

**Senate Bill No. 254**

(By Senators Cole (Mr. President) and Kessler,

By Request of the Executive)

\_\_\_\_\_

[Introduced January 19, 2015; referred to the Committee on Pensions; and then to the Committee  
on Finance.]

\_\_\_\_\_

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; providing for reduction of amount of survivor benefit payable when state pays portion of funeral expenses; 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

1 prepare a form for written designation of beneficiary; providing exclusions for availability  
2 of survivor benefit; providing that payments for survivor benefit be made from general  
3 revenue; and limiting right of action to recover survivor benefit.

4 *Be it enacted by the Legislature of West Virginia:*

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

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

9 **§5H-1-1. Title and legislative intent.**

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

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

16 **§5H-1-2. Death benefit for survivors.**

17 (a) ~~In the event a firefighter, EMS or law-enforcement provider is killed in the performance~~  
18 ~~of his or her duties, the department chief, within thirty days from the date of death shall submit~~  
19 ~~certification of the death to the Governor's office.~~

20 (b) ~~This act includes both paid and volunteer fire, EMS and law-enforcement personnel~~  
21 ~~acting in the performance of his or her duties of any fire, EMS or law-enforcement department~~

1 certified by the State of West Virginia.

2 ~~(c) A firefighter, EMS or law-enforcement provider is considered to be acting in the~~  
3 ~~performance of his or her duties for the purposes of this act when he or she is participating in any~~  
4 ~~role of a fire, EMS or law-enforcement department function. This includes training, administration~~  
5 ~~meetings, fire, EMS or law-enforcement incidents, service calls, apparatus, equipment or station~~  
6 ~~maintenance, fundraisers and travel to or from such functions.~~

7 ~~(d) Travel includes riding upon or in any apparatus or vehicle which is owned or used by the~~  
8 ~~fire, EMS or law-enforcement department, or any other vehicle going to or directly returning from~~  
9 ~~a firefighter's home, place of business or other place where he or she shall have been prior to~~  
10 ~~participating in a fire, EMS or law-enforcement department function or upon the authorization of~~  
11 ~~the chief of the department, agency head or other person in charge.~~

12 ~~(e) Certification shall include the name of the certified fire, EMS or law-enforcement~~  
13 ~~program, the name of the deceased firefighter, EMS or law-enforcement provider, the name and~~  
14 ~~address of the beneficiary, any documentation designating a beneficiary or beneficiaries and setting~~  
15 ~~forth the circumstances that qualify the deceased individual for death benefits under this act. Upon~~  
16 ~~receipt of the certification from the certified fire, EMS or law-enforcement program, the state shall,~~  
17 ~~from moneys from the State Treasury, General Fund, pay to the certified fire, EMS or law-~~  
18 ~~enforcement program the sum of \$50,000 in the name of the beneficiary of the death benefit. Within~~  
19 ~~five days of receipt of this sum from the state, the fire, EMS or law-enforcement program certified~~  
20 ~~by the state shall pay the sum as a benefit to the surviving spouse or designated beneficiary. If there~~  
21 ~~is no surviving spouse or designated beneficiary, then to the minor children of the firefighter, EMS~~

1 ~~or law-enforcement provider killed in the performance of duty. When no spouse, designated~~  
2 ~~beneficiary, or minor children survive, the benefit shall be paid to the parent or parents of the~~  
3 ~~firefighter, EMS or law-enforcement provider. It is the responsibility of the certified fire or EMS~~  
4 ~~program to document the surviving spouse or beneficiary for purposes of reporting to the Governor's~~  
5 ~~office.~~

6 (f) ~~Any death ruled by a physician to be a result of an injury sustained during any of the above~~  
7 ~~mentioned performance of fire department, EMS or law-enforcement duties will be eligible for this~~  
8 ~~benefit, even if this death occurs at a later time.~~

9 (g) ~~Those individuals who are covered by this article are eligible for only one death benefit~~  
10 ~~payment.~~

11 (h) ~~Every department or agency head employing persons to which this article applies shall~~  
12 ~~provide notice of the benefit provided hereby to such employees and encourage covered employees~~  
13 ~~to provide a written designation of beneficiary to be maintained in the employee's personnel file.~~

14 (a) For purposes of this article:

15 (1) Killed in the line of duty means the death of a public safety officer occurring in the  
16 performance of his or her official duties as a result of an incident, accident, or violence causing death  
17 or injuries which are the direct and proximate cause of death.

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

20 (3) Public safety officer means a firefighter, emergency medical services provider or  
21 law-enforcement personnel employed by or providing volunteer services to any fire, emergency

1 medical services, or law-enforcement program certified by the State of West Virginia.

2 (b) In the event a public safety officer is killed in the line of duty, a claim may be submitted  
3 to the office for determination of eligibility for the survivor benefit provided under this article. If  
4 the claim is determined to be eligible, a total sum of not more than \$50,000 shall be paid to the  
5 designated beneficiary or beneficiaries of such public safety officer, as provided in this section:  
6 Provided, That such sum shall be reduced by any amounts received for the payment of funeral  
7 expenses pursuant to article eleven, chapter fifteen of this code.

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

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

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

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

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

17 (iv) The documentation set forth in subsection (e) of this section evidencing that the  
18 designated beneficiary is or beneficiaries are the eligible recipient or recipients, respectively, of the  
19 survivor benefit; and

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

1       (3) Upon receipt of the certified request, the office shall review the request and make a  
2 determination of the eligibility of the designated beneficiary or beneficiaries of the deceased public  
3 safety officer for the survivor benefit. If it is determined that the claim is eligible, the office shall  
4 pay to the fire, emergency medical services, or law-enforcement program the total sum of not more  
5 than \$50,000 in the name of the designated beneficiary or beneficiaries of the survivor benefit:  
6 Provided, That such sum shall be reduced by any amounts received for the payment of funeral  
7 expenses pursuant to article eleven, chapter fifteen of this code. Within fourteen calendar days of  
8 receipt of such sum, the fire, emergency medical services, or law-enforcement program shall pay the  
9 sum as a benefit to the designated beneficiary or beneficiaries.

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

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

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

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

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

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

7           (4) A preexisting medical condition of the public safety officer was a substantial contributing  
8 factor in the death or injury resulting in death.

9           (5) 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 fund.

15           (h) Determinations of eligibility for the survivor benefit made by the office are final and this  
16 article does not give any person a right of action against the State of West Virginia in any court for  
17 the recovery of compensation authorized by this article.

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.

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