DOUGLAS F. GANSLER
Attorney General

Katherine Winfree
Chief Deputy Attorney General

John B. Howard, Jr.
Deputy Attorney General

ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

Sandra Benson Brantley
Bonnie A. Kirkland
Kathryn M. Rowe
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 23, 2007

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 752 and House Bill 1117

Dear Governor O'Malley:

We have reviewed Senate Bill 752 and House Bill 1117, identical bills entitled "Workers' Compensation - Benefits for Dependants," for constitutionality and legal sufficiency. While we approve the bills, it is our view that the title is close to violating the title requirements of Maryland Constitution Article III, § 29. As a result, we recommend that the bill be included in next year's curative bill.

Senate Bill 752 and House Bill 1117 were apparently introduced in response to the holding in *Johnson v. City of Baltimore*, 387 Md. 1 (2005) where the Court of Appeals held that two women entitled to benefits under Labor and Employment Article ("LE") § 9-503 as a result of the deaths of their firefighter husbands were subject to the set off provisions of LE § 9-610, and thus could collect Workers' Compensation benefits only to the extent that the Workers' Compensation benefit amount exceeds the amount of the retirement benefit. Employees eligible for benefits under § 9-503 are not subject to the set off provision, but their weekly benefits are limited to the amount of their weekly salary. The bill does not alter the amount of benefits to be awarded to dependents, which is set by the continuation provisions relating to the particular benefit in question if the employee dies of an unrelated cause, LE §§ 9-632, 9-640 and 9-646, or under LE § 9-678 if the employee dies of the compensable injury or illness. This amount may or may not be the same as that received by the employee at the time of death. What the bill does is permit dependents to receive the full amount of the award even if they are also receiving benefits under the employee's retirement system.

Maryland Constitution Article III, § 29 provides, in relevant part, that "every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." Generally, this provision requires that the title "should not only fairly indicate the general subject

of the Act, but should be sufficiently comprehensive in its scope to cover, to a reasonable extent, all its provisions and must not be misleading by what it says or omits to say." *Somerset County v. Pocomoke Bridge Co.*, 109 Md. 1 (1908).

The short title to Senate Bill 752 and House Bill 1117 states that it is an act concerning "Workers' Compensation - Benefits for Dependents." The remainder of the title states that the bill is:

> FOR the purpose of clarifying that surviving dependents of certain individuals are eligible to receive the same workers' compensation benefits as the individual received at the time of death; and generally relating to Workers' Compensation benefits for dependents.

It is our view that the provisions of Senate Bill 752 and House Bill 1117 are adequately described by the provisions of the short title and the generally relating clause. However, the other sentence of the title could be read to indicate that a dependent would in all cases receive the same benefit amount as the deceased employee, rather than simply having the same protection from set off under § 9-610 as is available to employees under § 9-503. To that extent it could be argued that the title is affirmatively misleading. However, since the bill does in fact make the pay out of benefits to dependents more like that available to the employee, it is our view that the title is not clearly misleading and that the inaccurate provision can be disregarded as surplusage. *Leonardo v. County Commissioners*, 214 Md. 287, *cert. denied* 355 U.S. 906 (1957). However, we do recommend that the bill be included in next year's curative bill.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/KMR/kmr

cc: Joseph Bryce
Secretary of State
Karl Aro
The Honorable Nathaniel Exum
The Honorable Ruth M. Kirk

KMR/kmr

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