

HOUSE No. 843

By Mr. Gallup of Cambridge (by request), petition of James W. Spring and others for certain amendments of the laws relative to the militia of the Commonwealth. Military Affairs and Public Safety.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Three.

AN ACT AMENDING THE LAW RELATIVE TO THE MILITIA.

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

1 SECTION 1. Chapter thirty-three of the General
2 Laws is hereby amended by striking out section
3 fifty-five, as appearing in section one of chapter
4 four hundred and twenty-five of the acts of nineteen
5 hundred and thirty-nine, and inserting in place
6 thereof the following section:—

7 *Section 55.* (a) An officer or soldier who shall,
8 while performing any lawfully ordered military
9 duty, receive any injury by reason of such duty, or
10 who shall without fault or neglect on his part be
11 wounded or disabled, or contract any sickness or
12 disease, while performing any such lawfully ordered
13 military duty, incapacitating him from pursuing
14 his usual business or occupation, shall during the
15 period of such incapacity, receive compensation
16 to be fixed by a board, appointed as hereinafter

17 provided, to inquire into his claim, not exceeding
18 in amount the pay plus ration allowance provided
19 for by this chapter and actual necessary expenses
20 for care and medical attendance. In case of death
21 resulting from such injury, sickness or disease,
22 compensation shall be paid to the decedent's depen-
23 dents, as determined in accordance with section
24 thirty-two and clause (3) of section one, both of
25 chapter one hundred and fifty-two, in the amounts
26 provided by, and otherwise subject to, section thirty-
27 one, of said chapter; provided, that compensation
28 to such dependents other than widows and children
29 shall be based on the pay plus ration allowance
30 hereinbefore mentioned, and that, for the purposes
31 hereof, said board shall exercise all the powers given
32 by said provisions of chapter one hundred and fifty-
33 two to the department of industrial accidents. All
34 claims arising under this section shall be inquired
35 into by a board of three officers, at least one of whom
36 shall be a medical officer, appointed by the com-
37 mander-in-chief. The board shall have the same
38 power to take evidence, administer oaths, issue
39 subpoenas and compel witnesses to attend and
40 testify and produce books and papers, and to punish
41 their failure to do so, as is possessed by a general
42 court-martial. The findings of the board shall be
43 subject to the approval of the commander-in-chief.
44 The amount so found due and so approved shall be
45 a charge against the commonwealth, and paid in the
46 same manner as other military accounts.

47 (b) The civilian operator of a motor vehicle not
48 owned by the commonwealth which is being used
49 for the purpose of transporting any member or
50 members of, or any military equipment or supplies

51 of, the military forces of the commonwealth in the
52 performance of any lawfully ordered military duty,
53 who shall receive any injury or who shall without
54 fault or neglect on his part be wounded or disabled
55 while so employed so as to incapacitate him from
56 pursuing his usual business or occupation shall
57 during the period of such incapacity receive com-
58 pensation to be fixed by a board appointed as herein-
59 before provided by paragraph (a) of this section to
60 inquire into his claim, which compensation shall
61 not exceed three dollars a day, plus actual necessary
62 expenses for medical services and care, medicines
63 and hospitalization.

64 In case of death resulting from such injury, wound
65 or disability, compensation shall be paid to the
66 decedent's dependents as determined in accordance
67 with section thirty-two, and clause (3) of section
68 one, both of chapter one hundred and fifty-two, in
69 the amount provided by, and otherwise subject to,
70 section thirty-one of said chapter; provided, that
71 compensation to such dependents other than widows
72 and children shall be based on the compensation
73 provided in the preceding paragraph of this para-
74 graph (b) of section fifty-five, and that, for the
75 purposes thereof, said board shall exercise all powers
76 given by said chapter one hundred and fifty-two
77 to the department of industrial accidents.

78 (c) Any person making claim against the com-
79 monwealth under the provisions of this section shall
80 be deemed thereby to have elected to waive any and
81 all other right or remedy against the commonwealth
82 relative to the subject matter of such claim to which
83 he might be entitled by law.

84 (d) Except as expressly provided therein, no

85 provision of this section shall be construed to make
86 any person referred to therein an employee of the
87 commonwealth or, if not already a member of its
88 active or organized militia including the state guard
89 or any similar military organization of the common-
90 wealth, to make him such a member, or to entitle
91 any such person to receive any pension or retirement
92 allowance from the commonwealth, or to acquire
93 any right, or to receive any other benefit or com-
94 pensation. Any person claiming the right to receive
95 compensation from the commonwealth under any
96 provision of this section shall, within thirty days
97 after receiving an injury, or contracting any sickness
98 or disease, while performing services referred to
99 therein, give to the adjutant general notice of his
100 name and place of residence, and the time, place
101 and cause of such injury, sickness or disease; pro-
102 vided, that such notice shall not be invalid or in-
103 sufficient solely by reason of any inaccuracy in stating
104 the name or place of residence of the person receiving
105 the injury, or contracting sickness or disease, or the
106 time, place or cause of the injury, sickness or disease,
107 if it is shown that there was no intention to mislead
108 and the adjutant general was not in fact misled
109 thereby. Such notice shall be in writing, signed by
110 the person claiming compensation or by someone
111 in his behalf. If by reason of physical or mental
112 incapacity it is impossible for such person to give
113 notice within the time required, he may give it
114 within thirty days after such incapacity has been
115 removed, and if he dies within said thirty days his
116 executor or administrator may give the notice within
117 thirty days after his appointment. Any form of
118 written communication signed by the person, or

119 by someone in his behalf, or by his executor or
120 administrator, or by someone in behalf of such
121 executor or administrator, which contains the in-
122 formation that the person was so injured, or so con-
123 tracted sickness or disease, giving the name and
124 place or residence of such person and the time, place
125 and cause of the injury, sickness or disease, shall be
126 considered a sufficient notice.

1 SECTION 2. Chapter thirty-three of the General
2 Laws hereby is further amended by striking out
3 section one hundred and fifteen, as appearing in
4 section one of chapter four hundred and twenty-
5 five of the acts of nineteen hundred and thirty-nine,
6 and inserting in place thereof the following section:—

7 *Section 115.* (a) An owner of a riding or draft
8 animal which is killed or injured while in the custody
9 of a person performing any lawfully ordered military
10 duty shall be entitled to receive compensation for
11 the loss sustained by such death or injury in the
12 manner hereinafter provided:

13 (b) The adjutant general, in the name and on
14 behalf of the commonwealth, may, under orders
15 issued by the commander-in-chief, take, accept the
16 gift or loan of, or the grant of the temporary right
17 to the use and control of, or may hire, any motor
18 vehicle or trailer for use for any military purpose,
19 and no motor vehicle or trailer not owned by the
20 commonwealth shall be used in the performance of
21 any lawfully ordered military duty unless and until
22 it shall be accepted by the adjutant general, who
23 shall be given in each instance a full description of
24 each such vehicle or trailer. The adjutant general
25 will designate the officer of the military forces of the

26 commonwealth who shall be responsible for the use
27 of each such motor vehicle or trailer. The adjutant
28 general shall from time to time issue regulations
29 governing the use of such motor vehicles and trailers
30 and any one damaged in property or injured in
31 person, even to the extent of loss of life, by any such
32 motor vehicle or trailer not owned by the common-
33 wealth while being used to transport any member
34 or members of, or any military equipment or sup-
35 plies of, the military forces of the commonwealth,
36 in the performance of any lawfully ordered military
37 duty, shall have recourse to the owner thereof only
38 to the extent that the owner is covered by insurance.

39 (c) The operation or use of a motor vehicle or
40 trailer for military purposes shall not be subject to
41 the provisions of General Laws (Tercentenary
42 Edition), chapter one hundred and fifty-nine A and
43 chapter one hundred and fifty-nine B or to the
44 provisions of any other law or regulation applicable
45 solely to the operation or use of motor vehicles as
46 taxi-cabs, jitneys, or other vehicles used for carrying
47 passengers for hire or for carrying property for hire.

48 (d) The owner of each such motor vehicle or
49 trailer referred to in paragraph (b) which, while
50 being used for the purpose of transporting any
51 member or members of, or any military equipment
52 or supplies of, the military forces of the common-
53 wealth, shall be destroyed or damaged, even though
54 the person in whose custody the motor vehicle or
55 trailer may be shall also be the owner, shall be
56 entitled to receive compensation for the loss sustained
57 because of such destruction or damage in the manner
58 hereinafter provided to the extent only that said
59 owner is not covered by insurance for such destruc-

60 tion or damage. There shall be no recovery for the
61 depreciation which any motor vehicle or trailer may
62 suffer while being used by the military division of the
63 commonwealth.

64 (e) Any person or corporation who or which shall
65 be entitled to compensation because of damage to
66 his or its real property under circumstances not
67 covered by the provisions of sections one hundred
68 and five and one hundred and six or because of
69 damage to his or its personal property which damage
70 shall have been caused by the act of an officer or
71 soldier of the military forces of the commonwealth
72 while in the performance of any lawfully ordered
73 military duty, shall be entitled to receive compensa-
74 tion for such damage in the manner hereinafter
75 provided to the extent only that said person or cor-
76 poration is not covered by insurance for such damage.

77 (f) The adjutant general, if notice shall be given to
78 him within thirty days after the date of the occurrence
79 upon which the claim for compensation is founded,
80 shall cause all claims for compensation under any
81 of the provisions of paragraphs (a) (d) and (e) of
82 this section to be inquired into by a board of three
83 officers appointed by the commander-in-chief, if
84 after investigation by the adjutant general it appears
85 to him that the insurance coverage of the claimant
86 is not adequate to meet the loss alleged to have been
87 sustained. The board shall have the same power to
88 take evidence, administer oaths, issue subpoenas
89 and compel witnesses to attend and testify and
90 produce books and papers, and to punish their
91 failure to do so, as is possessed by a general court
92 martial. The findings of the board shall be subject
93 to the approval of the commander-in-chief. The

94 amount in excess of insurance coverage found to be
95 due to the claimant by said board, to the extent
96 that its findings are approved by the commander-in-
97 chief, shall be paid from the fund established by
98 section one hundred and sixteen.