HOUSE DOCKET, NO. 1590 FILED ON: 1/15/2015

HOUSE . . . . . No. 3319

The Commonwealth of Massachusetts

PRESENTED BY:

Tricia Farley-Bouvier

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to veterans' agents.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tricia Farley-Bouvier	*3rd Berkshire*	*1/15/2015*
James J. O'Day	*14th Worcester*	*12/26/2019*
Alan Silvia	*7th Bristol*	*12/26/2019*
Brian M. Ashe	*2nd Hampden*	*12/26/2019*
Denise Provost	*27th Middlesex*	*3/19/2015*
Chris Walsh	*6th Middlesex*	*12/26/2019*
Carlos Gonzalez	*10th Hampden*	*12/26/2019*
Joseph D. McKenna	*18th Worcester*	*12/26/2019*

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HOUSE . . . . . No. 3319

By Ms. Farley-Bouvier of Pittsfield, a petition (accompanied by bill, House, No. 3319) of Tricia Farley-Bouvier and others relative to veterans' agents. Veterans and Federal Affairs.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to veterans' agents.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The second paragraph of section 46A of chapter 114 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following 2 sentences:- A certified copy of the affidavit shall be transmitted by the undertaker or other person authorized to make the burial or disposition, within 30 days of the burial or disposition, to the veterans' agent of the district, as defined in section 1 of chapter 115, within which the burial or other disposition of the body occurs. Upon receipt of the certified copy, the veterans' agent shall transmit the certified copy to the veterans' graves officer, appointed under section 9 of said chapter 115, of the city or town within which the burial or other disposition of the body occurs.

SECTION 2. Chapter 115 of the General Laws is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meaning:-

“Commissioner” or “secretary”, the secretary of veterans’ services.

“Department”, the department of veterans’ services.

“Dependent”, the wife, husband, widow, widower, child, mother or father of a veteran, as hereinafter defined, including any person who stood in the relationship of a parent to such veteran for the 5 years next preceding the commencement of his wartime service; provided, that no child of a veteran who is more than 18 years of age shall be deemed a dependent, unless such child is attending school for the purpose of completing a regulation high school course or its equivalent, or unless he is mentally or physically unable to support himself, and his disability existed before he attained that age, or unless he is under 23 years of age, and is a full-time student at an educational institution which maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the place where its educational activities are carried on.

“District”, a geographical district established by the commissioner pursuant to section 6.

“Institution”, any hospital, sanatorium or wayfarer's lodge, boarding or rest home, or convalescent or nursing home, for the operation of which a license is required by law, any facility conducted by an agency incorporated under chapter 180 or any special act as a charitable corporation and any facility operated by municipal, county, state or federal government.

“Reside”, to be present within a city or town of the commonwealth, notwithstanding the lack of a present abode, with no present intention of definite and early removal, but not

necessarily with the intention of remaining permanently; provided, however, that any such person who enters the commonwealth solely for the purpose of obtaining benefits under this chapter shall not be considered to reside in the commonwealth; and, provided further, that an applicant lacking a present abode shall be required to provide an affidavit stating his identity, his last place of residence and his intention to establish an abode within the district in which he applies.

"Veteran", any person who (a) is a veteran as defined in clause Forty-third of section 7of chapter 4; or (b) meets all the requirements of said clause Forty-third except that instead of performing wartime service as so defined he has served on active duty in the Mexican border service, between June 30, 1916, and February 3, 1917; or (c) is entitled to the Civil War, Indian Campaign, Spanish Campaign, or Spanish War Service Medal; or (d) meets all the requirements of said clause Forty-third except that instead of performing 90 days active service, at least one day of which was for wartime service, he has performed active service in the armed forces of the United States at any time between April 6, 1917 and November 11, 1918, inclusive; or (e) meets all the requirements of said clause Forty-third, except that instead of performing wartime service as so defined he is entitled to any of the following campaign badges: First Nicaraguan, Haitian, Dominican, Yangtze River, Second Yangtze River, Second Nicaraguan, Vera Cruz, Mexican Service; provided, that in any case the service of such person was credited to Massachusetts, or such person has resided in the commonwealth for 1 day.

"Veterans' agent" or "Deputy veterans' agent", a veteran, as defined in clause Forty-third of section 7 of chapter 4, appointed pursuant to section 3 to disburse veterans' benefits in any district.

"Veterans' benefits", the benefits provided by this chapter. When used in any statute, ordinance, by-law, rule or regulation, the phrases "state aid", "military aid", "soldiers' relief", "soldiers' burial", or any words or phrases connoting the same, shall mean veterans' benefits.

SECTION 3. Section 2 of said chapter 115, as so appearing, is hereby amended by striking out, in lines 11 and 12, the words "city and town" and inserting in place thereof the following words:- veterans' agent.

SECTION 4. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out, in line 18, the word "towns" and inserting in place thereof the following word:- districts.

SECTION 5. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out, in lines 29 and 39, the words "city or town" and inserting in place thereof, in each instance, the following words:- veterans' agent.

SECTION 6. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out the fourth paragraph.

SECTION 7. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out the sixth paragraph.

SECTION 8. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out, in lines 120 and 121, the following words:- of the various cities and towns and of the directors of veterans' services of the various cities, towns and districts.

SECTION 9. Said section 2 of said chapter 115, as so appearing, is hereby further amended by striking out the tenth paragraph.

SECTION 10. Section 2A of said chapter 115, as so appearing, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

If the commissioner decides a controversy between an applicant and a veterans' agent relative to the validity or amount of a claim for veterans' benefits, as provided in section 2, in favor of the applicant, the said veterans' agent shall, forthwith, make payment to the applicant in accordance with said decision notwithstanding any appeal therefrom by the veterans' agent. If the governor and council sustain the appeal of said veterans' agent as to the validity of such claim, payment to the applicant shall thereupon cease. If the governor and council sustain the appeal of said veterans' agent as to the amount of such claim, payment to the applicant of any amount in excess of the amount approved by the governor and council shall thereupon cease

SECTION 11. Said chapter 115 is hereby further amended by striking out section 3 and inserting in place thereof the following:-

Section 3. The commissioner shall appoint 1 veterans' agent within each district to act for the department in the disbursement of veterans' benefits. Each veterans' agent shall be appointed for a term of 2 years. Each veterans' agent shall appoint at least 2 deputy veterans' agents for each district, who shall perform all of the duties of the veterans' agent in the case of incapacity or absence, and may appoint assistant veterans' agents for each district as necessary; provided, however, that all such appointments shall be subject to the final approval of the commissioner. The commissioner may, in the commissioner's discretion, require that each assistant veterans' agent shall be a veteran, as defined in clause Forty-third of section 7 of chapter 4. A veterans' agent may employ support and administrative staff to assist in the administration of veterans' benefits, as necessary.

Veterans’ agents, deputy veterans’ agents, assistant veterans’ agents, and support or administrative staff, shall be employees of the department.

Veterans’ agents shall provide such information, advice and assistance to veterans and their dependents as may be necessary to enable them to procure the benefits to which they are or may be entitled relative to employment, vocational or other educational opportunities, hospitalization, medical care, pensions, and other veterans' benefits. Veterans’ agents shall acquire and maintain current booklets and other printed or electronic materials pertaining to the statutory rights of veterans under local, state and federal laws, and may call at any time upon any department, board, division or commission of the commonwealth for such assistance as may be necessary in carrying out their functions. Veterans’ agents shall work in close coordination with those federal agencies established to aid veterans, work in close coordination with the officials of all towns and cities within their respective districts, and coordinate with hospitals in their respective districts.

Veterans’ agents shall, from time after the original allowance of any claim for veterans' benefits, make such investigations of the necessities and qualifications of the claimant as to prevent the payment of any benefits contrary to any provision of this chapter.

Upon the request of any veteran, the veterans’ agent for the district in which the veteran resides shall record his discharge or release papers, without charge, in books kept by the veterans’ agent for that purpose. Said agent shall keep an index of papers so recorded, and copies thereof, if attested by him, shall be admissible in evidence to the same extent and with the same effect as the originals.

SECTION 12. Said chapter 115 is hereby further amended by striking out section 3B, as appearing in section 24 of chapter 62 of the acts of 2014, and inserting in place thereof the following section:-

Section 3B. (a) The secretary of veterans' services shall establish standards and promulgate regulations for the mandatory training and certification of veterans' agents, which shall, for the purposes of this section, include deputy veterans' agents, and may include assistant veterans' agents. The mandatory training shall be approved by the Massachusetts Veterans' Service Officers Association, and shall be administered annually by the secretary. A veterans' agent shall be trained and certified within 6 months of the agent's appointment pursuant to section 3. A veterans' agent shall attend a mandatory training once every calendar year shall take and pass the certification test offered at each training once every 3 years. The secretary of veterans' services shall consider veterans' agents who complete the requirements of this section certified veterans' agents.

(b) The secretary shall, in conjunction with the Massachusetts Veterans' Service Officers Association, formulate a certification test, which shall ensure that veterans' agents possess the core knowledge to effectively serve veterans. The secretary shall administer the test at the mandatory annual training and shall provide a reasonable schedule of make-up training and testing. The certification test shall assess areas of knowledge including, but not limited to, the following: veterans' benefits contained in this chapter; federal and local benefits, including employment, education, health care, retirement and other veterans' benefits; and alternative resources, including those partially or wholly subsidized by the federal government, such as Medicaid, Supplemental Security Income and Social Security Disability benefits and federal

pension and compensation entitlements. The secretary may, by regulation, establish exemptions to the requirements of this section.

(c) Veterans' agents shall not disclose any information transmitted in confidence by and between a veteran and the veterans' agents, except when the disclosure is: (i) made for the benefit of the veteran; (ii) reasonably necessary to assist the veteran; or (iii) under a lawful order to make such disclosure. For the purposes of this subsection, information received by a veterans' agent which arises out of and in the course of providing assistance shall include, but not be limited to, communications, reports, records, working papers or memoranda.

SECTION 13. Chapter 115 is hereby further amended by striking out section 4, as appearing in the 2012 Official Edition, and inserting in place thereof the following:-

Section 4. Every application for veterans' benefits shall be in writing, signed by the applicant under the penalties of perjury, and shall contain: (i) a statement of the name, age and residence of the applicant and his relationship to the veteran upon whose wartime service his application is based, if applicable; (ii) such information as the commissioner may require relative to the commencement, duration, extent and termination of the veteran's wartime service; and (iii) any other representations, concerning the needs of the applicant and his reasons for applying for such benefits, as the commissioner may require. Every application shall be submitted to the veterans' agent for the district within which the applicant resides. The veterans' agent shall recommend a particular action on each application and shall forthwith transmit the same to the commissioner for review and approval or amendment.

Veterans' agents shall complete applications authorized by the executive office of health and human services for any veteran, widow or dependent applying for veterans' benefits or for

medical assistance under chapter 118E, if agreed to by an applicant. The veterans' agent shall file the application for the veteran if the veteran selects assistance under said 118E. The application shall be processed through the appropriate department, and the veterans' agent shall coordinate with the appropriate department to advise an applicant of his or her entitlement to veterans' benefits or benefits from public assistance.

SECTION 14. Said chapter 115 is hereby further amended by striking out section 5 and inserting in place thereof the following section:-

Section 5. Veterans' benefits shall be paid to a veteran or dependent by the commonwealth; provided, that no benefits shall be paid to a veteran unless he or she has actually resided within the commonwealth for 1 day preceding the date of the application for such benefits, nor to any dependent of a veteran unless the veteran has actually resided within the commonwealth continuously for 3 years next preceding the date of the application for such benefits, nor unless the veteran of whom he or she is a dependent has actually resided within the commonwealth continuously for 3 years next preceding the date of such dependent's application for such benefits. If the veteran is deceased at the time of the dependent's application for benefits, and the veteran died while a resident of the commonwealth, the commissioner may, notwithstanding the foregoing proviso, authorize benefits to such dependent actually residing in the commonwealth at the time of the veteran's death; provided, however, any veteran who actually resided in the commonwealth at the time of his entry into or continuance in active military or naval service of the United States and the dependents of such veteran shall be eligible for benefits without any waiting period.

Veterans' benefits shall not be subject to trustee process, and no assignment thereof shall be valid. Only such amount shall be paid to or for any veteran or dependent as may be necessary to afford him sufficient relief or support and such benefits shall not be paid to any person who is able to support himself or who is in receipt of income from any source sufficient for his support. The applicant's receipt of income from any source in an amount insufficient for his support shall not bar him from receiving veterans' benefits to supplement the same, if determined necessary by the commissioner. No payment of benefits shall be made for any period of time prior to the date of application; provided, however, that the commissioner may, on the recommendation of a veterans' agent, authorize the payment of benefits for not more than 60 days prior to the date of the application if the necessity therefor has been caused by serious accident or illness to the applicant or to 1 or more dependents of the veteran upon whose service the application is made.

No veterans' benefits shall be paid to or for any veteran who has been dishonorably discharged from any national soldiers' or sailors' home or from a soldiers' home in this commonwealth, or to or for his dependents, unless expressly allowed by the commissioner; nor to or for any applicant convicted of a crime, if the veterans' agent and the commissioner shall so rule; and, unless the commissioner, at his discretion, shall otherwise determine, no veterans' benefits shall be paid to or for any veteran who neglects to support his dependents nor to or for any dependents of such veteran, nor to or for any veteran or applicant if the necessity therefor is caused by his voluntary idleness or continuous vicious habits nor to or for any dependents of such veteran or applicant; but dependents of a deceased veteran shall not be deemed ineligible to receive such benefits by reason of any negligence of such veteran, when alive, to support them. No veteran who is or shall otherwise be entitled to veterans' benefits shall lose his right thereto by reason of his absence from the commonwealth while receiving hospital treatment, under

orders of the United States Veterans' Administration, at any hospital located outside the commonwealth, nor shall the right of his dependents thereto be lost while he is actually receiving such hospital treatment by reason of their absence from the commonwealth to accompany him.

No veteran or dependent shall be compelled to receive veterans' benefits without his consent. He shall receive such benefits at home, or at such other place as the veterans' agent may deem proper, but he shall not be compelled to receive the same at an infirmary or public institution unless his physical or mental condition so requires, or, if a minor, unless his parents or guardians so elect. A veterans' agent or the commissioner may require a person to whom veterans' benefits are granted to pay over his United States pension or compensation to them to be expended for his relief before receiving such benefits. In the event that the necessity for the granting of veterans' benefits to any veteran or any dependent of a veteran is caused by unemployment, accident or illness of or to such veteran or dependent and monetary remuneration is provided therefor whether by workers' compensation, accident or health insurance, or otherwise, or by legal responsibility of a tortfeasor liable for financial damages to such veteran or dependent therefor, a veterans' agent or the commissioner may require such veteran or dependent to assign to him the whole or any portion of the financial proceeds to be realized from such workers' compensation, accident or health insurance, or otherwise, or the whole or any portion of the financial damages to be recovered from such tortfeasor whether by settlement, arbitration, court action, or otherwise. Such assignment shall operate as a lien on such financial proceeds or financial damages to an amount equivalent to the total expenditures of veterans' benefits allowed to such veteran or dependent, and said lien may be enforced by petition to any district court within the jurisdiction of which the district of payment is located.

Nothing in this chapter shall be deemed to prohibit the granting of veterans' benefits in excess of the amount originally authorized or approved by the commissioner in any particular case, or the paying of such benefits as may be necessary to meet the emergency needs of any applicant prior to the date of the approval by the commissioner of the payment of benefits under any such application if the veterans' agent making such grant or payment forthwith furnishes the commissioner with a written statement of his reasons for taking such action.

All benefits available to dependents of veterans as provided by this chapter shall be extended to the mother of any member of the armed forces of the United States whose death occurred as the result of injury sustained or disease contracted during active service in time of war or insurrection, including active service in the said armed forces under the flag of the United Nations; provided, that such a mother qualifies in her own right as to the requirements of residence notwithstanding the failure of the deceased veteran to so qualify at the time of his death and notwithstanding lack of proof of the actual dependency of such a mother upon such a veteran at the time of his death. Such benefits shall include payment of reasonable medical and hospital expenses in accordance with regulations adopted by the commissioner and directives issued and promulgated by him; provided, that no back benefits shall be paid beyond the date of application.

Effective July 1 of every year, subject to appropriation, the commissioner shall increase the basic budget of each eligible recipient, before taking into consideration any available income and resources, by a percentage amount equal to the percentage rise in the United States Consumer Price Index for January 1of that year over the level of said index for January 1 of the previous year plus such additional percentage amount as is recommended annually by the commissioner and appropriated by the general court.

The benefits provided herein shall include an amount for fuel in the winter months for eligible veterans and dependents if they pay their own heating costs.

SECTION 15. Section 5A of said chapter 115, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 6, the words “town granting such benefits” and inserting in place thereof the following words:- district or districts within which each parcel of real estate lies.

SECTION 16. The second paragraph of said section 5A of said chapter 115, as so appearing, is hereby further amended by striking out the fourth sentence and inserting in place thereof the following sentence:- Proceeds realized through any such enforcement shall be retained by the commonwealth.

SECTION 17. Said second paragraph of said section 5A of said chapter 115, as so appearing, is hereby further amended by striking out the sixth sentence and inserting in place thereof the following sentence:- If the veterans' agent neglects or refuses promptly to refer the enforcement of a lien under this section to the commissioner for his approval, or to bring a petition within the period specified by the commissioner, the commissioner shall thereupon bring the petition in his own name.

SECTION 18. Said chapter 115 is hereby further amended by striking out section 6 and inserting in place thereof the following section:-

Section 6. The commissioner shall establish, at a minimum, 25 districts for the purpose of administering veterans’ benefits under this chapter. Each district shall be comprised of adjoining municipalities, which may be towns or cities; provided, however, that a city with a population of 100,000 or more on the date of the most recent federal census may be divided into

more than 1 district. Each district shall be overseen by a veterans' agent and other department employees, as provided in section 3.

A veterans' agent shall maintain the following records with respect to the administration of veterans' benefits within his or her district: (1) the amounts expended by the commonwealth for veterans' benefits; (2) the names of the recipients of such benefits; (3) the amounts paid to or for each applicant for such benefits and the reasons for granting them; (4) the names of the veterans on account of whose services such benefits were granted; (5) the names, if any, of the companies, regiments, stations, organizations or vessels in which veterans on account of whose services benefits were granted respectively enlisted, or to which they were appointed, and in which they last served; (6) the relationship of each dependent to the veteran on account of whose service such benefits were granted; and (7) any other details that the commissioner may require. Each veterans' agent shall, within 30 days following the month in which an expenditure of veterans' benefits are made, provide all records related to the payment of such benefits to the commissioner on blank forms provided, and in a manner approved, by the commissioner, under the penalties of perjury. The commissioner shall examine such records, shall allow and endorse thereon such amounts as he finds have been paid and reported in accordance with the provisions of this chapter, and shall transmit the certificates to the comptroller. The commissioner may decide upon the necessity of the amount paid in each case, and may allow any part thereof which he deems proper and lawful. If the commissioner shall refuse to allow and endorse the payment of certain benefits, the commissioner shall provide notice of such refusal to the appropriate veterans' agent, with an explanation of the reason for the refusal. Such veterans' agent shall thereafter reduce the veterans' benefits to those amounts allowed by the commissioner; provided,

however, that the veterans' agent shall not require the reimbursement of any such benefits already paid.

SECTION 19. Section 7 of said chapter 115, as appearing in the 2012 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following:-

Each veterans' agent shall act as the burial agent for their district.

SECTION 20. Section 8 of said chapter 115, as so appearing, is hereby amended by striking out the third sentence.

SECTION 21. Said section 8 of said chapter 115, as so appearing, is hereby further amended by striking out, in lines 26 and 27, the following words:- and the treasurer of the city or town expending the amount.

SECTION 22. Said section 8 of said chapter 115, as so appearing, is hereby further amended by striking out the eighth sentence.

SECTION 23. Sections 10 to 15, inclusive, of said chapter 115 are hereby repealed.

SECTION 24. Chapter 471 of the acts of 1972 is hereby repealed.

SECTION 25. Chapter 128 of the acts of 1982 is hereby repealed.

SECTION 26. Chapter 69 of the acts of 1984 is hereby repealed.

SECTION 27. The secretary of veterans' affairs shall promulgate rules and regulations to facilitate the restructuring of the department of veterans' services and the provision of veterans' benefits as required by this act on or before July 1, 2016.