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By: **Senators Della, DeGrange, Giannetti, and Jimeno**

Introduced and read first time: February 11, 2005

Assigned to: Rules

Re-referred to: Budget and Taxation, February 21, 2005

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 3, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public Safety Employees Killed in Performance of Duties - Death Benefits -**  
3 **Heart Attack or Stroke**

4 FOR the purpose of ~~altering the amount of the death benefit for certain individuals~~  
5 ~~who are killed or die in the performance of duties~~; providing that an individual  
6 who dies from a heart attack or stroke shall be presumed to have died in the  
7 performance of duties under certain circumstances; clarifying a certain term;  
8 and generally relating to death benefits for employees killed in the performance  
9 of duties.

10 BY repealing and reenacting, with amendments,  
11 Article - Public Safety  
12 Section 1-202  
13 Annotated Code of Maryland  
14 (2003 Volume and 2004 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Public Safety**

18 1-202.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) (i) "Child" means a natural or adopted, legitimate or illegitimate  
21 child or stepchild of the decedent.

1 (ii) "Child" includes a child or stepchild born posthumously.

2 (3) "Correctional officer" has the meaning stated in § 8-201(e)(1) of the  
3 Correctional Services Article.

4 (4) (i) "Law enforcement officer" has the meaning stated in § 3-101 of  
5 this article.

6 (ii) "Law enforcement officer" includes:

7 1. an officer who serves in a probationary status; and

8 2. an officer who serves at the pleasure of the appointing  
9 authority of a county or municipal corporation.

10 (5) "Performance of duties" includes, in the case of a volunteer or career  
11 firefighter or rescue squad member:

12 (i) actively participating in fighting a fire;

13 (ii) going to or from a fire;

14 (iii) performing other duties necessary to the operation or  
15 maintenance of the fire company;

16 (iv) actively participating in the ambulance, advanced life support,  
17 or rescue work of an advanced life support unit or a fire, ambulance, or rescue  
18 company, including going to or from an emergency or rescue; and

19 (v) providing emergency or rescue assistance, whether acting alone  
20 or at the direction of or with a fire, ambulance, or rescue company or advanced life  
21 support unit.

22 (6) "Stepchild" means a child of the surviving spouse who was living with  
23 or dependent for support on the decedent at the time of the decedent's death.

24 (b) (1) Subject to SUBSECTION (C) OF THIS SECTION AND paragraph (2) of  
25 this subsection, a death benefit of {~~\$50,000~~} ~~\$125,000~~ shall be paid to the surviving  
26 spouse, child, dependent parent, or estate of each of the following individuals who is  
27 killed or dies in the performance of duties on or after July 1, 1989:

28 (i) a law enforcement officer;

29 (ii) a correctional officer;

30 (iii) a volunteer or career firefighter or rescue squad member; or

31 (iv) a sworn member of the office of State Fire Marshal.

32 (2) For fiscal year 1999, and for each following fiscal year, the death  
33 benefit provided in the prior fiscal year shall be adjusted by any change in the

1 calendar year preceding the fiscal year in the consumer price index (all urban  
2 customers - United States city average - all items), as published by the United States  
3 Bureau of Labor Statistics.

4 (3) A death benefit under this subsection is in addition to:

5 (i) any workers' compensation benefits;

6 (ii) the proceeds of any form of life insurance, regardless of who  
7 paid the premiums on the insurance; and

8 (iii) the funeral benefit provided under subsection [(c)] (D) of this  
9 section.

10 (c) (1) WHENEVER AN INDIVIDUAL IDENTIFIED IN SUBSECTION (B)(1)(I)  
11 THROUGH (IV) OF THIS SECTION DIES AS THE DIRECT AND PROXIMATE RESULT OF A  
12 HEART ATTACK OR STROKE, THE INDIVIDUAL SHALL BE PRESUMED TO HAVE DIED  
13 AS A DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED IN THE  
14 PERFORMANCE OF DUTIES IF:

15 (I) THE INDIVIDUAL, WHILE ON DUTY:

16 1. ENGAGED IN A SITUATION THAT INVOLVED NONROUTINE  
17 STRESSFUL OR STRENUOUS PHYSICAL LAW ENFORCEMENT, FIRE SUPPRESSION,  
18 RESCUE, HAZARDOUS MATERIAL RESPONSE, EMERGENCY MEDICAL SERVICES,  
19 PRISON SECURITY, DISASTER RELIEF, OR OTHER EMERGENCY RESPONSE ACTIVITY;  
20 OR

21 2. PARTICIPATED IN A TRAINING EXERCISE THAT INVOLVED  
22 NONROUTINE STRESSFUL OR STRENUOUS PHYSICAL ACTIVITY;

23 (II) THE INDIVIDUAL DIED AS A RESULT OF A HEART ATTACK OR  
24 STROKE THAT THE INDIVIDUAL SUFFERED:

25 1. WHILE ENGAGING OR PARTICIPATING IN AN ACTIVITY  
26 DESCRIBED IN ITEM (I)1 OR 2 OF THIS PARAGRAPH;

27 2. WHILE STILL ON DUTY AFTER ENGAGING OR  
28 PARTICIPATING IN AN ACTIVITY DESCRIBED IN ITEM (I)1 OR 2 OF THIS PARAGRAPH;  
29 OR

30 3. NOT LATER THAN 24 HOURS AFTER ENGAGING OR  
31 PARTICIPATING IN AN ACTIVITY DESCRIBED IN ITEM (I)1 OR 2 OF THIS PARAGRAPH;  
32 AND

33 (III) THE PRESUMPTION IS NOT OVERCOME BY COMPETENT  
34 MEDICAL EVIDENCE TO THE CONTRARY.

1 (2) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION,  
2 NONROUTINE STRESSFUL OR STRENUOUS PHYSICAL ACTIVITY DOES NOT INCLUDE  
3 ACTIONS OF A CLERICAL, ADMINISTRATIVE, OR NONMANUAL NATURE.

4 (D) (1) Reasonable funeral expenses, not exceeding \$10,000, shall be paid to  
5 the surviving spouse, child, parent, or estate of each of the following individuals who  
6 is killed or dies in the performance of duties:

7 (i) a law enforcement officer;

8 (ii) a correctional officer;

9 (iii) a volunteer or career firefighter or rescue squad member; or

10 (iv) a sworn member of the office of State Fire Marshal.

11 (2) The funeral benefit under this subsection shall be reduced by the  
12 amount of any related workers' compensation benefits paid under § 9-689 of the  
13 Labor and Employment Article.

14 [(d)] (E) (1) The Secretary of State shall issue a State flag to the family of a  
15 firefighter, policeman, or sworn member of the office of State Fire Marshal who is  
16 killed in the performance of duty.

17 (2) The flag shall be presented to the family of the deceased by the State  
18 Senator of the legislative district in which the deceased resided or served.

19 [(e)] (F) On a case-by-case basis, the Secretary of Public Safety and  
20 Correctional Services may award a death benefit under this section if:

21 (1) the decedent's death was caused by the decedent's intentional  
22 misconduct;

23 (2) the decedent intended to bring about the decedent's death; or

24 (3) the decedent's voluntary intoxication was the proximate cause of the  
25 decedent's death.

26 [(f)] (G) If the Secretary of Public Safety and Correctional Services  
27 determines that the benefits under this section are to be paid, the benefits shall be  
28 paid:

29 (1) to the decedent's surviving spouse;

30 (2) if no individual is eligible under item (1) of this subsection, to each  
31 surviving child of the decedent in equal shares;

32 (3) (i) for a death benefit under subsection (b) of this section, if no  
33 individual is eligible under item (1) or (2) of this subsection, to the decedent's  
34 surviving parent, if the parent was a dependent as defined in § 152 of the Internal  
35 Revenue Code; or

1                   (ii)       for any other benefit under this section, if no individual is  
2 eligible under item (1) or (2) of this subsection, to the decedent's surviving parent; or

3                   (4)       if no individual is eligible under item (1), (2), or (3) of this subsection,  
4 to the decedent's estate.

5       [(g)]       (H)       Payments under this section shall be made out of money that the  
6 Governor includes for that purpose in the State budget.

7       [(h)]       (I)       A person aggrieved by a final decision of the Secretary of Public  
8 Safety and Correctional Services under this section may seek judicial review as  
9 provided for review of final decisions in Title 10, Subtitle 2 of the State Government  
10 Article.

11       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 July 1, 2005.