

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 2438**

**FISCAL  
NOTE**

BY DELEGATE HARTMAN

[Introduced January 15, 2019; Referred  
to the Committee on Agriculture and Natural  
Resources then Finance.]

1 A BILL to amend and reenact §5H-1-1, §5H-1-2, and §5H-1-3 of the Code of West Virginia, 1931  
 2 as amended, all relating generally to survivor benefits for emergency response providers;  
 3 changing the name of the West Virginia Fire and EMS Survivor Benefit Act to the “West  
 4 Virginia Emergency Responders Survivor Benefit Act”; making Division of Forestry  
 5 personnel who die as a proximate result of their participation in wildland fire fighting,  
 6 emergency response, or disaster response operations eligible for survivor benefits;  
 7 defining terms; making technical changes; and reorganizing language in the act for clarity.

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

**ARTICLE 1. WEST VIRGINIA FIRE AND EMS EMERGENCY RESPONDERS  
 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~~ West Virginia Emergency Responders 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 of firefighters, EMS personnel, and  
 5 law-enforcement personnel, and Division of Forestry personnel killed in the performance of their  
 6 emergency response duties.

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

1 ~~(a) In the event a firefighter, EMS, or law-enforcement provider dies as a proximate result~~  
 2 ~~of the performance of, his or her duties, the department chief, within 30 days from the date of~~  
 3 ~~death shall submit certification of the death to the Governor’s Office.~~

4 ~~(b) This act includes both paid and volunteer fire, EMS, and law-enforcement personnel~~  
 5 ~~acting in the performance of his or her duties of any fire, EMS, or law-enforcement department~~  
 6 ~~certified by the State of West Virginia.~~

7 ~~(c) A firefighter, EMS, or law-enforcement provider is considered to be acting in the~~

8 ~~performance of his or her duties for the purposes of this act when he or she is participating in any~~  
9 ~~role of a fire, EMS, or law-enforcement department function. This includes training, administration~~  
10 ~~meetings, fire, EMS, or law-enforcement incidents, service calls, apparatus, equipment or station~~  
11 ~~maintenance, fundraisers, and travel to or from such functions.~~

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

17 (a) Terms.-- For the purposes of this article, the following terms have the following  
18 meanings:

19 (1) "Emergency responder" means a paid or volunteer firefighter, EMS personnel, law-  
20 enforcement agency personnel, or Division of Forestry personnel.

21 (2) "Emergency response duties" means:

22 (A) For a firefighter, EMS provider, or law-enforcement personnel, participation in any role  
23 of a fire department, EMS agency, or law-enforcement department function, including, but not  
24 limited to, training functions; administrative meetings; fire department, EMS agency, or law-  
25 enforcement incidents or service calls; apparatus, equipment, or station maintenance; and  
26 fundraisers, including travel to or from such functions; and

27 (B) For a Division of Forestry employee, participation in Division of Forestry wildland fire  
28 fighting, emergency, or disaster response operations, including, but not limited to, travel to and  
29 from the locations of wildland fires, emergencies, or disasters.

30 (3) "Law-enforcement agency" means any duly authorized state, county, or municipal  
31 organization employing one or more persons whose responsibility is the enforcement of laws of  
32 the state or any county or municipality thereof: *Provided*, That neither the Public Service  
33 Commission nor any state institution of higher education nor any resort area district is a law-

34 enforcement agency.

35 (4) "Travel" includes riding upon or in any apparatus or vehicle which is owned or used by  
36 the fire department, EMS agency, law-enforcement department, or the Division of Forestry, or any  
37 other vehicle going to or directly returning from an emergency responder's home, place of  
38 business, or other place where he or she shall have been prior to participating in a fire department  
39 function, EMS agency function, law-enforcement department function, or a Division of Forestry  
40 wildland fire fighting operation, or upon the authorization of the chief of the department, agency  
41 head, or other person in charge.

42 (b) An emergency responder who dies as a proximate result of the performance of, his or  
43 her emergency response duties is eligible for the survivor benefits established by this act.

44 ~~(e)~~ (c) Within 30 days after the death of an eligible emergency responder, the department  
45 or agency head, shall submit certification of the death to the Governor's Office. Certification of the  
46 death shall include the name of the certified fire ~~department,~~ EMS ~~agency,~~ or law-enforcement  
47 ~~program~~ ~~agency,~~ or ~~Division of Forestry program,~~ the name of the deceased ~~firefighter,~~ EMS, or  
48 ~~law-enforcement provider~~ ~~emergency responder,~~ the name or names and address of the  
49 beneficiary or beneficiaries, any documentation designating a beneficiary or beneficiaries, and  
50 ~~setting forth a description~~ of the circumstances that qualify the deceased individual for ~~death~~  
51 ~~survivor~~ benefits under this act.

52 (d) Upon receipt of the certification ~~of the death~~ from the certified fire ~~department,~~ EMS  
53 ~~agency,~~ or law-enforcement ~~program~~ ~~agency,~~ or ~~Division of Forestry program,~~ the state shall,  
54 from moneys from the State Treasury, General Fund, pay to the certified fire ~~department,~~ EMS  
55 ~~agency,~~ or law-enforcement ~~program~~ ~~department~~ the sum of \$100,000 in the name of the  
56 beneficiary or beneficiaries of the ~~emergency responder eligible for the death benefit.~~ Within five  
57 days of receipt of this sum from the state, the fire ~~department,~~ EMS ~~agency,~~ or law-enforcement  
58 ~~program~~ ~~department~~ ~~certified by the state~~ shall pay the sum as a benefit to the surviving  
59 designated beneficiary or beneficiaries. Within five days of receipt of this sum from the state, the

60 fire department, EMS agency, or law-enforcement ~~program~~ department ~~certified by the state~~ shall  
61 pay the sum as a benefit to the surviving designated beneficiary or beneficiaries. If there is no  
62 surviving designated beneficiary, then the sum shall be paid as if the decedent had designated  
63 as beneficiaries those persons who are entitled to inherit the decedent's intestate estate, in the  
64 proportions established by §42-1-3 and §42-1-3a of this code. It is the responsibility of the certified  
65 fire department, EMS agency, or law-enforcement ~~program~~ department to document the  
66 beneficiary or beneficiaries above mentioned for purposes of reporting to the Governor's Office.

67 (f) ~~(e)~~ Any death ruled by a physician to be a result of an injury sustained ~~during any of~~  
68 ~~the above mentioned performance of fire department, EMS, or law-enforcement duties~~ during  
69 performance of emergency response duties ~~will be~~ makes a deceased emergency responder  
70 eligible for this benefit, ~~even if this death occurs at a later time~~ regardless of when the death  
71 occurs.

72 (g) ~~(f)~~ Those individuals who are covered by this article are eligible The death of an eligible  
73 emergency responder qualifies his or her beneficiaries for only one state death benefit, paid  
74 pursuant to the provisions of this section, regardless of the amount.

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

79 (i) ~~(h)~~ ~~Any person making application for certification as a firefighter to which this section~~  
80 ~~applies~~ A person applying to the State Fire Marshal for certification as a firefighter shall provide a  
81 written designation of beneficiary using forms and procedures prescribed by the State Fire  
82 Marshal.

83 (j) ~~Any A person making application~~ applying to the Commissioner of the Bureau for Public  
84 Health for emergency medical services personnel certification ~~to which this section applies~~ shall

85 provide a written designation of beneficiary using forms and procedures prescribed by the  
86 commissioner of the Bureau for Public Health.

87 ~~(j) The operation of the amendments to this section enacted during the 2018 Regular~~  
88 ~~Session and 2018 First Extraordinary Session of the Legislature shall be effective retroactively to~~  
89 ~~January 1, 2018.~~

**§5H-1-3. Effective date.**

1 (a) The effective date for this act is January 1, 2007. The operation of the amendments to  
2 this article enacted during the year 2012 shall be effective retroactively to January 1, 2012.

3 (b) The operation of the amendments to this article enacted during the 2018 First  
4 Extraordinary Session of the Legislature shall be effective retroactively to January 1, 2018.

NOTE: The purpose of this bill is to include Division of Forestry employees eligible for survivor benefits as other first responders if they are killed while engaging in wildland fire fighting. This an Interim Committee bill recommended for introduction and passage by the Forest Management Review Commission.

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