S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. MENG, COLTON, DelMONTE, SPANO -- Multi-Sponsored by -- M. of A. ABBATE, GREENE, PHEFFER, TITONE, WEISENBERG -- read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the military law, in relation to the New York state armed services memorial award for liberty and honor and attendant honorarium; to amend the state finance law, in relation to establishing the New York state armed services memorial award for liberty and honor fund; and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The military law is amended by adding a new section 301-c to read as follows:

S 301-C. NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR. 1. THE NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR SHALL BE MADE ON BEHALF OF ALL THE PEOPLE OF THE STATE OF NEW YORK IN RECOGNITION OF THE SPECIAL PLACE OF HONOR EARNED BY NEW YORK MEMBERS OF THE ARMED SERVICES WHO SELFLESSLY GAVE THEIR LIVES IN THE CAUSE OF LIBERTY. ANY NEW YORK MEMBER OF THE ARMED SERVICES WHO IS KILLED IN ACTION, OR WHO DIES AS A DIRECT RESULT OF AND WITHIN ONE YEAR OF THE DATE OF AN INJURY OR ILLNESS SUSTAINED WHILE PERFORMING ACTIVE DUTY, SHALL, UPON CERTIFICATION BY THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK, BE DEEMED A POSTHUMOUS RECIPIENT OF THE NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR.

2. THE AWARD ESTABLISHED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE BESTOWED UPON EACH RECIPIENT BY MEANS OF AN OFFICIAL STATE POSTHUMOUS COMMENDATION DELIVERED TO THE RECIPIENT'S FAMILY REPRESENTATIVE BY THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK. EACH AWARD SHALL INCLUDE AN ATTENDANT HONORARIUM.

3. THE HONORARIUM ATTENDANT TO THE MEMORIAL AWARD SHALL BE DETERMINED AND DISTRIBUTED BY THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK AS FOLLOWS:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) WHERE THE RECIPIENT IS SURVIVED BY A SPOUSE:
(I) WHO IS THE MARITAL PARENT OF THE RECIPIENT'S CHILD OR WHERE THE MARRIAGE EXISTED FOUR OR MORE YEARS, THE SUM OF FIFTY THOUSAND DOLLARS TO BE DISTRIBUTED TO THE SURVIVING SPOUSE IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF FIVE YEARS; OR
(II) WHERE THE MARRIAGE EXISTED LESS THAN FOUR YEARS, THE SUM OF TWENTY-FIVE THOUSAND DOLLARS TO BE DISTRIBUTED TO THE SURVIVING SPOUSE IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF FIVE YEARS;
(III) EXCEPT IN EVERY CASE (A) NO SUM OR INSTALLMENTS, OTHER THAN UNDISTRIBUTED RETROACTIVE INSTALLMENTS, SHALL BE DISTRIBUTED AFTER THE REMARRIAGE OF THE SPOUSE WITHIN THREE YEARS OF THE RECIPIENT'S DEATH; (B) NO SUM SHALL BE DISTRIBUTED TO ANY SPOUSE WHO, PRIOR TO THE RECIPIENT'S DEATH, HAD SUBSTANTIALLY ABANDONED THE MARRIAGE, WAS OTHERWISE SUBSTANTIALLY ESTRANGED FROM THE RECIPIENT OR WHO WAS LEGALLY SEPARATED FROM THE RECIPIENT; AND (C) NO MORE THAN ONE PERSON SHALL QUALIFY AS THE SPOUSE OF A RECIPIENT FOR PURPOSES OF THIS SUBDIVISION.
(B) WHERE THE RECIPIENT IS SURVIVED BY A DEPENDENT CHILD OR CHILDREN:
(I) WHERE THERE ARE FOUR OR FEWER DEPENDENT CHILDREN, TO EACH INDIVIDUAL SURVIVING DEPENDENT CHILD THE SUM OF TWENTY-FIVE THOUSAND DOLLARS TO BE DISTRIBUTED TO THE INDIVIDUAL CHILD IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF FIVE YEARS; OR
(II) WHERE THERE ARE FIVE OR MORE DEPENDENT CHILDREN, TO EACH INDIVIDUAL SURVIVING DEPENDENT CHILD AN EQUALLY DIVIDED SHARE OF THE SUM OF ONE HUNDRED THOUSAND DOLLARS TO BE DISTRIBUTED TO THE INDIVIDUAL CHILD IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF FIVE YEARS;
(III) EXCEPT IN EVERY CASE, (A) NO SUM OR INSTALLMENT SHALL BE DISTRIBUTED TO ANY INDIVIDUAL CHILD OVER THE AGE OF TWENTY-THREE, UNLESS SUCH CHILD IS PHYSICALLY OR MENTALLY DISABLED; (B) ANY SUM DISTRIBUTED TO A SURVIVING DEPENDENT MINOR CHILD SHALL BE KEPT IN TRUST IN A FINANCIAL ACCOUNT, OF A TYPE APPROVED BY THE STATE COMPTROLLER AS ONE APPROPRIATE FOR MAINTAINING THE VALUE OF SUCH SUM, UNTIL SUCH MINOR CHILD REACHES EIGHTEEN YEARS OF AGE, AT WHICH TIME, SUCH SUM IN TRUST, TOGETHER WITH ANY INTEREST AND APPRECIATION AND ANY UNDISTRIBUTED INSTALLMENTS, SHALL BE DISTRIBUTED TO SUCH CHILD IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF FIVE YEARS.
(C) WHERE THE RECIPIENT IS SURVIVED BY DEPENDENT LEGAL PARENTS:
(I) WHERE THE RECIPIENT IS SURVIVED BY TWO LEGAL PARENTS WHO WERE SUBSTANTIALLY DEPENDENT UPON THE RECIPIENT, THE SUM OF THIRTY THOUSAND DOLLARS TO BE DISTRIBUTED TO EACH SUCH INDIVIDUAL SURVIVING LEGAL PARENT IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF THREE YEARS; OR
(II) WHERE THE RECIPIENT IS SURVIVED BY ONE LEGAL PARENT WHO WAS SUBSTANTIALLY DEPENDENT UPON THE RECIPIENT, THE SUM OF FORTY-TWO THOUSAND FIVE HUNDRED DOLLARS TO BE DISTRIBUTED TO SUCH SURVIVING LEGAL PARENT IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF THREE YEARS;
(III) EXCEPT IN EVERY CASE, (A) NO MORE THAN TWO PERSONS CAN QUALIFY AS THE LEGAL PARENTS OF A RECIPIENT FOR PURPOSES OF THIS PARAGRAPH; AND (B) NO SUM SHALL BE DISTRIBUTED TO ANY LEGAL PARENT WHO WAS SUBSTANTIALLY ESTRANGED FROM THE RECIPIENT FOR THREE OR MORE YEARS IMMEDIATELY PRIOR TO THE RECIPIENT'S DEATH.
(D) WHERE THE RECIPIENT IS SURVIVED BY NON-DEPENDENT LEGAL PARENTS:
(I) WHERE THE RECIPIENT IS SURVIVED BY TWO LEGAL PARENTS, NEITHER OF WHOM WAS SUBSTANTIALLY DEPENDENT UPON THE RECIPIENT, THE SUM OF EIGHT THOUSAND DOLLARS TO BE DISTRIBUTED TO EACH SURVIVING PARENT IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF TWO YEARS; OR
(II) WHERE THE RECIPIENT IS SURVIVED BY ONE LEGAL PARENT, WHO WAS NOT SUBSTANTIALLY DEPENDENT UPON THE RECIPIENT, THE SUM OF TWELVE THOUSAND

DOLLARS TO BE DISTRIBUTED TO SUCH SURVIVING LEGAL PARENT IN EQUAL PERIODIC INSTALLMENTS OVER A PERIOD OF TWO YEARS;

(III) EXCEPT IN EVERY CASE, (A) NO MORE THAN TWO PERSONS CAN QUALIFY AS THE LEGAL PARENTS OF A RECIPIENT FOR PURPOSES OF THIS PARAGRAPH; AND (B) NO SUM SHALL BE DISTRIBUTED TO ANY INDIVIDUAL LEGAL PARENT WHO WAS SUBSTANTIALLY ESTRANGED FROM THE RECIPIENT FOR THREE OR MORE YEARS IMMEDIATELY PRIOR TO THE RECIPIENT'S DEATH.

(E) IN THE ABSENCE OF ANY SURVIVING LEGAL PARENT, WHERE ANOTHER RELATIVE OR PERSON SERVED AS THE RECIPIENT'S DE FACTO PARENT OR LEGAL GUARDIAN FOR A SUBSTANTIAL PART OF THE RECIPIENT'S CHILDHOOD, SUCH DE FACTO PARENT OR LEGAL GUARDIAN, SUBJECT TO THE DISCRETION OF THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK, MAY BE DEEMED TO QUALIFY AS A LEGAL PARENT FOR PURPOSES OF THIS SUBDIVISION.

(F) IN NO CASE SHALL THE TOTAL HONORARIUM PAID IN CONNECTION WITH A SINGLE MEMORIAL AWARD EXCEED THE SUM OF TWO HUNDRED TEN THOUSAND DOLLARS, SUBJECT TO THE FOLLOWING LIMITATIONS: (I) IN NO CASE SHALL THE TOTAL OF ALL SUMS DISTRIBUTED TO THE SPOUSE OF A RECIPIENT EXCEED FIFTY THOUSAND DOLLARS; (II) IN NO CASE SHALL THE TOTAL OF ALL SUMS DISTRIBUTED TO THE DEPENDENT CHILDREN OF A RECIPIENT EXCEED ONE HUNDRED THOUSAND DOLLARS; (III) IN NO CASE SHALL THE TOTAL OF ALL SUMS DISTRIBUTED TO DEPENDENT PARENTS OF A RECIPIENT EXCEED SIXTY THOUSAND DOLLARS; (IV) IN NO CASE SHALL THE TOTAL OF ALL SUMS DISTRIBUTED TO NON-DEPENDENT PARENTS OF A RECIPIENT EXCEED SIXTEEN THOUSAND DOLLARS; (V) AND IN NO CASE SHALL THE TOTAL OF ALL SUMS DISTRIBUTED TO A COMBINATION OF BOTH DEPENDENT AND NON-DEPENDENT PARENTS OF A RECIPIENT EXCEED FIFTY-FOUR THOUSAND FIVE HUNDRED DOLLARS.

(G) UPON REQUEST FROM THE STATE DIRECTOR OF THE DIVISION OF VETERANS AFFAIRS, THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK, MAY DISTRIBUTE TO AN HONORARIUM BENEFICIARY, A SINGLE LUMP SUM AMOUNT NOT TO EXCEED THE TOTAL OF ALL INSTALLMENTS SCHEDULED TO BE DISTRIBUTED TO SUCH BENEFICIARY IN THE NEXT TWELVE MONTH PERIOD. ONLY ONE SUCH LUMP SUM PAYMENT SHALL BE ALLOWED FOR EACH BENEFICIARY.

(H) THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK MAY MAKE PROVISION FOR EACH NEW YORK MEMBER OF THE ARMED SERVICES TO MAKE A WRITTEN DESIGNATION OF THOSE POTENTIAL BENEFICIARIES WHO WOULD AND WOULD NOT BE ELIGIBLE, BASED ON AN EXCEPTION, FOR A PORTION OF AN HONORARIUM IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

(I) NO PORTION OF ANY HONORARIUM SHALL BE SUBJECT TO INCOME TAX IN THIS STATE AND NO PORTION OF ANY HONORARIUM SHALL BE INCLUDED IN ANY CALCULATION OF INCOME OR FINANCIAL RESOURCES FOR ANY PURPOSE. NO PORTION OF ANY HONORARIUM SHALL BE SUBJECT TO ASSIGNMENT OR ATTACHMENT. ANY LEGAL DOCUMENT OR AGREEMENT PURPORTING TO REQUIRE OR ACCOMPLISH ANY OF THESE PROHIBITED ACTIONS IS DEEMED VOID AS AGAINST PUBLIC POLICY.

(J) THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK SHALL MAKE, BASED UPON REASONABLE EVIDENCE, A DETERMINATION REGARDING THE ELIGIBILITY OF ANY PERSON AS AN HONORARIUM BENEFICIARY WITHIN NINETY DAYS AFTER THE DEATH OF THE RECIPIENT OF THE MEMORIAL AWARD. ELIGIBILITY TO RECEIVE ANY PORTION OF AN HONORARIUM PURSUANT TO THIS SUBDIVISION MUST EXIST ON THE DAY OF THE RECIPIENT'S DEATH. ANY PORTION OF AN HONORARIUM MAY BE DETERMINED AND DISTRIBUTED SUBSEQUENT TO THE DELIVERY OF THE MEMORIAL AWARD.

(K) PERIODIC INSTALLMENTS SHALL BE MADE AT LEAST FOUR TIMES PER YEAR. THE PERIOD OF YEARS OVER WHICH PERIODIC INSTALLMENTS ARE TO BE PAID SHALL COMMENCE ON THE NINETY-FIRST DAY AFTER THE DAY OF THE RECIPIENT'S DEATH. IF PERIODIC INSTALLMENTS DO NOT ACTUALLY COMMENCE ON THAT DAY, SUCH DELAYED PERIODIC INSTALLMENTS SHALL BE PAID RETROACTIVELY FOLLOWING

THE ISSUANCE OF THE FIRST REGULAR PERIODIC INSTALLMENT. ALL SUCH RETROACTIVE INSTALLMENTS SHALL BE SEPARATELY AGGREGATED INTO A LUMP SUM AND THEN DISTRIBUTED IN AT LEAST FOUR BUT NOT MORE THAN SIXTEEN EQUAL QUARTERLY INSTALLMENTS, COMMENCING WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE FIRST REGULAR PERIODIC INSTALLMENT, SO AS TO APPROXIMATE THE APPLICABLE PERIODIC SCHEDULE SPECIFIED IN THIS SUBDIVISION. IN NO CASE, HOWEVER, SHALL ANY ADMINISTRATIVE DELAY BEYOND SUCH NINETY-FIRST DAY RESULT IN ANY DIMINUTION OR REDUCTION IN THE SUM OF THE HONORARIUM DETERMINED AND TO BE DISTRIBUTED PURSUANT TO THIS SUBDIVISION.

(L) UPON THE SUBSEQUENT DEATH OF A SPOUSE, CHILD OR PARENT ENTITLED TO A SUM PURSUANT TO THIS SUBDIVISION, ALL INSTALLMENTS OF SUCH SUM THAT HAVE NOT YET BEEN DISTRIBUTED TO SUCH SPOUSE, CHILD OR PARENT SHALL BECOME PAYABLE TO SUCH PERSON'S ESTATE.

4. THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK SHALL FILE AN ANNUAL REPORT WITH THE GOVERNOR AND THE STATE LEGISLATURE REGARDING ALL MEMORIAL AWARDS BESTOWED. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) A DESCRIPTION OF ANY CASE WHERE A CLAIM FOR A PORTION OF AN HONORARIUM WAS DENIED AND THE REASONS FOR SUCH DENIAL;

(B) RECOMMENDATIONS FOR LEGISLATIVE OR EXECUTIVE ACTION RELATING TO THE MEMORIAL AWARD AND THE ATTENDANT HONORARIUM.

5. FOR PURPOSES OF THIS SECTION:

(A) "NEW YORK MEMBER OF THE ARMED SERVICES" MEANS ANY PERSON IN THE ACTIVE MILITARY OF THE UNITED STATES, INCLUDING THE COAST GUARD, AND ANY PERSON WHO IS A MEMBER OF THE NEW YORK STATE RESERVE, NEW YORK NATIONAL GUARD, NEW YORK GUARD OR NEW YORK NAVAL MILITIA WHO WAS DOMICILED IN THIS STATE AT THE TIME SUCH PERSON WAS CALLED TO ACTIVE SERVICE AND WHO WAS DEPLOYED ON OR AFTER SEPTEMBER ELEVENTH, TWO THOUSAND ONE, IN SUPPORT OF A WAR ENACTED BY THE CONGRESS OF THE UNITED STATES, INCLUDING BUT NOT LIMITED TO "OPERATION ENDURING FREEDOM" OR "OPERATION IRAQI FREEDOM."

(B) "OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK" MEANS THE ADJUTANT GENERAL OF THE DIVISION OF MILITARY AND NAVAL AFFAIRS.

(C) "SPOUSE" MEANS THE PERSON RECOGNIZED UNDER THE LAWS OF NEW YORK AS LEGALLY MARRIED TO THE RECIPIENT AT THE TIME OF THE RECIPIENT'S DEATH.

(D) "MARITAL PARENT" MEANS A SPOUSE WHO IS LISTED AS THE BIOLOGICAL MOTHER OR FATHER ON THE BIRTH CERTIFICATE OF RECIPIENT'S CHILD OR WHO LEGALLY ADOPTED, OR IS IN THE PROCESS OF AND DOES SO ADOPT, RECIPIENT'S CHILD.

(E) "CHILD" MEANS A BIOLOGICAL CHILD OF THE RECIPIENT, ALSO INCLUDING ONE LATER BORN OF AN EXISTING PREGNANCY, OR A CHILD LEGALLY ADOPTED BY THE RECIPIENT. AT THE DISCRETION OF THE OFFICIAL REPRESENTATIVE OF THE STATE OF NEW YORK, A "CHILD" MAY ALSO INCLUDE A CHILD OF THE RECIPIENT'S SPOUSE, PROVIDED THE RECIPIENT HAD A SUBSTANTIAL PARENTAL RELATIONSHIP WITH SUCH CHILD AND PROVIDED SUCH CHILD RESIDED FULL TIME IN THE RECIPIENT'S HOUSEHOLD DURING THE MARRIAGE.

(F) "LEGAL PARENT" MEANS A PERSON LISTED AS THE BIOLOGICAL MOTHER OR FATHER ON THE RECIPIENT'S BIRTH CERTIFICATE OR A PERSON SUBSEQUENTLY SPECIFIED AS THE RECIPIENT'S PARENT PURSUANT TO LAW.

S 2. The state finance law is amended by adding a new section 98-d to read as follows:

S 98-D. NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE ADJUTANT GENERAL OF THE DIVISION OF MILITARY AND NAVAL AFFAIRS A SPECIAL FUND TO BE KNOWN AS THE "NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR FUND."

2. SUCH FUND SHALL CONSIST OF ALL MONEYS APPROPRIATED FOR THE PURPOSE OF SUCH FUND, ALL OTHER MONEYS REQUIRED TO BE PAID INTO OR CREDITED TO SUCH FUND, AND ALL MONEYS RECEIVED BY THE FUND OR DONATED TO IT. INVESTMENT EARNINGS CREDITED TO THE ASSETS OF THE FUND SHALL BECOME PART OF THE ASSETS OF THE FUND.

3. MONIES OF THE FUND SHALL BE AVAILABLE FOR THE PURPOSES OF PAYING HONORARIUMS PURSUANT TO THE NEW YORK STATE ARMED SERVICES MEMORIAL AWARD FOR LIBERTY AND HONOR ESTABLISHED PURSUANT TO SECTION THREE HUNDRED ONE-C OF THE MILITARY LAW.

4. ON AND AFTER JULY FIRST, TWO THOUSAND NINE, THE DIVISION OF MILITARY AND NAVAL AFFAIRS MAY DEDUCT AND RETAIN FROM THE MONEYS IN THE FUND AN AMOUNT EQUAL TO THE COSTS INCURRED BY SUCH DIVISION IN ADMINISTERING THE PROVISIONS OF SECTION THREE HUNDRED ONE-C OF THE MILITARY LAW, EXCEPT THAT SAID AMOUNT SHALL NOT EXCEED FIVE PERCENT OF THE MONEYS DEPOSITED INTO THE FUND IN ANY FISCAL YEAR.

5. THE MONIES OF THE FUND SHALL BE PAID OUT ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE ADJUTANT GENERAL OF THE DIVISION OF MILITARY AND NAVAL AFFAIRS OR HIS OR HER REPRESENTATIVE.

S 3. The sum of eight hundred fifty thousand dollars ($850,000), or so much thereof as may be necessary, is hereby appropriated to the "New York armed services memorial award for liberty and honor fund" from any moneys in the state treasury in the general fund to the credit of the state operations and aid to localities account not otherwise appropriated for services and expenses of the division of military and naval affairs for the purposes of carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the adjutant general of the division of military and naval affairs, or his or her duly designated representative in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chair of the senate finance committee and the chair of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chair of the senate finance committee and the chair of the assembly ways and means committee.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the state director of the division of veterans' affairs and the adjutant general of the division of military and naval affairs are authorized and directed to add, amend and/or repeal any rule or regulation necessary for the implementation of this act on its effective date, and to identify any deceased New York members of the armed services and the spouses, children and parents of such deceased recipients who are eligible to receive the memorial award and/or a portion of the honorarium pursuant to section one of this act.