

# SENATE BILL No. 47

January 11, 1989, Introduced by Senators GEO. HART and WELBORN and referred to the Committee on State Affairs, Tourism, and Transportation.

A bill to provide survivor benefits on account of the duty-related death of certain public safety officers under certain circumstances; to create the public safety officers' surviving children fund; to provide for certain powers and duties of certain state agencies; and to provide for funding of the benefits.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Act of duty" means an act performed by a public safety  
3 officer arising out of and in the course of the public safety  
4 officer's work responsibilities, or an act performed by the  
5 public safety officer pertinent or incidental to the public  
6 safety officer's work responsibilities, regardless of time or  
7 place.

1 (b) "Child" means a natural, illegitimate, adopted, or  
2 posthumous offspring of a deceased public safety officer or a  
3 natural, illegitimate, adopted, or posthumous offspring of the  
4 surviving spouse of a deceased public safety officer, who, at the  
5 time of the public safety officer's death, is all of the  
6 following:

7 (i) Eighteen years of age or less.

8 (ii) Substantially reliant for support upon the income of  
9 the deceased public safety officer. This subdivision is not  
10 applicable to a posthumous child.

11 (c) "Department" means the department of treasury.

12 (d) "Eligible public safety officer" means a person who, at  
13 the time of sustaining a personal injury, was a public safety  
14 officer engaged in an act of duty.

15 (e) "Fire fighter" means a regularly employed or volunteer  
16 member of a fire department or other organization of a city,  
17 county, township, or village that is responsible for the preven-  
18 tion, detection, and extinguishment of fires and the enforcement  
19 of the general fire laws of this state. Fire fighter does not  
20 include a person serving as a fire fighter solely by virtue of  
21 that person occupying any other office or position.

22 (f) "Fund" means the "public safety officers' surviving  
23 children fund".

24 (g) "Intoxication" means a disturbance of mental or physical  
25 faculties resulting from the introduction of alcohol, drugs, or  
26 other substances into the body.

1 (h) "Law enforcement officer" means that term as defined in  
2 section 2 of the Michigan law enforcement officers training  
3 council act of 1965, Act No. 203 of the Public Acts of 1965,  
4 being section 28.602 of the Michigan Compiled Laws, who meets the  
5 minimum employment standards of Act No. 203 of the Public Acts of  
6 1965, or who was employed before January 1, 1977 and who quali-  
7 fies for employment with a law enforcement agency under that  
8 act. Law enforcement officer also includes a sheriff or  
9 sheriff's deputy.

10 (i) "Public safety officer" means a fire fighter or law  
11 enforcement officer.

12 Sec. 2. (1) An annual survivor benefit of \$5,000.00 shall  
13 be paid on September 1 of each year to a child of an eligible  
14 public safety officer who dies, during or following the fiscal  
15 year ending on September 30, 1987, as a direct and proximate  
16 result of personal injury sustained while engaged in an act of  
17 duty as defined in section 1.

18 (2) The annual survivor benefit under subsection (1) shall  
19 not be paid to a child after the child's eighteenth birthday.  
20 However, if a child turns 18 prior to the September 1 payment,  
21 the child shall receive that portion of the \$5,000.00 annual pay-  
22 ment that would have accrued if the \$5,000.00 was paid in equal  
23 monthly installments.

24 (3) The survivor benefit payable under this section shall  
25 not be subject to offset by any other benefit payable from any  
26 other source.

1 (4) The survivor benefit payable under this section shall  
2 not be subject to garnishment, execution, or attachment.

3 (5) The survivor benefit payable under this section shall  
4 not be subject to state or local taxation.

5 Sec. 3. The survivor benefit described in section 2 shall  
6 not be paid to a surviving child of the public safety officer  
7 under 1 or more of the following circumstances:

8 (a) If the death of the public safety officer was caused by  
9 the intentional misconduct of the public safety officer or by the  
10 public safety officer's intention to bring about his or her own  
11 death.

12 (b) If voluntary intoxication of the public safety officer  
13 was the proximate cause of the public safety officer's death.

14 (c) If the surviving child's actions were a substantial con-  
15 tributing factor in the death of the public safety officer.

16 Sec. 4. The department of treasury shall make determina-  
17 tions of eligibility for survivor benefits under this act and  
18 shall otherwise be charged with administering the provisions of  
19 this act. A claimant who is dissatisfied with a determination of  
20 the department shall be entitled to an administrative hearing as  
21 provided in the administrative procedures act of 1969, Act  
22 No. 306 of the Public Acts of 1969, being sections 24.201 to  
23 24.328 of the Michigan Compiled Laws.

24 Sec. 5. (1) A surviving parent or guardian of a child  
25 claiming that a child is eligible to receive a survivor benefit  
26 under this act shall file a claim with the department not later  
27 than August 1 of the fiscal year following the date of death of

1 the public safety officer. A claim may be filed on behalf of the  
2 child claiming eligibility by the law enforcement agency or fire  
3 department that employed the deceased public safety officer at  
4 the time of his or her death. The department for good cause may  
5 extend the time for filing for a period not to exceed 1 year  
6 after the date of death of the public safety officer. The claim  
7 shall be in the form and contain the information as prescribed by  
8 the department.

9 (2) A surviving child shall be barred from receiving a sur-  
10 vivor benefit under this act if a claim under this act on behalf  
11 of that child is not made as required under subsection (1).

12 Sec. 6. (1) If the department determines upon a showing of  
13 need and prior to taking final action on a claim, that the sur-  
14 viving child of a public safety officer is one to whom a survivor  
15 benefit probably will be paid under section 2, the department may  
16 make an interim benefit payment not exceeding \$3,000.00 per child  
17 to the parent or guardian of the child who is entitled to receive  
18 the benefit under section 2.

19 (2) The amount of an interim payment made to a child under  
20 subsection (1) shall be deducted from the amount of the survivor  
21 benefit paid from the fund for that fiscal year on behalf of that  
22 child.

23 (3) If the department determines the child is not entitled  
24 to a survivor benefit under section 2, the parent or guardian of  
25 the child who receives the interim payment under subsection (1)  
26 shall be liable for repayment of that amount. The department may

1 waive all or part of the repayment, taking into consideration any  
2 hardship that would result if repayment is required.

3       Sec. 7. The legislature shall fund the public safety  
4 officers' surviving children fund by annual appropriation.

5       Sec. 8. The public safety officers' surviving children fund  
6 is created in the department, and shall be the fund into which  
7 appropriations pursuant to section 7 shall be deposited and from  
8 which all survivor benefits provided by this act shall be paid.