

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2868

BY DELEGATES STORCH, GEARHEART, PETHTEL, EVANS,

ANDERSON, AND J. PACK

[BY REQUEST OF THE MUNICIPAL PENSIONS OVERSIGHT
BOARD]

[Introduced March 03, 2021; Referred to the
Committee on Pensions and Retirement then
Finance]

1 A BILL to amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating
 2 to providing that member contributions and interest exceeding authorized payments of
 3 death benefits be paid to the member's heirs.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND
 RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS
 FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR
 COMBINED WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who has been in continuous service
 3 for more than five years dies from any cause other than as specified in subsection (b) of this
 4 section before retirement on a disability pension under the provisions of, prior to July 1, 1981,
 5 section twenty-four of this article, or after June 30, 1981, §8-22-23a and §8-22-24 of this code, or
 6 a retirement pension under the provisions of §8-22-25(a) or §8-22-25(a) and §8-22-25(b) of this
 7 code, leaving in either case surviving a spouse, or any dependent child or children under the age
 8 of 18 years, or dependent father or mother or both, or any dependent brothers or sisters or both
 9 under the age of 18 years, or any dependent child over the age of 18 years of age who is totally
 10 physically or mentally disabled so long as such condition exists; or

11 (2) Any former member of any such department who is on a disability pension prior to July
 12 1, 1981, under section twenty-four of this article, or after June 30, 1981, under §8-22-23a and §8-
 13 22-24 of this code, or is receiving or is entitled to receive retirement pension benefits under the
 14 provisions of §8-22-25(a) or §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other
 15 than as specified in subsection (b) of this section leaving in either case surviving a spouse or any
 16 dependent child or children under the age of 18 years or dependent father or mother or both, or

17 any dependent brothers or sisters or both under the age of 18 years, or any dependent child over
18 the age of 18 years of age who is totally physically or mentally disabled so long as such condition
19 exists; then in any of the cases set forth in subdivisions (1) and (2) of this subsection, the board
20 of trustees of such pension and relief fund shall, immediately following the death of the member,
21 pay to or for each entitled surviving dependents the following pension benefits: To the surviving
22 spouse, until death or remarriage, a sum per month equal to 60 percent of the member's pension
23 or, in the event the member was not receiving a pension at the time of the member's death, a
24 sum per month equal to 60 percent of the monthly retirement pension such member would have
25 been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if
26 the member had then been eligible for a retirement pension, or the sum of \$300 per month,
27 whichever is greater; to each dependent child, a sum per month equal to 20 percent of the
28 member's pension or, in the event the member was not receiving a pension on the date of the
29 member's death, a sum per month equal to 20 percent of the monthly retirement pension the
30 member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the
31 member's death if the member had then been eligible for a retirement pension, or until the child
32 attains the age of 18 years or marries, whichever first occurs; to each dependent orphaned child,
33 a sum per month equal to 25 percent of the member's pension or, in the event the member was
34 not receiving a pension at the time of the member's death, a sum per month equal to 25 percent
35 of the monthly retirement pension the member would have been entitled to receive pursuant to
36 §8-22-25 of this code on the date of the member's death if the member had then been eligible for
37 a retirement pension, until the child attains the age of 18 years or marries, whichever first occurs;
38 ~~to each dependent orphaned child, a sum per month equal to twenty-five percent of the member's~~
39 ~~pension or, in the event the member was not receiving a pension on the date of the member's~~
40 ~~death, a sum per month equal to twenty-five percent of the monthly retirement pension the~~
41 ~~member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the~~
42 ~~member's death if the member had then been eligible for a retirement pension, until the child~~

43 ~~attains the age of eighteen years or marries, whichever first occurs;~~ to each dependent father or
44 mother, a sum per month for each equal to 10 percent of the member's pension or, in the event
45 the member was not receiving a pension on the date of the member's death, a sum per month
46 equal to 10 percent of the monthly retirement pension the member would have been entitled to
47 receive pursuant to §8-22-25 of this code on the date of the member's death if the member had
48 then been eligible for a retirement pension; to each dependent brother or sister, the sum of \$50
49 per month until he or she attains the age of 18 years or marries, whichever first occurs, but in no
50 event shall the aggregate amount paid to all brothers and sisters of the member exceed \$100 per
51 month. If at any time, because of the number of dependents, all dependents cannot be paid in full
52 as herein provided, then each dependent shall receive his or her pro rata share of the payments.
53 In no case shall the payments to the surviving spouse and children be cut below 65 percent of
54 the total amount paid to all dependents.

55 (b) The surviving spouse, child or children, or dependent father or mother, or dependent
56 brothers or sisters, of any member who dies by reason of service rendered in the performance of
57 the member's duties shall, regardless of the length of the member's service and irrespective of
58 whether the member was or was not entitled to receive, or was or was not receiving, disability
59 pension or temporary disability payments at the time of the member's death, receive the death
60 benefits provided for in subsection (a) of this section. If the member had less than three years'
61 service at the time of the member's death, the member's pension shall be computed on the basis
62 of the actual number of years of service.

63 (c) If a member dies without leaving a spouse, dependent child or children, or dependent
64 father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six
65 percent interest shall be refunded to the member's named beneficiary or, if no beneficiary has
66 been named, to the member's estate to the extent that the contributions plus interest exceed any
67 disability or retirement benefits that the member may have received before the member's death.

68 (d) The provisions of this section shall not be construed as creating or establishing any

69 contractual or vested rights in favor of any individual who may be or become qualified as a
70 beneficiary of the death benefits authorized to be made pursuant to this section. All the provisions
71 of this section and benefits provided pursuant to this section are expressly subject to subsequent
72 legislative enactments as may provide for any change, modification or elimination of the
73 beneficiaries or benefits specified herein.

74 (e) Notwithstanding the provisions of §8-22-24 of this code, the benefit provided for in this
75 section shall be calculated as if the member had remained unemployed throughout any period of
76 disability.

77 (f) For the purpose of distributing premium tax proceeds as required by §33-3-14d of this
78 code, one beneficiary of the death benefit authorized by this section shall be included in the
79 average monthly number of retired police officers and firefighters

80 (g) If there are no survivors entitled to receive benefits pursuant to the provisions of this
81 section because of death, age or marital status, to the extent the member's contributions to the
82 fund plus six percent interest exceed any survivor benefits already paid, any excess shall be
83 refunded to the member's named beneficiary. If there is no named beneficiary, any excess shall
84 be paid to the member's heirs to be distributed in accordance with the provisions of §42-1-1 et
85 seq., of this code relating to intestate succession.

NOTE: The purpose of this bill is to provide a mechanism to allow for the contributions paid by a member into a retirement plan to be returned to the member's heirs after the member's death if the member's survivors are deceased and his or her remaining heirs no longer receive death benefits after reaching the age of 18.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.