

SENATE BILL 212

K1
SB 953/10 – FIN

11r1349
CF 11r1790

By: **Senators Klausmeier, Edwards, and Kittleman**

Introduced and read first time: January 27, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Death Benefits – Dependency**

3 FOR the purpose of altering the authority of the Workers' Compensation Commission
4 to make certain determinations of dependency; altering a provision of law that
5 specifies that certain surviving spouses and individuals are not entitled to
6 certain death benefits; altering the provisions relating to the calculation of
7 death benefits for individuals who are wholly or partly dependent; requiring an
8 employer or its insurer to pay certain death benefits to certain dependents for a
9 certain period of time; specifying the calculation of certain death benefits;
10 specifying the minimum amount of certain death benefits; specifying the
11 minimum amount of time for the payment of certain death benefits; providing
12 for an exception to the time limitation for certain dependents who are incapable
13 of self-support under certain circumstances; providing for the termination of
14 certain death benefits under certain circumstances; providing for an exception
15 to the termination of certain death benefits for certain children under certain
16 circumstances; providing for the amount of death benefits to certain dependents
17 who are neither a dependent spouse nor a dependent child; providing for an
18 annual adjustment in a certain manner of a certain death benefit; specifying
19 that the Commission has continuing jurisdiction under certain circumstances;
20 increasing the amount of certain funeral expenses that the employer or its
21 insurer is required to pay; providing for the application of this Act; making
22 stylistic changes; and generally relating to workers' compensation death
23 benefits for dependents of covered employees.

24 BY repealing and reenacting, without amendments,
25 Article – Labor and Employment
26 Section 9–678
27 Annotated Code of Maryland
28 (2008 Replacement Volume and 2010 Supplement)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Labor and Employment
Section 9–679, 9–680, 9–681, 9–683, and 9–689
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing

Article – Labor and Employment
Section 9–682
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY adding to

Article – Labor and Employment
Section 9–682
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

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

Article – Labor and Employment

9–678.

A dependent of a covered employee who is entitled to compensation for the death of the covered employee resulting from an accidental personal injury or occupational disease shall be paid compensation in accordance with this Part XII of this subtitle.

9–679.

(A) Except as otherwise provided in this subtitle, the Commission shall determine all questions of [partial or total] dependency in accordance with the facts of each case that existed:

(1) at the time of the occurrence of the accidental personal injury that caused the death of the covered employee; or

(2) on the date of disablement from the occupational disease that caused the death of the covered employee.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF A COVERED EMPLOYEE BORN AFTER:

(1) THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;

1 **(2) THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL**
2 **DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR**

3 **(3) THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM**
4 **THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.**

5 9–680.

6 **[(a)]** The surviving spouse of a **DECEASED** covered employee whose death was
7 caused by an accidental personal injury or an occupational disease is not entitled to
8 **DEATH** benefits under this title if[:

9 (1) the surviving spouse deserts the covered employee for more than 1
10 year before the time of the occurrence of the accidental personal injury or the date of
11 disablement from the occupational disease;

12 (2) the surviving spouse deserts the covered employee at any time
13 after the time of the occurrence of the accidental personal injury or the date of
14 disablement from the occupational disease; or

15 **(3)]** the surviving spouse and the covered employee[:

16 **(i)]** were married after the time of the occurrence of the
17 accidental personal injury or the date of disablement from the occupational disease[;
18 and

19 **(ii)** do not have any dependent children].

20 **[(b) (1)** Except as provided in paragraph (2) of this subsection, an
21 individual is not entitled to compensation due to the death of a covered employee from
22 an occupational disease if the individual became dependent on the covered employee
23 after the beginning of the 1st compensable disability of the covered employee resulting
24 from the occupational disease.

25 (2) The prohibition against compensation in paragraph (1) of this
26 subsection does not apply to a child of the deceased covered employee born:

27 (i) after the beginning of the 1st compensable disability of the
28 covered employee resulting from the occupational disease; and

29 (ii) of a marriage that existed at the beginning of the disability.]

30 9–681.

1 (a) If there are individuals who were [wholly] dependent on a deceased
2 covered employee at the time of death resulting from an accidental personal injury or
3 occupational disease, the employer or its insurer shall pay death benefits in
4 accordance with this section.

5 [(b) (1) Except as provided in paragraph (2) of this subsection, the death
6 benefit payable under this section shall equal two-thirds of the average weekly wage
7 of the deceased covered employee, but may not:

8 (i) exceed the State average weekly wage; or

9 (ii) be less than \$25.

10 (2) If the average weekly wage of the deceased covered employee was
11 less than \$25 at the time of the accidental personal injury or the last injurious
12 exposure to the hazards of the occupational disease, the weekly death benefit payable
13 under this section shall equal the average weekly wage of the deceased covered
14 employee.

15 (c) Except as otherwise provided in this section, the employer or its insurer
16 shall pay the weekly death benefit:

17 (1) for the period of total dependency; or

18 (2) until \$45,000 has been paid.

19 (d) If a surviving spouse who was wholly dependent at the time of death
20 continues to be wholly dependent after \$45,000 has been paid, the employer or its
21 insurer shall continue to make payments to the surviving spouse at the same weekly
22 rate during the total dependency of the surviving spouse.

23 (e) (1) If a surviving spouse who is wholly dependent at the time of death
24 becomes wholly self-supporting before \$45,000 has been paid, the employer or its
25 insurer shall continue to pay death benefits until \$45,000 has been paid.

26 (2) If a surviving spouse who is wholly dependent at the time of death
27 becomes partly self-supporting, the employer or its insurer shall continue to make
28 payments to the surviving spouse in accordance with § 9-682 of this subtitle.

29 (f) (1) Except as provided in paragraph (2) of this subsection, if a
30 surviving spouse who is wholly dependent remarries, payment to the surviving spouse
31 shall stop on the date of remarriage, even if \$45,000 has not been paid.

32 (2) If a surviving spouse who is wholly dependent remarries and does
33 not have dependent children at the time of the remarriage, the employer or its insurer
34 shall continue to make payments to the surviving spouse for 2 years after the date of
35 the remarriage.

(g) If a surviving child continues to be wholly dependent after the total amount of \$45,000 has been paid, the employer or its insurer shall continue to make payments at the same weekly rate during the total dependency of the surviving child.

(h) Except as provided in subsection (i) of this section, if a child who is wholly dependent at the time of death becomes wholly or partly self-supporting, the employer or its insurer shall continue to pay death benefits until \$45,000 has been paid.

(i) (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for the period of dependency if the child is:

(i) wholly dependent on the deceased covered employee; and

(ii) incapable of self-support because of mental or physical disability or other sufficient reason as determined by the Commission.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full-time basis; and

(ii) the school offers an educational program or a vocational training program, that is accredited or approved by the State Department of Education.

(j) The Commission has continuing jurisdiction to:

(1) determine whether a surviving spouse or child has become wholly or partly self-supporting;

(2) suspend or terminate payments of compensation; and

(3) reinstate payments of compensation that have been suspended or terminated.]

(B) (1) BEGINNING ON THE DATE OF DEATH OF A DECEASED COVERED EMPLOYEE AND CONTINUING FOR A PERIOD OF 144 MONTHS, THE EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS, AS CALCULATED IN THIS SECTION, TO THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE.

1 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
2 DEATH BENEFITS SHALL BE PAID AT THE RATE OF TWO-THIRDS OF THE
3 DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE AT THE TIME OF
4 THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE
5 DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM
6 THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED
7 EMPLOYEE, NOT TO EXCEED THE STATE AVERAGE WEEKLY WAGE.

8 (3) THE AVERAGE WEEKLY WAGE OF ALL DEPENDENTS AND THE
9 DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE SHALL BE
10 COMBINED TO DETERMINE THE FAMILY INCOME.

11 (4) THE DECEASED COVERED EMPLOYEE'S INCOME SHALL BE
12 DIVIDED BY THE FAMILY INCOME TO DETERMINE THE PERCENT OF THE FAMILY
13 INCOME EARNED BY THE DECEASED COVERED EMPLOYEE.

14 (5) THE PERCENT OF THE FAMILY INCOME EARNED BY THE
15 DECEASED COVERED EMPLOYEE SHALL BE MULTIPLIED BY THE DEATH
16 BENEFIT, AS CALCULATED IN PARAGRAPH (2) OF THIS SUBSECTION, TO
17 DETERMINE THE AMOUNT PAYABLE, COLLECTIVELY, TO ALL DEPENDENTS.

18 (6) IF THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED
19 EMPLOYEE WAS LESS THAN \$100 AT THE TIME OF THE OCCURRENCE OF THE
20 ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED
21 EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL
22 DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, THE WEEKLY
23 DEATH BENEFIT PAID UNDER THIS SECTION SHALL EQUAL THE AVERAGE
24 WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE UP TO \$100 PER WEEK.

25 (C) (1) DEATH BENEFITS SHALL BE PAID FOR A MINIMUM OF 5 YEARS
26 AFTER THE COVERED EMPLOYEE'S DEATH.

27 (2) SUBJECT TO SUBSECTIONS (D) THROUGH (H) OF THIS
28 SECTION, PROVIDED THAT A MINIMUM OF 5 YEARS OF DEATH BENEFITS HAS
29 BEEN PAID, DEATH BENEFITS SHALL TERMINATE ON THE DATE THAT WOULD
30 HAVE BEEN THE DECEASED COVERED EMPLOYEE'S 70TH BIRTHDAY.

31 (D) NOTWITHSTANDING THE TIME LIMITATIONS UNDER SUBSECTIONS
32 (B) AND (C) OF THIS SECTION, IF A DEPENDENT SPOUSE OR DEPENDENT CHILD
33 IS INCAPABLE OF SELF-SUPPORT BECAUSE OF A MENTAL OR PHYSICAL
34 DISABILITY THAT PREEXISTED THE COVERED EMPLOYEE'S DEATH, DEATH
35 BENEFITS SHALL CONTINUE FOR THE DURATION OF THE DEPENDENT'S
36 DISABILITY.

1 **(E) IF A DEPENDENT SPOUSE REMARRIES, DEATH BENEFITS SHALL**
2 **TERMINATE 2 YEARS AFTER THE DATE OF REMARRIAGE.**

3 **(F) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE**
4 **PAYMENTS TO OR FOR THE BENEFIT OF A DEPENDENT CHILD UNTIL THE CHILD**
5 **REACHES 18 YEARS OF AGE.**

6 **(G) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE**
7 **PAYMENTS TO, OR FOR THE BENEFIT OF, A DEPENDENT CHILD FOR UP TO 5**
8 **YEARS AFTER THE CHILD REACHES 18 YEARS OF AGE IF:**

9 **(1) THE CHILD IS ATTENDING SCHOOL ON A FULL-TIME BASIS;**
10 **AND**

11 **(2) THE SCHOOL OFFERS AN EDUCATIONAL PROGRAM OR A**
12 **VOCATIONAL TRAINING PROGRAM THAT IS ACCREDITED OR APPROVED BY THE**
13 **STATE DEPARTMENT OF EDUCATION.**

14 **(H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
15 **SUBSECTION, ALL DEPENDENTS WHO ARE NEITHER A DEPENDENT SPOUSE NOR**
16 **A DEPENDENT CHILD SHALL BE ENTITLED TO NO MORE THAN A TOTAL OF**
17 **\$65,000, COLLECTIVELY, AS THEIR PORTION OF THE TOTAL DEATH BENEFITS**
18 **PAYABLE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.**

19 **(2) BEGINNING ON JANUARY 1, 2012, THE BENEFIT LIMIT UNDER**
20 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ADJUSTED ANNUALLY BY THE**
21 **SAME PERCENT APPLICABLE TO THE ADJUSTMENT OF THE STATE AVERAGE**
22 **WEEKLY WAGE.**

23 **[9-682.**

24 **(a) The employer or its insurer shall pay a death benefit in accordance with**
25 **this section if:**

26 **(1) there are no individuals who were wholly dependent on the**
27 **deceased covered employee at the time of death, but there are individuals who were**
28 **partly dependent; or**

29 **(2) a surviving spouse who was wholly dependent on the deceased**
30 **covered employee at the time of death becomes partly self-supporting.**

31 **(b) (1) The maximum weekly death benefit payable under this section**
32 **shall equal two-thirds of the average weekly wage of the deceased covered employee,**
33 **but may not exceed two-thirds of the State average weekly wage.**

(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:

(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and

(ii) does not exceed the maximum weekly death benefit.

(c) Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of partial dependency; or

(2) until \$75,000 has been paid, including any payments made during a period of total dependency under § 9–681 of this subtitle.

(d) (1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.

(2) The total of the payments made before the remarriage may not exceed \$75,000.

(e) (1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections (b) and (c) of this section.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full-time basis; and

(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.]

9–682.

THE COMMISSION HAS CONTINUING JURISDICTION TO:

1 **(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF**
2 **COMPENSATION IN ACCORDANCE WITH THIS PART; AND**

3 **(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN**
4 **SUSPENDED OR TERMINATED UNDER THIS SECTION.**

5 9–683.

6 (a) If there are multiple dependents entitled to death benefits, the
7 Commission may apportion an award of death benefits among the dependents in the
8 manner that the Commission considers just and equitable.

9 **[(b)]** If there are wholly and partly dependent individuals entitled to death
10 benefits, the Commission may:

11 (1) award the death benefits to the wholly dependent individuals only;
12 or

13 (2) apportion the award among the wholly and partly dependent
14 individuals in the manner that the Commission considers to be fair and equitable
15 under all of the facts and circumstances of the case.]

16 **[(c)] (B)** (1) Death benefits shall be paid to 1 or more of the dependents
17 of a covered employee who are entitled to death benefits, as determined by the
18 Commission, for the benefit of all of the dependents who are entitled to death benefits.

19 (2) A dependent to whom death benefits are paid shall apply the death
20 benefits to the use of all of the dependents who are entitled to death benefits:

21 (i) according to the respective claims of the dependents on the
22 deceased covered employee for support; and

23 (ii) in compliance with the findings and direction of the
24 Commission.

25 9–689.

26 (a) The employer or its insurer shall pay reasonable funeral expenses of a
27 deceased covered employee, not exceeding **[\$5,000] \$7,000**, if the covered employee
28 died as a result of:

29 (1) an accidental personal injury, within 7 years of the accidental
30 personal injury; or

31 (2) an occupational disease.

1 (b) Unless approved by the Commission, a bill for funeral expenses of more
2 than **[\$5,000] \$7,000** is void and uncollectable out of:

3 (1) workers' compensation benefits payable with respect to the
4 deceased covered employee; or

5 (2) personal assets of any person to whom workers' compensation
6 benefits are payable with respect to the deceased covered employee.

7 (c) If there are no dependents, the employer[, **OR** its insurer[, or the Injured
8 Workers' Insurance Fund, as appropriate,] shall pay the expenses of the last sickness
9 and [burial] **FUNERAL EXPENSES** of the covered employee.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively to deaths occurring on or after the effective date
12 of this Act and may not be applied or interpreted to have any effect on or application to
13 any death occurring before the effective date of this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2011.