

TITLE 28. INSURANCE

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

CHAPTER 132: BENEFITS--DEATH AND BURIAL PAYMENTS

Title 28 TAC §132.7

INTRODUCTION

The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes an amendment to §132.7, concerning *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) 2119, 85th Legislature, Regular Session (2017), effective September 1, 2017. HB 2119 amended §408.183 to allow eligible spouses of first responders to remain eligible for death benefits for life after remarrying, regardless of the date on which the death of the first responder occurred, if the first responder died as a result of an injury in the course and scope of employment or while providing services as a volunteer.

Amended §132.7(f) deletes the words, "This subsection only applies to claims based on a compensable injury that occurs on or after September 1, 2015," and adds the following words and the following new language: "This subsection applies to: (1) eligible spouses who remarry on or after September 1, 2017; and (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."

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

Mr. Matthew Zurek, deputy commissioner for Health and Safety, has determined that for each year of the first five years the amended rules will be in effect, there will be a fiscal impact to state and local governments as a result of enforcement or administration of the proposal. As required under HB 2119, state and local governments will be responsible for paying death benefits to eligible spouses that remarry. However, as those costs are based both on the payment of benefits in individual cases and dependent on whether an eligible spouse remarries, DWC cannot provide an estimate of those costs. As noted in the fiscal note for HB 2119, “[d]ependent upon the number of surviving spouses of first responders made eligible under the bill for workers’ compensation death benefits, there would be an indeterminate cost to the State.” There will be no measurable effect on local employment or the local economy because of the proposal. The amendment to §132.7 reflects the statutory changes made by HB 2119 to Labor Code §408.183 and do not impose any additional requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COSTS

Mr. Zurek has determined that for each year of the first five years the sections are in effect, public benefits are anticipated as the result of continuing death benefits for remarried eligible spouses under amended §132.7(f) as required by HB 2119.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

Mr. Zurek anticipates that, for each of the first five years the amendment to §132.7 are in effect, as noted above, there will be indeterminate costs to persons required to comply with the

proposal. Any costs resulting from the proposed amendment would be a direct result of the statutory change and not a result of this proposal.

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

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Government Code §2006.002(c) provides that 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 the proposed amendment simply implements statutory requirements. Therefore, a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that this amendment will be in effect, it will neither create or eliminate a government program, require the creation of new employee positions or the elimination of existing employee positions, require an increase or decrease in future legislative appropriations, require an increase or decrease in fees paid to the division, create a new regulation, nor limit or repeal an existing regulation. As noted above, DWC has determined that the proposed amendment

will not affect the state's economy as it will neither impose a cost for compliance nor have an adverse economic effect on small businesses, micro businesses, or rural communities.

The proposed amendment will expand existing regulation and increase the number of individual's subject to the benefit of §132.7 as required by HB 2119. The proposed amendment will provide that eligible spouses of deceased first responders who remarry after September 1, 2017, or who remarried between September 1, 2015, and August 31, 2017, will remain eligible for death benefits.

TAKINGS IMPACT ASSESSMENT

DWC has determined that no private real property interests are affected by this proposal. Therefore, this proposal neither constitutes a taking of real property nor requires a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT

If you would like to comment on the proposal or request a public hearing, your comments or hearing request must be received by 5:00 p.m. CST on November 12, 2018. Written comments or hearing requests may be sent by email to Rulecomments@tdi.texas.gov or by mail to Ashley Hyten, 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, DWC will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY

The amendment is proposed under Labor Code §§402.00111, 402.061, and 408.183. Section §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Section 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. Section 408.183 outlines the duration of death benefits for legal beneficiaries. The proposed amendment supports the implementation of the Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

Other provisions of the Labor Code relating to Rule 132.7 include §§401.011(13) and (29), 415.002(a), 408.181, 408.182, and 408.184. Section 401.011(13) defines death benefits. Section 401.011(29) defines legal beneficiary. Section 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, and (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. Section 408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Section 408.182 outlines the requirements for distribution of death benefits. Section 408.184 outlines the requirements for redistribution of death benefits.

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, 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: [~~This subsection only applies to claims based on a compensable injury that occurs on or after September 1, 2015.~~]

(1) eligible spouses who remarry on or after September 1, 2017; and

(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.

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 September 21, 2018.

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation