

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 559 (Delegate Clippinger)
Economic Matters

Workers' Compensation - Permanent Total Disability - Survival of Claim

This bill modifies the conditions under which an existing benefit limit applies for survivors otherwise due the compensation payable for a covered employee who 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 changes. 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 changes. 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 changes. 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

Bill Summary: If the permanent total disability was either due in part to an accidental personal injury (in conjunction with a preexisting condition or an occupational disease) or resulted from an occupational disease, then the total amount of compensation still due on death remains payable to the survivors. Thus, survivors in those cases receive all unpaid compensation, regardless of whether \$45,000 has already been paid.

However, as under current law, if the permanent total disability was due *solely* to an accidental personal injury and compensation totaling \$45,000 or more has already been paid, then there is no right of survivorship to any residual compensation payable under the award. If less than \$45,000 has been paid and more compensation is still payable, then the survivors receive benefits but only until the \$45,000 cap has been reached.

Current Law/Background: The bill addresses an issue 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 in **Exhibit 1**.

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.

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* establishes that the limit of \$45,000 only applies when a claim is *solely* due to an accidental personal injury

Source: Department of Legislative Services

In response to the Hollingsworth case, the bill removes the \$45,000 limit but not for all permanent total disability claims.

State/Chesapeake/Local/Small Business Expenditures: Chesapeake advises that, over the past 10 years, it had no cases for which the bill's changes would have applied; however, it currently has four permanent total disability cases that could be affected by the bill's changes if the claimant dies from a cause unrelated to an accidental personal injury. The precise impact to 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. Even so, any impact is expected to be minimal due to how rare the situation being addressed by the bill actually is.

Additional Information

Prior Introductions: None.

Cross File: SB 51 (Senator Klausmeier) - Finance.

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

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md/ljm

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