

CHAPTER 519

(House Bill 787)

AN ACT concerning

Emergency Responders – Death Benefits and Funeral Expenses

FOR the purpose of providing that certain individuals employed as emergency responders for the Department of the Environment are eligible for certain death benefits and funeral expenses; defining certain terms; requiring the Department of the Environment to place in reserve each fiscal year a certain amount to pay a certain death benefit under certain circumstances; and generally relating to benefits for emergency responders for the Department of the Environment.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 1–202
Annotated Code of Maryland
(2003 Volume and 2008 Supplement)

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

Article – Public Safety

1–202.

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

(2) (i) “Child” means a natural or adopted, legitimate or illegitimate child or stepchild of the decedent.

(ii) “Child” includes a child or stepchild born posthumously.

(3) “Correctional officer” has the meaning stated in § 8–201(e)(1) of the Correctional Services Article.

(4) **“HAZARDOUS MATERIAL” MEANS ANY SUBSTANCE REGULATED AS A HAZARDOUS MATERIAL UNDER TITLE 49 OF THE CODE OF FEDERAL REGULATIONS.**

(5) **“HAZARDOUS MATERIAL ~~RESPONDER~~ RESPONSE TEAM EMPLOYEE” MEANS ~~ANY INDIVIDUAL EMPLOYED BY THE STATE OR A LOCAL GOVERNMENT AGENCY WHOSE PRIMARY DUTIES DIRECTLY INVOLVE~~**

HAZARDOUS MATERIALS AN EMPLOYEE OF THE DEPARTMENT OF THE ENVIRONMENT WHO IS ON CALL 24 HOURS A DAY TO PROVIDE EMERGENCY RESPONSE TO A DISCHARGE OF OIL OR A RELEASE OF HAZARDOUS MATERIAL OR OTHER EMERGENCY RESPONSE ACTIVITY.

[(4)] (6) (i) “Law enforcement officer” has the meaning stated in § 3–101 of this article.

(ii) “Law enforcement officer” includes:

1. an officer who serves in a probationary status; and
2. an officer who serves at the pleasure of the appointing authority of a county or municipal corporation.

[(5)] (7) “Performance of duties” includes, in the case of a volunteer or career firefighter, public safety aviation employee, [or] rescue squad member, **OR HAZARDOUS MATERIALS RESPONDER, OR EMPLOYEE OF THE HARFORD COUNTY EMERGENCY MEDICAL SERVICES FOUNDATION MATERIAL RESPONSE TEAM EMPLOYEE:**

- (i) actively participating in fighting a fire;
- (ii) going to or from a fire;
- (iii) performing other duties necessary to the operation or maintenance of the fire company;
- (iv) actively participating in the ambulance, advanced life support, or rescue work of an advanced life support unit or a fire, ambulance, or rescue company, including going to or from an emergency or rescue;
- (v) providing emergency or rescue assistance, whether acting alone or at the direction of or with a fire, ambulance, or rescue company or advanced life support unit; [and]
- (vi) actively participating in flight operations as a crew member in a rotary or fixed wing aircraft; **AND**

(VII) PERFORMING DUTIES DIRECTLY INVOLVING HAZARDOUS MATERIALS PROVIDING EMERGENCY RESPONSE TO A DISCHARGE OF OIL OR A RELEASE OF HAZARDOUS MATERIAL OR OTHER EMERGENCY RESPONSE ACTIVITY.

[(6)] (8) “Public safety aviation employee” includes a pilot and aviation maintenance technician employed by the State.

[(7)] (9) “Stepchild” means a child of the surviving spouse who was living with or dependent for support on the decedent at the time of the decedent’s death.

(a-1) For purposes of this section, an individual served in the Afghanistan or Iraq conflict if the individual was a member of the uniform services of the United States who served in:

(1) Afghanistan or contiguous air space, as defined in federal regulations, on or after October 24, 2001, and before a terminal date to be prescribed by the United States Secretary of Defense; or

(2) Iraq or contiguous waters or air space, as defined in federal regulations, on or after March 19, 2003, and before a terminal date to be prescribed by the United States Secretary of Defense.

(b) (1) Subject to subsection (c) of this section and paragraph (2) of this subsection, a death benefit of \$125,000 shall be paid to the surviving spouse, child, dependent parent, or estate of each of the following individuals who is killed or dies in the performance of duties on or after January 1, 2006:

(i) a law enforcement officer;

(ii) a correctional officer;

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

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

(v) a public safety aviation employee; [or]

(vi) a Maryland resident who was a member of the uniform services of the United States serving in the Afghanistan or Iraq conflict; **OR**

(VII) A HAZARDOUS MATERIAL RESPONDER; OR

~~**(VIII) AN EMPLOYEE OF THE HARFORD COUNTY EMERGENCY MEDICAL SERVICES FOUNDATION RESPONSE TEAM EMPLOYEE.**~~

(2) For fiscal year 2009, and for each following fiscal year, the death benefit provided in the prior fiscal year shall be adjusted by any change in the calendar year preceding the fiscal year in the Consumer Price Index (all urban

customers – United States city average – all items), as published by the United States Bureau of Labor Statistics.

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

(i) any workers' compensation benefits;

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

(iii) the funeral benefit provided under subsection (d) of this section.

(c) (1) Whenever an individual identified in subsection (b)(1)(i) through (v) **AND (VII)** of this section dies as the direct and proximate result of a heart attack or stroke, the individual shall be presumed to have died as a direct and proximate result of a personal injury sustained in the performance of duties if:

(i) the individual, while on duty:

1. engaged in a situation that involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, **RESPONSE TO A DISCHARGE OF OIL OR A RELEASE OF hazardous material** ~~response~~, emergency medical services, prison security, disaster relief, flight operations as a crew member in a rotary or fixed wing aircraft, or other emergency response activity; or

2. participated in a training exercise that involved nonroutine stressful or strenuous physical activity;

(ii) the individual died as a result of a heart attack or stroke that the individual suffered:

1. while engaging or participating in an activity described in item (i)1 or 2 of this paragraph;

2. while still on duty after engaging or participating in an activity described in item (i)1 or 2 of this paragraph; or

3. not later than 24 hours after engaging or participating in an activity described in item (i)1 or 2 of this paragraph; and

(iii) the presumption is not overcome by competent medical evidence to the contrary.

(2) For purposes of paragraph (1) of this subsection, nonroutine stressful or strenuous physical activity does not include actions of a clerical, administrative, or nonmanual nature.

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

- (i) a law enforcement officer;
- (ii) a correctional officer;
- (iii) a volunteer or career firefighter or rescue squad member;
- (iv) a public safety aviation employee; [or]
- (v) a sworn member of the office of State Fire Marshal; **OR**

(VI) A HAZARDOUS MATERIAL RESPONDER; OR

~~**(VII) AN EMPLOYEE OF THE HARFORD COUNTY EMERGENCY MEDICAL SERVICES FOUNDATION RESPONSE TEAM EMPLOYEE.**~~

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

(e) (1) The Secretary of State shall issue a State flag to the family of a firefighter, policeman, member of the military, or sworn member of the office of State Fire Marshal who is killed in the performance of duty.

(2) (i) Except when the deceased is a member of the military, the flag shall be presented to the family of the deceased by the State Senator of the legislative district in which the deceased resided or served.

(ii) When the deceased is a member of the military, the flag shall be presented to the family of the deceased by the Department of Veterans Affairs.

(f) On a case-by-case basis, the Secretary of Public Safety and Correctional Services may award a death benefit under this section if:

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

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

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

(g) If the Secretary of Public Safety and Correctional Services determines that the benefits under this section are to be paid, the benefits shall be paid:

(1) to the decedent's surviving spouse;

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

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

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

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

(h) Payments under this section shall be made out of money that the Governor includes for that purpose in the State budget.

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

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the Environment shall place in reserve each fiscal year from a combination of the State Hazardous Substance Control Fund and the Oil Disaster Containment, Cleanup & Contingency Fund the amount needed to pay for one death benefit for a hazardous material response team employee, as provided for under § 1-202 of the Public Safety Article, as enacted by Section 1 of this Act, for the purpose of covering the death benefit, and, in the event of the death of a hazardous material response team employee who qualifies for payment of the death benefit, shall pay to the Department of ~~Budget and Management~~ Public Safety and Correctional Services the funds required to pay the benefit.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 19, 2009.