

1 HB187
2 197015-2
3 By Representatives Fridy, Drummond and Treadaway
4 RFD: Ways and Means General Fund
5 First Read: 19-MAR-19

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8 SYNOPSIS: Under existing law, after July 1, 2018, the
9 surviving spouse of a law enforcement officer or
10 firefighter killed in the line of duty is entitled
11 to continue to receive workers' compensation
12 benefits after remarriage and any dependent
13 children of that officer or firefighter are
14 entitled to continue to receive workers'
15 compensation benefits until the age of majority.

16 This bill would provide that the existing
17 law applies retroactively to the surviving spouse
18 and dependents of a law enforcement officer or
19 firefighter who dies on or after January 1, 2018,
20 as a result of injuries received while engaged in
21 the performance of his or her duties.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To amend Sections 25-5-60, 25-5-66, 25-5-68,
2 25-5-69, and 36-29A-9, Code of Alabama 1975, as added to the
3 Code of Alabama 1975, by Act 2018-523, 2018 Regular Session,
4 relating to workers' compensation; to provide retroactive
5 effect for the surviving spouse and dependents of a law
6 enforcement officer or firefighter who dies on or after
7 January 1, 2018, as a result of injuries received while
8 engaged in the performance of his or her duties.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Sections 25-5-60, 25-5-66, 25-5-68, and
11 25-5-69, Code of Alabama 1975, as amended by Act 2018-523,
12 2018 Regular Session, and Section 36-29A-9, Code of Alabama
13 1975, as added to the Code of Alabama 1975, by Act 2018-523,
14 2018 Regular Session, are amended to read as follows:

15 "§25-5-60.

16 "In death cases, where the death results proximately
17 from the accident within three years, compensation payable to
18 dependents shall be computed on the following basis and shall
19 be paid to the persons entitled thereto without
20 administration, or to a guardian or other person as the court
21 may direct, for the use and benefit of the person entitled
22 thereto.

23 "(1) PERSONS ENTITLED TO BENEFITS; AMOUNT OF
24 BENEFITS.

25 "a. If the deceased employee leaves one dependent,
26 there shall be paid to the dependent 50 percent of the average
27 weekly earnings of the deceased.

1 "b. If the deceased employee leaves two or more
2 dependents, there shall be paid to the dependents 66 2/3
3 percent of the average weekly earnings of the deceased.

4 "c. If one of two or more dependents is a widow or
5 widower, the compensation may be paid to the widow or widower
6 for the benefit of herself or himself and the dependent child
7 or children. In its discretion and when it considers
8 appropriate to do so, the court shall at any time have the
9 power to determine, without the appointment of any guardian or
10 guardians, what portion of the compensation shall be applied
11 for the benefit of any child or children and may order the
12 same paid to a guardian or custodian of the child or children.

13 "d. Partial dependents shall be entitled to receive
14 only that proportion of the benefits provided for total
15 dependents which the average amount of the earnings regularly
16 contributed by the deceased employee to the partial dependent,
17 at and for a reasonable time immediately prior to the injury,
18 bore to the total income of the dependent during the same
19 time. If there is one dependent and one or more partial
20 dependents and the dependent is not entitled to the maximum
21 amount of compensation provided in Section 25-5-68, there
22 shall be paid to the partial dependent or partial dependents
23 that percentage of the benefit paid to a full dependent which
24 the contribution of the decedent to the partial dependent's
25 support bears to the total income of the partial dependent.
26 Notwithstanding the foregoing, the compensation payable to the
27 partial dependent or dependents shall not exceed the lesser of

1 16 2/3 percent of the decedent's average weekly wage or the
2 difference between the compensation payable to the full
3 dependent and the maximum weekly compensation benefit payable
4 as provided in Section 25-5-68.

5 "e. Except as provided in subdivision (3), if
6 compensation is being paid under this article to any
7 dependent, the compensation shall cease upon the death or
8 marriage of the dependent, unless otherwise provided in this
9 article.

10 "f. Upon the cessation of compensation to or for any
11 dependent, for any cause, the compensation of the remaining
12 dependents entitled to compensation shall, for the unexpired
13 period during which their compensation is payable, be that
14 which would have been payable to them had they been the only
15 persons entitled to compensation at the time of death of the
16 deceased employee.

17 "g. If, however, the deceased employee at the time
18 of his or her death has no dependents as herein defined, then
19 within 60 days of his or her death, the employer shall pay a
20 one-time lump sum payment of seven thousand five hundred
21 dollars (\$7,500) to the deceased worker's estate.

22 "h. If a dependent is the surviving spouse of a law
23 enforcement officer or firefighter ~~killed~~ who dies on or after
24 January 1, 2018, as a result of injuries received while
25 engaged in the performance of his or her duties, the
26 compensation does not cease upon remarriage.

1 "(2) MAXIMUM AND MINIMUM COMPENSATION AWARDS. The
2 compensation payable in case of death to persons wholly
3 dependent shall be subject to a maximum and minimum weekly
4 compensation as stated in Section 25-5-68, but if at the time
5 of injury the employee receives earnings of less than the
6 minimum stated in Section 25-5-68, then the compensation shall
7 be the full amount of such earnings per week. The compensation
8 payable to partial dependents shall be subject to a maximum
9 and minimum weekly compensation as stated in Section 25-5-68,
10 but if the income loss of the partial dependents by the death
11 is less than the minimum weekly compensation stated in Section
12 25-5-68, then the dependents shall receive the full amount of
13 their income loss. This compensation shall be paid during
14 dependency, not exceeding 500 weeks, except as provided in
15 subsection (f) of Section 25-5-68. Payments shall be made at
16 the intervals when the earnings were payable, as nearly as may
17 be, unless the parties otherwise agree.

18 "§25-5-66.

19 "(a) In case of the remarriage of the surviving
20 spouse of an employee who has another dependent, the unpaid
21 balance of compensation, which would otherwise become due,
22 shall be paid to the dependent or may, on approval by the
23 court, be paid to some suitable person designated by the court
24 for the use and benefit of the dependent. Payment to that
25 person shall discharge the employer from any further
26 liability.

1 "(b) Subsection (a) does not apply to the surviving
2 spouse of a law enforcement officer or firefighter who ~~was~~
3 ~~killed~~ dies on or after January 1, 2018, as a result of
4 injuries received while engaged in the performance of his or
5 her duties.

6 "§25-5-68.

7 "(a) The compensation paid under this article shall
8 be not less than, except as otherwise provided in this
9 article, 27 1/2 percent of the average weekly wage of the
10 state as determined by the secretary, rounded to the nearest
11 dollar, pursuant to subsection (b) of this section and, in any
12 event, no more than 100 percent of the average weekly wage.
13 Notwithstanding the foregoing, the maximum compensation
14 payable for permanent partial disability shall be no more than
15 the lesser of \$220.00 per week or 100 percent of the average
16 weekly wage.

17 "(b) For the purpose of this section, the average
18 weekly wage of the state shall be determined by the secretary
19 as follows: On or before June 1 of each year, the total wages
20 reported on contribution reports to the unemployment
21 compensation division of the department for the preceding
22 calendar year shall be divided by the average monthly number
23 of insured workers, which shall be determined by dividing the
24 sum of the number of insured workers reported for each month
25 of the preceding year by 12. The average annual wage thus
26 obtained shall be divided by 52, and the average weekly wage
27 thus determined rounded to the nearest cent. The average

1 weekly wage as so determined shall be applicable for the
2 12-month period beginning July 1 following the June 1
3 determination. If the determination shall not be made on or
4 before June 1, the effective date of the average weekly wage
5 when determined shall be the first day of the month next
6 following 30 days after the determination is made.

7 "(c) The maximum and minimum weekly benefit shall
8 not be changed on any July 1 or as a result of any annual
9 determination, unless the computation provided for in
10 subsection (b) results in an increase or decrease of two
11 dollars (\$2) or more in the amount of either the maximum or
12 minimum benefit.

13 "(d) In no event, except as provided for permanent
14 total disability in subdivision (a)(4) of Section 25-5-57 or
15 except for compensation benefits payable for permanent partial
16 and temporary total disability in connection with a disability
17 scheduled in subdivisions (1) and (3) of subsection (a) of
18 Section 25-5-57 or except as provided in subsection (f), shall
19 the total amount of compensation payable for an accident or an
20 occupational disease exceed the product of 500 times the
21 maximum weekly benefit applicable on the date of the accident.

22 "(e) The minimum and maximum benefits that are in
23 effect on the date of the accident which results in injury or
24 death shall be applicable for the full period during which
25 compensation is payable.

26 "(f) Notwithstanding any other provision of this
27 article, the compensation benefits payable to a surviving

1 dependent child of a law enforcement officer or firefighter
2 who ~~was killed~~ dies on or after January 1, 2018, as a result
3 of injuries received while engaged in the performance of his
4 or her duties shall not discontinue at least until the
5 dependent child reaches the age of 18 years.

6 "§25-5-69.

7 ~~"Except when the dependent is the surviving spouse
8 of a law enforcement officer or firefighter who was killed as
9 a result of injuries received while engaged in the performance
10 of his or her duties, if (a) If~~ compensation is being paid
11 under this article to any dependent, such compensation shall
12 cease upon the death or marriage of such dependent. Where
13 compensation is being paid under this chapter to any
14 dependent, in no event shall such dependent receive more than
15 the proportion which the amount received of the deceased
16 employee's income during his or her life bears to the
17 compensation provided under this article.

18 "(b) Subsection (a) does not apply if the dependent
19 is the surviving spouse of a law enforcement officer or
20 firefighter who dies on or after January 1, 2018, as a result
21 of injuries received in the performance of his or her duties.

22 "§36-29A-9.

23 "(a) The compensation payable under this chapter to
24 the surviving spouse of a law enforcement officer or
25 firefighter who ~~was killed~~ dies on or after January 1, 2018,
26 as a result of injuries received while engaged in the

1 performance of his or her duties shall continue upon
2 remarriage.

3 "(b) The compensation payable under this chapter to
4 a surviving dependent child of a law enforcement officer or
5 firefighter who ~~was killed~~ dies on or after January 1, 2018,
6 as a result of injuries received while engaged in the
7 performance of his or her duties shall not discontinue at
8 least until the dependent child reaches the age of 18 years."

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.