

BILL ANALYSIS

Senate Research Center

H.B. 872
By: Hefner et al. (Flores)
State Affairs
5/7/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently the state provides line of duty death (LODD) benefits to survivors of peace officers, fire fighters, and certain other public servants who claim the "individual died as a result of a personal injury sustained in the line of duty in the individual's position."

Section 1. Consideration of Evidence. Section 615.041, Government Code mandates that the employing entity "as soon as practicable after the death" of an eligible individual "shall" furnish to ERS proof of the death and "additional evidence and information required by the board."

Despite these provisions, interested parties have asserted that some employing entities have taken it upon themselves to make these determinations, rather than the Employees Retirement System of Texas (ERS), sometimes finding that a death did not result in the line of duty (LODD), when in fact it may have. Concerns have been raised that employer-entities might be doing this in order for the employer to avoid liability under the state's workers' compensation laws. In the past, when an employing agency has failed to file the claim, third parties have had to get involved to help survivors get the documentation to ERS.

H.B. 872 more strenuously mandates that the employing agency file the claim with ERS for any death of a covered individual while in the performance of their duties, providing for enforcement by the Office of the Attorney General.

Section 2. Adds jailers and guards to those state employees eligible for death benefits when killed in the line of duty. These county jailers and detention officers perform the same or similar duties as those officers currently covered under that statute. These employees are responsible for both the care and custody of dangerous felons and are regularly put at risk of injury or death from attack, and deserve the same benefits as their counterparts.

Anticipated witnesses:
Chris Jones - CLEAT

H.B. 872 amends current law relating to financial assistance paid to the survivors of certain law enforcement officers and other public employees killed in the line of duty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 615.041, Government Code, as follows:

Sec. 615.041. New heading: CONSIDERATION AND DETERMINATION OF CLAIM; COMPELLED COMPLIANCE. (a) Creates this subsection from existing text. Requires an individual's employing entity, as soon as practicable after the death of an individual listed under Section 615.003 (Applicability) that occurs in the performance of duties in the individual's position as described by Section 615.003 or as a result of an action that occurs while the individual is performing those duties, rather than as soon as practicable

after the death of an individual listed under Section 615.003 that is claimed to meet the requirements of Section 615.021(1), to furnish to the board of trustees of the Employees Retirement System of Texas (board; ERS) proof of the death in the form and with additional evidence and information required by the board.

(b) Requires the board to consider the proof, evidence, and information provided under Subsection (a), and any additional information required by the rules adopted in accordance with Section 615.002 (Administration of Chapter), to determine whether the individual's death satisfies the eligibility requirements established under Section 615.021(a)(1) (relating to circumstances in which a survivor of a certain individual is eligible for assistance) and justifies the payment of assistance to the individual's eligible survivors under this chapter (Financial Assistance to Survivors of Certain Law Enforcement Officers, Fire Fighters, and Others).

(c) Authorizes the Texas attorney general, if the individual's employing entity fails to comply with Subsection (a), to use any means authorized by law, including filing suit for a writ of mandamus against the employer, to compel the employer's compliance with this section.

SECTION 2. Amends Section 615.121(a), Government Code, as follows:

(a) Requires the state to pay the following benefits to an eligible surviving spouse of a peace officer, a jailer, a county jailer or guard, or an employee of the Texas Department of Criminal Justice (TDCJ), as described by Section 615.003(1) (relating to this chapter applying to certain individuals), (4) (relating to this chapter applying to paid jailers), (6) (relating to this chapter applying to certain members of the class of employees of the correctional institutions division), or (7) (relating to this chapter applying to certain jailers or guards of a county jail who is appointed by the sheriff), who was killed in the line of duty and who had not qualified for an annuity under an employees' retirement plan, rather than requiring the state to pay the following benefits to an eligible surviving spouse of a peace officer or an employee of TDCJ, as described by Section 615.003(1) or (6), who was killed in the line of duty and who had not qualified for an annuity under an employees' retirement plan:

(1) funeral expenses related to the deceased person, rather than the deceased officer or employee; and

(2) monthly payments that equal the greater of:

(A) makes conforming changes to this paragraph;

(B) the minimum monthly annuity payment the deceased person would have received if the person had been employed by the state for 10 years, had been paid a salary at the lowest amount provided by the General Appropriations Act for a position of peace officer, jailer, county jailer or guard, or employee of the Texas Department of Criminal Justice, as described by Section 615.003(1), (4), (6), or (7), and had been eligible to retire under ERS, rather than the minimum monthly annuity payment the deceased officer or employee would have received if the officer or employee had been employed by the state for 10 years, had been paid a salary at the lowest amount provided by the General Appropriations Act for a position of peace officer or employee of the TDCJ, as described by Section 615.003(1) or (6), and had been eligible to retire under the ERS.

SECTION 3. Makes application of Section 615.041, Government Code, as amended by this Act, prospective.

SECTION 4. Provides that Section 615.121(a), Government Code, as amended by this Act, applies to a payment of assistance to survivors of certain law enforcement officers and

employees on or after the effective date of this Act regardless of the date the officer or employee died.

SECTION 5. Effective date: September 1, 2019.