

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 426

(Senator Klausmeier)

Finance

Economic Matters

Workers' Compensation - Permanent Total Disability - Survival of Claim

This bill increases the cap – from \$45,000 to \$65,000 – on unpaid benefits that may survive to a covered employee's dependents or spouse when the employee was receiving permanent total disability benefits and died from causes unrelated to the claim.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any claims arising before the bill's October 1, 2017 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) increase due to the bill's benefit change. Because the situation addressed by the bill rarely occurs, the timing of any applicable claim cannot be predicted and the impact is expected to be minimal. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase due to the bill's benefit change. Because the situation addressed by the bill rarely occurs, the timing of any applicable claim cannot be predicted and the impact is expected to be minimal. Revenues are not materially affected.

Local Effect: Local expenditures increase due to the bill's benefit change. Because the situation addressed by the bill rarely occurs, the timing of any applicable claim cannot be predicted and the impact is expected to be minimal. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law/Background: A case related to the survivorship of permanent partial disability and permanent total disability claims was recently deliberated by the Court of Appeals in *Hollingsworth v. Severstal Sparrows Point, LLC*, 448 Md. 648 (2016). In the case, the court decided whether § 9-632 or § 9-640 of the Labor and Employment Article applies when an injured worker who is receiving benefits for a permanent total disability from both his or her employer (for a compensable workplace injury) and the Subsequent Injury Fund (SIF) (for preexisting conditions) dies from a cause that is not related to the claim. Section 9-632 of the Labor and Employment Article requires that, for an award of *permanent partial disability*, if a covered employee dies from a cause that is not related to the claim, the right to compensation that is unpaid on the date of death survives to the employee's surviving dependents or spouse. Section 9-640 of the Labor and Employment Article requires that such benefits survive for an award of *permanent total disability*; however, § 9-640 also limits the total benefit that may survive to at most \$45,000, inclusive of any compensation already paid prior to the death. The \$45,000 cap was established by Chapter 671 of 1973. The differences between the two sections of law and the bill's changes are summarized below in **Exhibit 1**.

Exhibit 1

Differences in § 9-632 and § 9-640 of the Labor and Employment Article

Section 9-632

- Governs survivorship for an award of permanent partial disability
- Does not limit benefits payable to survivors if the claimant dies from a cause unrelated to the compensation claim
- *The bill* makes no changes to permanent partial disability claims and awards

Section 9-640

- Governs survivorship for an award of permanent total disability
- Limits to \$45,000 the benefits payable to survivors, inclusive of any amount already paid to the claimant and regardless of the cause for the claim, if the claimant dies from a cause unrelated to the compensation claim
- *The bill* increases the \$45,000 limit discussed above to \$65,000

Source: Department of Legislative Services

In the case, the Workers' Compensation Commission (WCC) found that Hollingsworth was permanently totally disabled due to injuries sustained both from a compensable workplace accident and his preexisting conditions. The award, which was decided in November 2013, found that (1) 65% of the permanent disability was due to the workplace injury and, therefore, covered by the employer and (2) 35% was due to the preexisting conditions and, therefore, covered by SIF. Hollingsworth was awarded compensation at the rate of \$798 per week, not to exceed a sum total of \$345,534; however, in July 2014, Hollingsworth died from causes unrelated to the accidental injury. At the time of his death, Hollingsworth had received about \$52,166 in total compensation.

Even though the compensable injury only caused a portion of the total disability, with Hollingsworth's preexisting conditions causing the other portion of the total disability that made up the whole, WCC decided that § 9-640 applied because the award was for a permanent total disability and, therefore, Hollingsworth's benefits had already met the \$45,000 maximum. In its decision, the Court of Appeals agreed with WCC's decision.

Although the bill does not directly address the decision of the court, it increases the cap on survivable benefits for a permanent total disability claim from \$45,000 to \$65,000. Had the \$65,000 higher cap under the bill been in place, Hollingsworth's survivors would have received \$12,834 (rather than \$0 as under current law).

State/Chesapeake/Local/Small Business Expenditures: The bill's change to the survivorship of benefits for a permanent total disability claim increases workers' compensation expenditures for employers by as much as \$20,000 per incident. Even so, the circumstances under which the limit takes effect appear to occur rarely. Chesapeake advises that, over the past 10 years, it had 158 permanent total disability claims. Of that total, only 2 of the claimants are deceased, and neither claimant died from causes unrelated to the workers' compensation claim.

The precise impact on expenditures for the State, Chesapeake, local governments, and small businesses depends on the number and nature of affected cases filed annually and cannot be reliably estimated at this time. However, any impact is expected to be minimal due to how rare the situation being addressed by the bill appears to be.

Additional Information

Prior Introductions: None.

Cross File: HB 1294 (Delegate Valderrama) - Economic Matters.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Department of Legislative Services

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