

CHAPTER 132: DEATH BENEFITS--DEATH AND BURIAL BENEFITS
28 TAC §132.7

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes an amendment to §132.7, Duration of Death Benefits for Eligible Spouse. The purpose of this amendment is to align the rule with Labor Code §408.183, as amended by House Bill (HB) 2503, 86th Legislature, Regular Session (2019), effective September 1, 2019. The Legislature amended §408.183 to expand eligibility of spouses who may receive death benefits for life, regardless of remarriage, to spouses of peace officers as described in Texas Code of Criminal Procedures Article 2.12 and intrastate fire mutual aid system team members or regional incident management team members.

EXPLANATION. Amended §132.7(f) deletes the words "eligible spouses" in §132.7(f)(1)(B) and adds the words "or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F)." The amendment also adds the words in §132.7(f)(1) "of first responders, as defined by Labor Code §504.055" to include those eligible spouses. New subsection §132.7(f)(2) is added, which states the amendment applies to "Eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019."

The amendment does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Hearings, Kerry Sullivan, has determined that, for each year of the first five years the amended rules will be in effect, there will be no measurable fiscal impact to state and local governments as a result of enforcement or administration of the amendment. The fiscal note for HB 2503 states, "based on information provided by the Texas Department of Insurance, State Office of Risk Management, Commission on Law Enforcement, The University of Texas System Administration, and Texas A&M University System Administration, this analysis assumes that the duties and responsibilities associated with implementing the provisions of this bill could be accomplished by utilizing existing resources." There will be no measurable effect on local employment or the local economy because of the amendment.

The amendment to §132.7 reflects the statutory changes HB 2503 made to Labor Code §408.183 and does not impose any additional requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Deputy Commissioner Sullivan expects that it will have the public benefit of aligning the division's rules regarding the duration of death benefits with the statutory changes made by HB 2503 and continued death benefits for remarried eligible spouses under amended §132.7(f).

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Deputy Commissioner Sullivan anticipates that, for each of the first five years the proposed amendment is in effect, there will be indeterminate costs to those required to comply with the proposal. Any costs resulting from the proposed amendment would be a direct result of the statutory change.

Government Code §2001.0045 requires a state agency to offset any costs on regulated individuals associated with a proposed rule. However, DWC has determined that this proposed rule will impose indeterminate costs on system participants as a result of the statutory change. Under §2001.045(c)(9), this requirement does not apply to a rule necessary to implement legislation.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), if a proposed rule may have an adverse economic effect on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. DWC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses or rural communities because it simply implements statutory requirements. Therefore, DWC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to DWC;
- will not require an increase or decrease in fees paid to DWC;
- will not create a new regulation;

- will not limit or repeal an existing regulation; or
- will not positively or adversely affect the Texas economy.

The proposed amendment will align the division's rules regarding the duration of death benefits with the statutory changes made by HB 2503. The proposed amendment will provide that eligible spouses of deceased first responders, as defined in Labor Code §504.055, who remarried on or after September 1, 2017, as well as eligible spouses who remarried between September 1, 2015, and August 31, 2017, and their claim was based on a compensable injury that occurred on or after September 1, 2015, will remain eligible for death benefits. Eligible spouses of individuals, as defined in Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019, will remain eligible for death benefits.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you would like to comment on the proposal or request a public hearing, you must submit your comments or hearing request by 5 p.m., Central time, on Monday, July 20, 2020. Email your comments or hearing requests to Rulecomments@tdi.texas.gov or mail them to Cynthia Guillen, Texas Department of Insurance, Division of Workers' Compensation, DWC Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If DWC holds a hearing, DWC will consider written comments and public testimony presented at the hearing.

CHAPTER 132.

28 TAC §132.7 DEATH BENEFITS--DEATH AND BURIAL BENEFITS.

STATUTORY AUTHORITY. DWC proposes §132.7 under the following statutory authority:

Labor Code §401.011 provides general definitions of the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner will administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation will adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §408.181 provides the obligation an insurance carrier must satisfy in paying death and burial benefits.

Labor Code §408.182 provides how the insurance carrier should distribute the death benefits and defines eligible beneficiaries.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries.

Labor Code §408.184 provides for the redistribution of death benefits if necessary.

Labor Code §415.002 outlines insurance carrier administrative violations.

Labor Code §501.001 defines a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under: (i) Code of Criminal Procedure Article 2.12; or (ii) Code of Criminal Procedure Articles 14.03(d) and (g).

Government Code §615.003 lists the various eligible survivors and the applicability of Chapter 615 to eligible individuals.

TEXT.

§132.7. Duration of Death Benefits for Eligible Spouse.

(a) Except as provided in subsection (f) of this section, a spouse who is determined eligible for death benefits is entitled to receive benefits until the date of the spouse's death or until remarriage. The insurance carrier shall notify the eligible spouse of the requirements of this section within 60 days of initiating benefits to that spouse.

(b) An eligible spouse who enters into a ceremonial or informal marriage is entitled to receive a lump-sum payment of 104 weeks of death benefits.

(c) An eligible spouse shall notify the division and the insurance carrier in writing within 30 days of the date of remarriage. The notice shall include the name and social security number of the deceased employee, the date of death, the workers' compensation claim file number, and the date of remarriage.

(d) The amount of the lump-sum payment shall be calculated by multiplying the amount paid to the spouse the week prior to the remarriage by 104. If the insurance carrier paid any weekly benefits to the eligible spouse after the remarriage, the total amount of such payments shall be deducted from the amount of the commuted payment.

(e) An eligible spouse who knowingly accepts death benefits after remarriage in excess of the amount allowed by this section, and who does not notify the division or the insurance carrier of remarriage, may be subject to administrative penalties.

(f) An eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F), who died as a result of an injury in the course and scope of employment or while providing services as a volunteer. Subsections (b)-(e) of this section do not apply to an eligible spouse under this subsection. This subsection applies to:

(1) Eligible [eligible] spouses of first responders, as defined by Labor Code §504.055:

(A) who remarry on or after September 1, 2017; and
(B) [~~(2) eligible spouses~~] who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015; and[.]

(2) Eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on June 3, 2020.



Kara Mace
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Texas Department of Insurance,
Division of Workers' Compensation