

SB3392



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3392

Introduced 2/14/2014, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

820 ILCS 305/7

from Ch. 48, par. 138.7

Amends the Workers' Compensation Act. Provides that benefits accruing because of an accidental injury resulting in death shall be payable until the death of a widow or widower of a firefighter or police officer without consideration of whether the widow or widower remarries. Effective immediately.

LRB098 19697 JLS 54906 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 7 as follows:

6 (820 ILCS 305/7) (from Ch. 48, par. 138.7)

7 Sec. 7. The amount of compensation which shall be paid for
8 an accidental injury to the employee resulting in death is:

9 (a) If the employee leaves surviving a widow, widower,
10 child or children, the applicable weekly compensation rate
11 computed in accordance with subparagraph 2 of paragraph (b) of
12 Section 8, shall be payable during the life of the widow or
13 widower and if any surviving child or children shall not be
14 physically or mentally incapacitated then until the death of
15 the widow or widower or until the youngest child shall reach
16 the age of 18, whichever shall come later; provided that if
17 such child or children shall be enrolled as a full time student
18 in any accredited educational institution, the payments shall
19 continue until such child has attained the age of 25. In the
20 event any surviving child or children shall be physically or
21 mentally incapacitated, the payments shall continue for the
22 duration of such incapacity.

23 The term "child" means a child whom the deceased employee

1 left surviving, including a posthumous child, a child legally
2 adopted, a child whom the deceased employee was legally
3 obligated to support or a child to whom the deceased employee
4 stood in loco parentis. The term "children" means the plural of
5 "child".

6 The term "physically or mentally incapacitated child or
7 children" means a child or children incapable of engaging in
8 regular and substantial gainful employment.

9 In the event of the remarriage of a widow or widower, other
10 than a widow or widower of a firefighter or police officer,
11 where the decedent did not leave surviving any child or
12 children who, at the time of such remarriage, are entitled to
13 compensation benefits under this Act, the surviving spouse
14 shall be paid a lump sum equal to 2 years compensation benefits
15 and all further rights of such widow or widower shall be
16 extinguished. If the widow or widower of a firefighter or
17 police officer remarries, he or she shall continue to receive
18 benefits.

19 If the employee leaves surviving any child or children
20 under 18 years of age who at the time of death shall be
21 entitled to compensation under this paragraph (a) of this
22 Section, the weekly compensation payments herein provided for
23 such child or children shall in any event continue for a period
24 of not less than 6 years.

25 Any beneficiary entitled to compensation under this
26 paragraph (a) of this Section shall receive from the special

1 fund provided in paragraph (f) of this Section, in addition to
2 the compensation herein provided, supplemental benefits in
3 accordance with paragraph (g) of Section 8.

4 (b) If no compensation is payable under paragraph (a) of
5 this Section and the employee leaves surviving a parent or
6 parents who at the time of the accident were totally dependent
7 upon the earnings of the employee then weekly payments equal to
8 the compensation rate payable in the case where the employee
9 leaves surviving a widow or widower, shall be paid to such
10 parent or parents for the duration of their lives, and in the
11 event of the death of either, for the life of the survivor.

12 (c) If no compensation is payable under paragraphs (a) or
13 (b) of this Section and the employee leaves surviving any child
14 or children who are not entitled to compensation under the
15 foregoing paragraph (a) but who at the time of the accident
16 were nevertheless in any manner dependent upon the earnings of
17 the employee, or leaves surviving a parent or parents who at
18 the time of the accident were partially dependent upon the
19 earnings of the employee, then there shall be paid to such
20 dependent or dependents for a period of 8 years weekly
21 compensation payments at such proportion of the applicable rate
22 if the employee had left surviving a widow or widower as such
23 dependency bears to total dependency. In the event of the death
24 of any such beneficiary the share of such beneficiary shall be
25 divided equally among the surviving beneficiaries and in the
26 event of the death of the last such beneficiary all the rights

1 under this paragraph shall be extinguished.

2 (d) If no compensation is payable under paragraphs (a), (b)
3 or (c) of this Section and the employee leaves surviving any
4 grandparent, grandparents, grandchild or grandchildren or
5 collateral heirs dependent upon the employee's earnings to the
6 extent of 50% or more of total dependency, then there shall be
7 paid to such dependent or dependents for a period of 5 years
8 weekly compensation payments at such proportion of the
9 applicable rate if the employee had left surviving a widow or
10 widower as such dependency bears to total dependency. In the
11 event of the death of any such beneficiary the share of such
12 beneficiary shall be divided equally among the surviving
13 beneficiaries and in the event of the death of the last such
14 beneficiary all rights hereunder shall be extinguished.

15 (e) The compensation to be paid for accidental injury which
16 results in death, as provided in this Section, shall be paid to
17 the persons who form the basis for determining the amount of
18 compensation to be paid by the employer, the respective shares
19 to be in the proportion of their respective dependency at the
20 time of the accident on the earnings of the deceased. The
21 Commission or an Arbitrator thereof may, in its or his
22 discretion, order or award the payment to the parent or
23 grandparent of a child for the latter's support the amount of
24 compensation which but for such order or award would have been
25 paid to such child as its share of the compensation payable,
26 which order or award may be modified from time to time by the

1 Commission in its discretion with respect to the person to whom
2 shall be paid the amount of the order or award remaining unpaid
3 at the time of the modification.

4 The payments of compensation by the employer in accordance
5 with the order or award of the Commission discharges such
6 employer from all further obligation as to such compensation.

7 (f) The sum of \$8,000 for burial expenses shall be paid by
8 the employer to the widow or widower, other dependent, next of
9 kin or to the person or persons incurring the expense of
10 burial.

11 In the event the employer failed to provide necessary first
12 aid, medical, surgical or hospital service, he shall pay the
13 cost thereof to the person or persons entitled to compensation
14 under paragraphs (a), (b), (c) or (d) of this Section, or to
15 the person or persons incurring the obligation therefore, or
16 providing the same.

17 On January 15 and July 15, 1981, and on January 15 and July
18 15 of each year thereafter the employer shall within 60 days
19 pay a sum equal to $\frac{1}{8}$ of 1% of all compensation payments made
20 by him after July 1, 1980, either under this Act or the
21 Workers' Occupational Diseases Act, whether by lump sum
22 settlement or weekly compensation payments, but not including
23 hospital, surgical or rehabilitation payments, made during the
24 first 6 months and during the second 6 months respectively of
25 the fiscal year next preceding the date of the payments, into a
26 special fund which shall be designated the "Second Injury

1 Fund", of which the State Treasurer is ex-officio custodian,
2 such special fund to be held and disbursed for the purposes
3 hereinafter stated in paragraphs (f) and (g) of Section 8,
4 either upon the order of the Commission or of a competent
5 court. Said special fund shall be deposited the same as are
6 State funds and any interest accruing thereon shall be added
7 thereto every 6 months. It is subject to audit the same as
8 State funds and accounts and is protected by the General bond
9 given by the State Treasurer. It is considered always
10 appropriated for the purposes of disbursements as provided in
11 Section 8, paragraph (f), of this Act, and shall be paid out
12 and disbursed as therein provided and shall not at any time be
13 appropriated or diverted to any other use or purpose.

14 On January 15, 1991, the employer shall further pay a sum
15 equal to one half of 1% of all compensation payments made by
16 him from January 1, 1990 through June 30, 1990 either under
17 this Act or under the Workers' Occupational Diseases Act,
18 whether by lump sum settlement or weekly compensation payments,
19 but not including hospital, surgical or rehabilitation
20 payments, into an additional Special Fund which shall be
21 designated as the "Rate Adjustment Fund". On March 15, 1991,
22 the employer shall pay into the Rate Adjustment Fund a sum
23 equal to one half of 1% of all such compensation payments made
24 from July 1, 1990 through December 31, 1990. Within 60 days
25 after July 15, 1991, the employer shall pay into the Rate
26 Adjustment Fund a sum equal to one half of 1% of all such

1 compensation payments made from January 1, 1991 through June
2 30, 1991. Within 60 days after January 15 of 1992 and each
3 subsequent year through 1996, the employer shall pay into the
4 Rate Adjustment Fund a sum equal to one half of 1% of all such
5 compensation payments made in the last 6 months of the
6 preceding calendar year. Within 60 days after July 15 of 1992
7 and each subsequent year through 1995, the employer shall pay
8 into the Rate Adjustment Fund a sum equal to one half of 1% of
9 all such compensation payments made in the first 6 months of
10 the same calendar year. Within 60 days after January 15 of 1997
11 and each subsequent year through 2005, the employer shall pay
12 into the Rate Adjustment Fund a sum equal to three-fourths of
13 1% of all such compensation payments made in the last 6 months
14 of the preceding calendar year. Within 60 days after July 15 of
15 1996 and each subsequent year through 2004, the employer shall
16 pay into the Rate Adjustment Fund a sum equal to three-fourths
17 of 1% of all such compensation payments made in the first 6
18 months of the same calendar year. Within 60 days after July 15
19 of 2005, the employer shall pay into the Rate Adjustment Fund a
20 sum equal to 1% of such compensation payments made in the first
21 6 months of the same calendar year. Within 60 days after
22 January 15 of 2006 and each subsequent year, the employer shall
23 pay into the Rate Adjustment Fund a sum equal to 1.25% of such
24 compensation payments made in the last 6 months of the
25 preceding calendar year. Within 60 days after July 15 of 2006
26 and each subsequent year, the employer shall pay into the Rate

1 Adjustment Fund a sum equal to 1.25% of such compensation
2 payments made in the first 6 months of the same calendar year.
3 The administrative costs of collecting assessments from
4 employers for the Rate Adjustment Fund shall be paid from the
5 Rate Adjustment Fund. The cost of an actuarial audit of the
6 Fund shall be paid from the Rate Adjustment Fund. The State
7 Treasurer is ex officio custodian of such Special Fund and the
8 same shall be held and disbursed for the purposes hereinafter
9 stated in paragraphs (f) and (g) of Section 8 upon the order of
10 the Commission or of a competent court. The Rate Adjustment
11 Fund shall be deposited the same as are State funds and any
12 interest accruing thereon shall be added thereto every 6
13 months. It shall be subject to audit the same as State funds
14 and accounts and shall be protected by the general bond given
15 by the State Treasurer. It is considered always appropriated
16 for the purposes of disbursements as provided in paragraphs (f)
17 and (g) of Section 8 of this Act and shall be paid out and
18 disbursed as therein provided and shall not at any time be
19 appropriated or diverted to any other use or purpose. Within 5
20 days after the effective date of this amendatory Act of 1990,
21 the Comptroller and the State Treasurer shall transfer
22 \$1,000,000 from the General Revenue Fund to the Rate Adjustment
23 Fund. By February 15, 1991, the Comptroller and the State
24 Treasurer shall transfer \$1,000,000 from the Rate Adjustment
25 Fund to the General Revenue Fund. The Comptroller and Treasurer
26 are authorized to make transfers at the request of the Chairman

1 up to a total of \$19,000,000 from the Second Injury Fund, the
2 General Revenue Fund, and the Workers' Compensation Benefit
3 Trust Fund to the Rate Adjustment Fund to the extent that there
4 is insufficient money in the Rate Adjustment Fund to pay claims
5 and obligations. Amounts may be transferred from the General
6 Revenue Fund only if the funds in the Second Injury Fund or the
7 Workers' Compensation Benefit Trust Fund are insufficient to
8 pay claims and obligations of the Rate Adjustment Fund. All
9 amounts transferred from the Second Injury Fund, the General
10 Revenue Fund, and the Workers' Compensation Benefit Trust Fund
11 shall be repaid from the Rate Adjustment Fund within 270 days
12 of a transfer, together with interest at the rate earned by
13 moneys on deposit in the Fund or Funds from which the moneys
14 were transferred.

15 Upon a finding by the Commission, after reasonable notice
16 and hearing, that any employer has willfully and knowingly
17 failed to pay the proper amounts into the Second Injury Fund or
18 the Rate Adjustment Fund required by this Section or if such
19 payments are not made within the time periods prescribed by
20 this Section, the employer shall, in addition to such payments,
21 pay a penalty of 20% of the amount required to be paid or
22 \$2,500, whichever is greater, for each year or part thereof of
23 such failure to pay. This penalty shall only apply to
24 obligations of an employer to the Second Injury Fund or the
25 Rate Adjustment Fund accruing after the effective date of this
26 amendatory Act of 1989. All or part of such a penalty may be

1 waived by the Commission for good cause shown.

2 Any obligations of an employer to the Second Injury Fund
3 and Rate Adjustment Fund accruing prior to the effective date
4 of this amendatory Act of 1989 shall be paid in full by such
5 employer within 5 years of the effective date of this
6 amendatory Act of 1989, with at least one-fifth of such
7 obligation to be paid during each year following the effective
8 date of this amendatory Act of 1989. If the Commission finds,
9 following reasonable notice and hearing, that an employer has
10 failed to make timely payment of any obligation accruing under
11 the preceding sentence, the employer shall, in addition to all
12 other payments required by this Section, be liable for a
13 penalty equal to 20% of the overdue obligation or \$2,500,
14 whichever is greater, for each year or part thereof that
15 obligation is overdue. All or part of such a penalty may be
16 waived by the Commission for good cause shown.

17 The Chairman of the Illinois Workers' Compensation
18 Commission shall, annually, furnish to the Director of the
19 Department of Insurance a list of the amounts paid into the
20 Second Injury Fund and the Rate Adjustment Fund by each
21 insurance company on behalf of their insured employers. The
22 Director shall verify to the Chairman that the amounts paid by
23 each insurance company are accurate as best as the Director can
24 determine from the records available to the Director. The
25 Chairman shall verify that the amounts paid by each
26 self-insurer are accurate as best as the Chairman can determine

1 from records available to the Chairman. The Chairman may
2 require each self-insurer to provide information concerning
3 the total compensation payments made upon which contributions
4 to the Second Injury Fund and the Rate Adjustment Fund are
5 predicated and any additional information establishing that
6 such payments have been made into these funds. Any deficiencies
7 in payments noted by the Director or Chairman shall be subject
8 to the penalty provisions of this Act.

9 The State Treasurer, or his duly authorized
10 representative, shall be named as a party to all proceedings in
11 all cases involving claim for the loss of, or the permanent and
12 complete loss of the use of one eye, one foot, one leg, one arm
13 or one hand.

14 The State Treasurer or his duly authorized agent shall have
15 the same rights as any other party to the proceeding, including
16 the right to petition for review of any award. The reasonable
17 expenses of litigation, such as medical examinations,
18 testimony, and transcript of evidence, incurred by the State
19 Treasurer or his duly authorized representative, shall be borne
20 by the Second Injury Fund.

21 If the award is not paid within 30 days after the date the
22 award has become final, the Commission shall proceed to take
23 judgment thereon in its own name as is provided for other
24 awards by paragraph (g) of Section 19 of this Act and take the
25 necessary steps to collect the award.

26 Any person, corporation or organization who has paid or

1 become liable for the payment of burial expenses of the
2 deceased employee may in his or its own name institute
3 proceedings before the Commission for the collection thereof.

4 For the purpose of administration, receipts and
5 disbursements, the Special Fund provided for in paragraph (f)
6 of this Section shall be administered jointly with the Special
7 Fund provided for in Section 7, paragraph (f) of the Workers'
8 Occupational Diseases Act.

9 (g) All compensation, except for burial expenses provided
10 in this Section to be paid in case accident results in death,
11 shall be paid in installments equal to the percentage of the
12 average earnings as provided for in Section 8, paragraph (b) of
13 this Act, at the same intervals at which the wages or earnings
14 of the employees were paid. If this is not feasible, then the
15 installments shall be paid weekly. Such compensation may be
16 paid in a lump sum upon petition as provided in Section 9 of
17 this Act. However, in addition to the benefits provided by
18 Section 9 of this Act where compensation for death is payable
19 to the deceased's widow, widower or to the deceased's widow,
20 widower and one or more children, and where a partial lump sum
21 is applied for by such beneficiary or beneficiaries within 18
22 months after the deceased's death, the Commission may, in its
23 discretion, grant a partial lump sum of not to exceed 100 weeks
24 of the compensation capitalized at their present value upon the
25 basis of interest calculated at 3% per annum with annual rests,
26 upon a showing that such partial lump sum is for the best

1 interest of such beneficiary or beneficiaries.

2 (h) In case the injured employee is under 16 years of age
3 at the time of the accident and is illegally employed, the
4 amount of compensation payable under paragraphs (a), (b), (c),
5 (d) and (f) of this Section shall be increased 50%.

6 Nothing herein contained repeals or amends the provisions
7 of the Child Labor Law relating to the employment of minors
8 under the age of 16 years.

9 However, where an employer has on file an employment
10 certificate issued pursuant to the Child Labor Law or work
11 permit issued pursuant to the Federal Fair Labor Standards Act,
12 as amended, or a birth certificate properly and duly issued,
13 such certificate, permit or birth certificate is conclusive
14 evidence as to the age of the injured minor employee for the
15 purposes of this Section only.

16 (i) Whenever the dependents of a deceased employee are
17 aliens not residing in the United States, Mexico or Canada, the
18 amount of compensation payable is limited to the beneficiaries
19 described in paragraphs (a), (b) and (c) of this Section and is
20 50% of the compensation provided in paragraphs (a), (b) and (c)
21 of this Section, except as otherwise provided by treaty.

22 In a case where any of the persons who would be entitled to
23 compensation is living at any place outside of the United
24 States, then payment shall be made to the personal
25 representative of the deceased employee. The distribution by
26 such personal representative to the persons entitled shall be

1 made to such persons and in such manner as the Commission
2 orders.

3 (Source: P.A. 93-721, eff. 1-1-05; 94-277, eff. 7-20-05;
4 94-695, eff. 11-16-05.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.