorized representative of the decedent, if any, informing  
16          the estate and the representative that the claim will be  
17          dismissed unless an application for substitution as the  
18          claimant is received by the Secretary within one year of  
19          the claimant’s death. If the Secretary has actual knowl-  
20          edge of the name and last known address of the surviving  
21          spouse, surviving children, surviving parent, or the legal  
22          representative of the decedent’s estate, a copy of such no-  
23          tice shall be mailed or delivered to each such person. An  
24          application under this section for substitution as the

1 claimant on a claim must be filed within one year after  
2 the date of the claimant's death.

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

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

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

12 “(A) The veteran's spouse.

13 “(B) The veteran's children (in equal  
14 shares).

15 “(C) The veteran's dependent parents (in  
16 equal shares).

17 “(2) If the deceased claimant was claiming ben-  
18 efits as the surviving spouse of a veteran, to the sur-  
19 viving children of the deceased veteran (in equal  
20 shares).

21 “(3) If the deceased claimant was claiming ben-  
22 efits under chapter 18 of this title as the child of a  
23 veteran, to the surviving parents of the child (in  
24 equal shares).

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

5           “(f) No part of any benefit payable to a person as  
6           a result of being substituted as the claimant on a claim  
7           under this section shall be used to reimburse any political  
8           subdivision of the United States for expenses incurred in  
9           the last sickness or burial of the deceased claimant.

10          “(g) Upon the appointment of a substitute claimant,  
11          the Secretary shall notify the person substituted as the  
12          claimant as to the evidence or information necessary to  
13          substantiate the pending claim. If such information or evi-  
14          dence is not received within one year from the date of such  
15          notification, no benefits may be paid on the claim.”.

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

“5127. Deaths of applicants for benefits: continuation of claims and substitution  
of parties.”.

19       **SEC. 3. PAYMENT OF ACCRUED BENEFITS APPLICABLE TO**  
20                               **DEATHS BEFORE DATE OF ENACTMENT.**

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

23               (1) in the matter preceding paragraph (1), by  
24          striking “periodic monetary benefits” and all that

1 follows through “be paid” and inserting “accrued  
 2 benefits of a deceased individual who died before the  
 3 date of the enactment of the Veterans’ Claims Con-  
 4 tinuation Act that are due and unpaid for a period  
 5 not to exceed two years shall be paid”; and

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

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

13 “(d) For purposes of this section and section 5122  
 14 of this title, the term ‘accrued benefits’, with respect to  
 15 a deceased individual, means periodic monetary benefits  
 16 (other than insurance and servicemember’s indemnity)  
 17 under laws administered by the Secretary to which the de-  
 18 ceased individual was entitled at death under existing rat-  
 19 ings or decisions or based on evidence in the file at date  
 20 of death.”.

21 **SEC. 4. SUBSTITUTION OF SURVIVOR IN CASES PENDING**  
 22 **BEFORE A COURT.**

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

1 **“§ 7270. Cases pending on death of claimant: substi-**  
2 **tution of parties**

3 “(a) If a claimant dies before filing an appeal under  
4 section 7266 of this title, an eligible person may file an  
5 appeal as a substituted claimant for the decedent within  
6 the time period specified under section 7266 of this title.  
7 If an appellant or respondent dies while a claim is pending  
8 before a court and before a final decision is rendered  
9 under section 7291 of this title, an eligible person may  
10 move the court for substitution of claimant in the pending  
11 action. Any such appeal to the United States Court of Ap-  
12 peals for Veterans Claims or to the United States Court  
13 of Appeals for the Federal Circuit must be filed within  
14 the time period prescribed by sections 7266 and 7292 of  
15 this title, respectively, or within one year of the claimant’s  
16 death, whichever is earlier.

17 “(b) In any case in which a final decision under sec-  
18 tion 7291 of this title has not been made, an eligible per-  
19 son may move a court to be substituted as the appellant  
20 (or respondent as the case may be) for an appellant or  
21 respondent who dies while an appeal is pending. The court  
22 shall, upon filing of a timely motion, appoint an eligible  
23 person to substitute as the claimant to continue prosecu-  
24 tion or defense of that claim.

25 “(c) Nothing in this section shall require or authorize  
26 substitution for a deceased claimant if a final decision

1 under section 7291 of this title has been entered before  
2 the filing of a motion for substitution.

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

5 (2) The table of sections at the beginning of such sub-  
6 chapter is amended by adding at the end the following  
7 new item:

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

8 (b) EFFECTIVE DATE.—Section 7270 of title 38,  
9 United States Code, as added by subsection (a), shall  
10 apply with respect to deaths of claimants on or after the  
11 date of the enactment of this Act.

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