

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Enrolled**

### **Senate Bill 459**

BY SENATORS NELSON, AZINGER, CLEMENTS, KARNES,

LINDSAY, PLYMALE, AND TRUMP

[Passed March 4, 2021; in effect from passage]



1 AN ACT to amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating  
2 to providing a mechanism by which contributions paid by a member into a retirement plan  
3 would be returned to the member's heirs after the member's death in the event that the  
4 member's survivors are deceased and his or her remaining heirs no longer receive death  
5 benefits under the retirement plan after reaching the age of 18.

*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 pursuant to §8-22-24 of this code if prior to July  
5 1, 1981, or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or a retirement  
6 pension pursuant to §8-22-25(a) and §8-22-25(b) of this code, leaving in either case a surviving  
7 spouse, or any dependent child or children under the age of 18 years, or dependent father or  
8 mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any  
9 dependent child over the age of 18 years of age who is totally physically or mentally disabled so  
10 long as such condition exists; or

11 (2) Any former member of any such department who is on a disability pension pursuant to  
12 §8-22-24 of this code if prior to July 1, 1981, , or pursuant to §8-22-23a and §8-22-24 of this code  
13 if after June 30, 1981, or is receiving or is entitled to receive retirement pension benefits pursuant  
14 to §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other than as specified in

15 subsection (b) of this section leaving in either case a surviving spouse or any dependent child or  
16 children under the age of 18 years, or dependent father or mother, or both, or any dependent  
17 brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18  
18 years of age who is totally physically or mentally disabled so long as such condition exists; then  
19 in any of the cases set forth in this subdivision and subdivision (1) of this subsection, the board of  
20 trustees of such pension and relief fund shall, immediately following the death of the member, pay  
21 to or for each entitled surviving dependent the following pension benefits: To the surviving spouse,  
22 until death or remarriage, a sum per month equal to 60 percent of the member's pension or, in  
23 the event the member was not receiving a pension at the time of the member's death, a sum per  
24 month equal to 60 percent of the monthly retirement pension such member would have been  
25 entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the  
26 member had then been eligible for a retirement pension, or the sum of \$300 per month, whichever  
27 is greater; to each dependent child, a sum per month equal to 20 percent of the member's pension  
28 or, in the event the member was not receiving a pension on the date of the member's death, a  
29 sum per month equal to 20 percent of the monthly retirement pension the member would have  
30 been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if  
31 the member had then been eligible for a retirement pension, or until the child attains the age of  
32 18 years or marries, whichever first occurs; to each dependent orphaned child, a sum per month  
33 equal to 25 percent of the member's pension or, in the event the member was not receiving a  
34 pension on the date of the member's death, a sum per month equal to 25 percent of the monthly  
35 retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this  
36 code on the date of the member's death if the member had then been eligible for a retirement  
37 pension, until the child attains the age of 18 years or marries, whichever first occurs; to each  
38 dependent father or mother, a sum per month for each equal to 10 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 10 percent of the monthly retirement pension the member would

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

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

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

62 (d) This section shall not be construed as creating or establishing any contractual or vested  
63 rights in favor of any individual who may be or become qualified as a beneficiary of the death  
64 benefits authorized to be made pursuant to this section. This section and benefits provided  
65 pursuant to this section are expressly subject to subsequent legislative enactments as may

66 provide for any change, modification, or elimination of the beneficiaries or benefits specified  
67 herein.

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2021.

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*Governor*