

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132: DEATH BENEFITS--DEATH AND BURIAL PAYMENTS

28 TAC §132.7 and §132.13

1. INTRODUCTION.

The Texas Department of Insurance, Division of Workers' Compensation (division) proposes amendments to §132.7, concerning duration of death benefits for eligible spouse and, §132.13, concerning burial benefits. The purpose of amended §132.7 is to align existing §132.7 with House Bill (HB) 1094, 84th Legislature, Regular Session (2015). HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. The purpose of amended §132.13 is to align existing §132.13 with Senate Bill (SB) 653, 84th Legislature, Regular Session (2015). SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000. An informal working draft of the rule text was published on the division's website on August 12, 2015, and the division received six comments.

The division also proposes non-substantive changes to amended §132.7 and §132.13 including adding the word "insurance" before the word "carrier" in §132.7(a) and (c) - (e), replacing "commission" with "division" in §132.7(c) and (e) and §132.13(d), replacing "rule" with "section" in §132.7(e), and replacing "common law" with "informal" in §132.7(b).

Amended §132.7. Amended §132.7(a) adds the word “insurance” before the word “carrier” to conform to current agency style. Amended §132.7(a) also exempts subsection (f) from the requirements in §132.7(a). The purpose of amended §132.7(a) is to align existing §132.7 with HB 1094, which amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits.

Amended §132.7(b) replaces “common law” with “informal” to align with Family Code §2.401. The division clarifies that the alignment with Family Code §2.401 will not change any requirements in existing §132.7. HB 53, 61st Legislature, Regular Session (1969) codified common law marriage into statute as informal marriage under Family Code §1.91. The purpose of the non-substantive amendment is solely to conform §132.7(b) with current statutory language.

Amended §132.7(c) replaces “commission” with “division” and adds the word “insurance” before the word “carrier” to conform to current agency style.

Amended §132.7(d) adds the word “insurance” before the word “carrier” to conform to current agency style.

Amended §132.7(e) replaces “commission” with “division,” adds the word “insurance” before the word “carrier,” and replaces “rule” with “section” in §132.7(e) to conform to current agency style. Amended §132.7(e) deletes the reference to Texas Workers’ Compensation Act §10.04 because HB 752, 73rd Legislature, Regular Session (1993) repealed Vernon’s Texas Civil Statutes Article 8308 §10.04, and re-adopted as the Labor Code.

New §132.7(f) states that 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, who suffered death in the course and scope of employment or while providing services as a volunteer. Amended §132.7(b) - (e) do not apply to an eligible spouse under new §132.7(f). New §132.7(f) applies to claims based on

a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.7(f) is to align existing §132.7 with HB 1094. HB 1094 amended Labor Code §408.183 to allow eligible spouses of first responders to remarry and remain eligible for death benefits for life, if the first responder suffered death in the course and scope of employment or while providing services as a volunteer. HB 1094 applies to claims based on a compensable injury that occurs on or after September 1, 2015.

The division clarifies that new §132.7(f) 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. The division also clarifies that although new §132.7(f) does not affect the redistribution of death benefits under §132.12, an eligible spouse under new §132.7(f) will remain eligible for death benefits after remarriage and the spouse's share of benefits will not be redistributed.

Amended §132.13. Amended §132.13(b)(3) modifies the effective date for the \$6,000 maximum reimbursement for burial benefits paid based on a compensable injury that occurs “on or after September 1, 1999” to “on or after September 1, 1999 and before September 1, 2015.” The purpose of amended §132.13(b)(3) is to align existing §132.13 with SB 653. SB 653 amended Labor Code §408.186 to increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000.

New §132.13(b)(4) increases the amount of maximum reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000 if the burial benefits are paid based on a compensable injury that occurs on or after September 1, 2015. The purpose of amended §132.13(b)(4) is to align existing §132.13 with SB 653, which amended Labor Code §408.186 to

increase the maximum amount of reimbursement for burial benefits payable in the workers' compensation system from \$6,000 to \$10,000.

Amended §132.13(d) replaces "commission" with "division" to conform to current agency style.

2. FISCAL NOTE.

Mr. Matthew Zurek, Deputy Commissioner for Health Care Management and System Monitoring, has determined that for each year of the first five years the amended rules will be in effect, there will be no fiscal impact to state and local governments as a result of enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy because of the proposal. The amendments to §132.7 and §132.13 reflect the statutory changes made by HB 1094 and SB 653 to Labor Code §408.183 and §408.186 and do not impose any additional requirements that would cause a fiscal impact as a result of the rules.

3. PUBLIC BENEFIT/COST NOTE.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, there are public benefits anticipated as a result of the enforcement and administration of the proposal.

Anticipated Public Benefits. Mr. Zurek has determined that, for each year of the first five years amended §132.7 and §132.13 are in effect, the public benefits anticipated because of the proposed amendments include: (1) aligning the division's rules regarding the duration of death benefits and the maximum amount of burial benefits with the statutory changes made by SB 653 and HB 1094 and (2) continuing death benefits for remarried eligible spouses under new §132.7(e).

Anticipated Costs to Comply with the Proposal. Mr. Zurek has determined that there will be no costs to persons required to comply with amended §132.7 and §132.13 because the proposed

amendments implement the requirements in the statute. Any costs resulting from the proposed amendments are a result of the statute and not as a result of this proposal.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES.

Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

In accordance with Government Code §2006.002(c), the division has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses because the proposed amendments primarily implement statutory requirements. Therefore, in accordance with Government Code §2006.002(c), a regulatory flexibility analysis is not required.

5. TAKINGS IMPACT ASSESSMENT.

The division has determined that no private real property interests are affected by this proposal and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on Monday, January 4, 2016. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to Rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation,

Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

7. STATUTORY AUTHORITY.

The amendments are proposed under Labor Code §§408.183, 408.186, 408.181, 408.182, 408.184, 401.011(13), 401.011(29), 402.021(a)(1), 402.021(b)(5), 415.002(a)(11), 415.002(a)(12), 415.002(a)(13), 402.00111, and 402.061.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries. Labor Code §408.186 outlines the requirements for burial benefits in the workers' compensation system. Labor Code §408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Labor Code §408.182 outlines the requirements for distribution of death benefits. Labor Code §408.184 outlines the requirements for redistribution of death benefits. Labor Code §401.011(13) defines death benefits. Labor Code §401.011(29) defines legal beneficiary. Labor Code 402.021(a)(1) states that one of the basic goals of the workers' compensation system is that each employee be treated with dignity and respect when injured on the job. Labor Code §402.021(b)(5) states that one of the goals of the workers' compensation system is to minimize the likelihood of disputes and resolve them promptly and fairly when identified. Labor Code §415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner. Labor Code §415.002(a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. 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 §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

8. TEXT.

§132.7. Duration of Death Benefits for Eligible Spouse.

(a) Except as provided in subsection (f) of this section, a [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 [rule] within 60 days of initiating benefits to that spouse.

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

(c) An eligible spouse shall notify the division [~~commission~~] 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 [rule], and who does not notify the division [~~commission~~] or the

insurance carrier of remarriage, may be subject to administrative penalties [under the Texas Workers' Compensation Act , §10.04].

(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, who suffered death 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 only applies to claims based on a compensable injury that occurs on or after September 1, 2015.

§132.13. Burial Benefits.

(a) When an employee has died as the result of a compensable injury, a person claiming burial benefits shall file a request for payment of burial benefits and the bills showing the amount of burial and transportation costs incurred. The request and the documentation shall be filed with the insurance carrier within 12 months of the date of death of the employee.

(b) The person who incurred liability for the costs of burial is entitled to receive the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) \$2,500--if burial benefits are paid based on a compensable injury that occurs before September 1, 1999; or

(3) \$6,000--if burial benefits are paid based on a compensable injury that occurs on or after September 1, 1999 and before September 1, 2015; or [-]

(4) \$10,000--if burial benefits are paid based on a compensable injury that occurs on or after September 1, 2015.

(c) The person who incurred liability for the costs of transporting the body of the employee is entitled to be reimbursed for the reasonable cost of transportation if the employee died away from the usual place of employment. The insurance carrier's liability for transportation costs under this

subsection shall not exceed the cost equivalent to transporting the body from the place the employee died to the employee's usual place of employment.

(d) The insurance carrier shall review each claim for burial benefits. The insurance carrier must either pay or deny the claim within seven days of the date the claim was received by the carrier. If the claim is denied, the insurance carrier must notify the person claiming burial benefits and the division [Commission] in writing of its denial and the facts supporting the denial.

10. CERTIFICATION.

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

Issued at Austin, Texas, on November _____, 2015.

X

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation