

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 254

(By Senators Cole (Mr. President)
and Kessler,
By Request of the Executive)

[Originating in the Committee
on Pensions;
reported February 27, 2015.]

A BILL to amend and reenact §5H-1-1 and §5H-1-2 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act; clarifying process for payment of survivor benefit; defining terms; limiting eligibility for survivor benefit to beneficiaries designated in writing by applicable public safety officer; clarifying circumstances for eligibility of survivor benefit; transferring responsibility for determination of eligibility for survivor benefit from Governor's office to Department of Military Affairs and Public Safety, Office of the Secretary; setting forth required information for certified request for survivor benefit; requiring fire, emergency medical service and law-enforcement programs to provide notice of survivor benefit and obtain written designations of beneficiaries from eligible public safety officers; requiring Department of Military Affairs and Public Safety, Office of the Secretary, to prepare a form for written designation of beneficiary; providing exclusions for availability of survivor

[COM. SUB. FOR S. B. NO. 254]

benefit; providing that payments for survivor benefit be made from general revenue; and authorizing the Department of Military Affairs and Public Safety, Office of the Secretary, to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That §5H-1-1 and §5H-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. WEST VIRGINIA FIRE, EMS AND LAW-ENFORCEMENT OFFICER
SURVIVOR BENEFIT ACT.**

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the West Virginia Fire, EMS and Law-Enforcement Officer
2 Survivor Benefit Act.

3 (b) It is the intent of the Legislature to provide for the payment of death benefits to the
4 ~~surviving spouse, designated beneficiary, children or parents~~ or beneficiaries of firefighters, EMS
5 emergency medical service providers and law-enforcement personnel killed in the ~~performance of~~
6 ~~their duties~~ line of duty.

7 **§5H-1-2. Death benefit for survivors.**

8 (a) For purposes of this article:

9 (1) “Killed in the line of duty” means the death of a public safety officer as a result of an
10 incident, accident or violence causing death or injuries which are the direct and proximate cause of
11 death and occurring in the performance of his or her official duties, including, but not limited to,
12 training, administration meetings, fire, emergency medical service or law-enforcement incidents,

[COM. SUB. FOR S. B. NO. 254]

1 service calls, apparatus, equipment or station maintenance.

2 (2) "Office" means the Department of Military Affairs and Public Safety, Office of the
3 Secretary.

4 (3) "Public safety officer" means a firefighter, emergency medical services provider or
5 law-enforcement personnel employed by or providing volunteer services to any fire, emergency
6 medical services or law-enforcement program certified by the State of West Virginia.

7 (b) When a public safety officer is killed in the line of duty, a claim may be submitted to the
8 office for determination of eligibility for the survivor benefit provided under this article. If the claim
9 is determined to be eligible, a total sum of \$50,000 shall be paid to the designated beneficiary or
10 beneficiaries of such public safety officer, as provided in this section.

11 (c) (1) All claims for compensation under this article shall be submitted to the office in the
12 form of a certified request by the chief of the applicable fire, emergency medical services or
13 law-enforcement program. Any such claims not submitted within one year of the date of death are
14 not eligible for the survivor benefit.

15 (2) The certified request for the survivor benefit shall include:

16 (i) The name of the certified fire, emergency medical services or law-enforcement program;

17 (ii) The name of the deceased public safety officer;

18 (iii) The name and address of the designated beneficiary or beneficiaries of the survivor
19 benefit;

20 (iv) The documentation set forth in subsection (e) of this section evidencing that the
21 designated beneficiary is or beneficiaries are the eligible recipient or recipients, respectively, of the

[COM. SUB. FOR S. B. NO. 254]

1 survivor benefit; and

2 (v) Documentation setting forth the circumstances that qualify the designated beneficiary or
3 beneficiaries of the deceased public safety officer for the survivor benefit.

4 (3) Upon receipt of the certified request, the office shall review the request and make a
5 determination of the eligibility of the designated beneficiary or beneficiaries of the deceased public
6 safety officer for the survivor benefit. If it is determined that the claim is eligible, the office shall
7 pay to the fire, emergency medical services or law-enforcement program the total sum of \$50,000
8 in the name of the designated beneficiary or beneficiaries of the survivor benefit. Within fourteen
9 calendar days of receipt of such sum, the fire, emergency medical services or law-enforcement
10 program shall pay the sum as a benefit to the designated beneficiary or beneficiaries.

11 (d) The sum payable under this article shall be paid in accordance with subdivision (3),
12 subsection (c) of this section to the beneficiary or beneficiaries previously designated in writing by
13 the public safety officer pursuant to subsection (e) of this section. In the event a minor is a
14 designated beneficiary, the sum shall be paid to the guardian, custodian or trustee of the minor for
15 the benefit of such minor.

16 (e) Each fire, emergency medical services and law-enforcement program employing public
17 safety officers shall provide notice of this benefit and obtain a written designation of beneficiary or
18 beneficiaries from each public safety officer on a form created by the office, to be maintained in the
19 public safety officer's personnel file. The form shall require each public safety officer to allocate
20 the percentage of the sum payable under this article to each designated beneficiary in the event
21 multiple beneficiaries are designated.

[COM. SUB. FOR S. B. NO. 254]

1 (f) A survivor benefit payment may not be made under this article if any of the following
2 apply:

3 (1) The death or injury that resulted in death was caused by the intentional misconduct of the
4 public safety officer.

5 (2) The public safety officer was voluntarily drugged or intoxicated at the time the death or
6 injury resulting in death occurred.

7 (3) The public safety officer was performing his or her duties in a grossly negligent manner
8 at the time the death or injury resulting in death occurred.

9 (4) The death or injury resulting in death was the direct and proximate result of the actions
10 of an individual to whom payment would be made under this act: *Provided*, That in the event the
11 public safety officer designated more than one beneficiary, payment may be made to the designated
12 beneficiaries not taking actions that are the direct and proximate cause of such death or injury
13 resulting in death.

14 (g) Payments made under this article shall be made out of the State Treasury, General
15 Revenue Fund.

16 (h) The office may propose rules for legislative approval in accordance with the provisions
17 of article three, chapter twenty-nine-a of this code to carry out the provisions of this section.

(NOTE: The purpose of this bill is to clarify the West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act with respect to the process to receive the survivor benefit and the eligibility for the survivor benefit. This bill also transfers oversight of the certification process from the Governor's Office to the Department of Military Affairs and Public Safety, Office of the Secretary.

[COM. SUB. FOR S. B. NO. 254]

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)