

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

Senate Bill 459

BY SENATORS NELSON, AZINGER, CLEMENTS, KARNES,

LINDSAY, PLYMALE, AND TRUMP

[Originating in the Committee on Pensions; reported

on February 25, 2021]

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

12 (2) Any former member of any such department who is on a disability pension pursuant to
13 §8-22-24 of this code if prior to July 1, 1981, ~~under section 24 of this article, or pursuant to §8-~~
14 22-23a and §8-22-24 of this code if after June 30, 1981, ~~under §8-22-23a and §8-22-24 of this~~

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

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

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

65 (c) If a member dies without leaving a spouse, dependent child or children, or dependent
66 father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six

67 percent interest shall be refunded to the member's named beneficiary or, if no beneficiary has
68 been named, to the member's estate to the extent that the contributions plus interest exceed any
69 disability or retirement benefits that the member may have received before the member's death.

70 (d) ~~The provisions of this~~ This section shall not be construed as creating or establishing
71 any contractual or vested rights in favor of any individual who may be or become qualified as a
72 beneficiary of the death benefits authorized to be made pursuant to this section. ~~All the provisions~~
73 ~~of this~~ This section and benefits provided pursuant to this section are expressly subject to
74 subsequent legislative enactments as may provide for any change, modification, or elimination of
75 the beneficiaries or benefits specified herein.

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

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

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