

PUBLIC SAFETY OFFICERS' BENEFITS IMPROVEMENT ACT OF 2012

HR 4018



SUMMARY

The legislation primarily would make improvements in the Public Safety Officers' Benefit Act ("PSOBA") of 1976.

The PSOBA provides for the payment of benefits to certain survivors of public safety officers who are killed or permanently and totally disabled in the line of duty. The original enactment was an expression of concerns that States and municipalities did not provide adequate death benefits to public safety officers and their families and that the low level of benefits impeded recruitment efforts and impaired morale. By providing benefits at the federal level, Congress sought to ameliorate some of these defects.

The PSOBA was originally enacted over thirty-five years ago. Subsequent modifications and amendments of the PSOBA have been enacted over the years. Time has shown, however, that certain statutory anachronisms have provided occasion for confusion and uncertainty regarding various provisions of the PSOBA.

Furthermore, experience has highlighted the arbitrariness of certain provisions in the PSOBA that have the effect of excluding, without proper consideration, certain classes of safety officers from the program. This bill would remedy these defects by making certain limited expansions of coverage to some nonprofit emergency response personnel who suffer fatal or catastrophic injury as a result of their discharge of certain public safety activities.

This bill also makes certain other necessary changes of a technical or administrative nature. These changes would expedite the processing of claims for benefits, thus helping ensure the prompt resolution of claims under the PSOBA and saving time and money.

Nearly identical language has been introduced by Sen. Patrick Leahy [S. 1696].

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SECTION-BY-SECTION ANALYSIS OF THE “PUBLIC SAFETY OFFICERS’ BENEFITS IMPROVEMENT ACT OF 2012”

Section 1. SHORT TITLE

This section creates a short title, the Public Safety Officers’ Benefits Improvement Act of 2011.

Section 2. BENEFITS FOR CERTAIN NONPROFIT EMERGENCY MEDICAL SERVICE PROVIDERS AND CERTAIN TRAINEES; MISCELLANEOUS AMENDMENTS

This section implements certain technical corrections, harmonizes inconsistent statutory language within the PSOBA, and adds certain limited classes of beneficiaries.

Subsection (a)(1): Currently, hearing examiners may receive evidence in any part of the United States. This provision of the bill clarifies that medical or claims examiners may also receive evidence in any part of the United States. The amendment makes clear that medical or claims examiners are hearing examiners under the PSOBA.

Subsection (a)(2):

Subparagraph (A): These provisions of the bill create a new category of beneficiaries (adult children of deceased public safety officers) to follow deceased parents. This would prevent a situation from arising where there are no eligible beneficiaries because a public safety officer’s children are all adults, there is no surviving spouse, no applicable designation of beneficiary is on file with the public agency, and the officer’s parents are deceased. These provisions (along with a change made by subparagraph (B) of the bill) also clarify as a matter of statute that the living-beneficiaries rule in *Semple v. United States*, 24 Ct. Cl. 422 (1889), which has consistently and properly been applied by the agency since the PSOBA was enacted, *see, e.g., White v. United States*, 543 F.3d 1330, 1338 (Fed. Cir. 2008) (Prost, J., dissenting) (correctly noting the agency practice with approval), continues to apply to the legal gratuity established by the PSOBA. *Cf. also, e.g., Richard ex rel. Richard v. West*, 161 F.3d 719 (Fed. Cir. 1998); *Haines v. West*, 154 F.3d 1298 (Fed. Cir. 1998).

Subparagraph (B): This provision of the bill removes confusing surplusage that can occasion delay in the processing of disability claims. Additionally, it harmonizes the statutory language relating to disability with other provisions of the PSOBA so as to create consistency in terms across the statute. Finally, it clarifies the law with regard to timing provisions so as to lessen confusion.

Subparagraph (C): This provision of the bill makes a technical correction to a longstanding scrivener’s error made in 1984, in Pub. L. 98-473, and makes a conforming amendment to the PSOBA collateral source provision.

Subparagraph (D): After the enactment of the Hometown Heroes Survivors Benefits Act of 2003, which first introduced the term “competent medical evidence to the contrary” to the PSOBA, the Department of Justice proposed the promulgation of regulations, 70 Fed. Reg. 43,078 (July 26, 2005), that would have made the mere existence of cardio-vascular disease risk factors

“competent medical evidence to the contrary.” This result was avoided, however, in the regulations that the Department ultimately promulgated, 71 Fed. Reg. 46,028 (Aug. 10, 2006), which turn, instead, on “risky behavior.” This provision of the bill prevents any return to a “mere existence” régime in determining what may be “competent medical evidence to the contrary.” Additionally, this provision of the bill adds vascular rupture to the fatal conditions that already qualify under the Hometown Heroes Act; under this provision, which also simplifies the presumption mechanism created by the 2003 Act, any fatal heart attack, stroke, or vascular rupture that is precipitated by stress and strain occasioned by non-routine physical activity qualifying under the PSOBA would, in principle, constitute an injury under the PSOBA. This would remove largely artificial statutory distinctions between decedents who died from different traumatic cardiovascular conditions under what otherwise would be the same qualifying circumstances. The provision would allow deserving claimants, who would otherwise have been barred, to receive the legal gratuity established under the PSOBA.

Subparagraph (E): This provision of the bill moves a provision currently contained in the PSOBA to a more logical place within the statute, without making any substantive change.

Subsection (a)(3) & (4): This provision of the bill harmonizes the statutory language with other provisions of the PSOBA so as to create consistency in terms across the statute.

Subsection (a)(5): In addition to harmonizing the statutory language with other provisions of the PSOBA so as to create consistency in terms across the statute, this provision of the bill makes a limited expansion of coverage under the PSOBA to include nonprofit emergency medical service providers. This subsection mirrors legislation sponsored by Rep. Mike Fitzpatrick and Sen. Patrick Leahy.

Subsections (a)(6) & (11): This provision of the bill clarifies that the various incorporations by reference that currently exist in the PSOBA constitute general references under the law and thus include subsequent amendments.

Subsections (a)(7)-(10): These provisions of the bill remove confusing surplusage from the PSOBA. For example, the PSOBA currently uses the terms “dependent spouse” and “dependent child,” but does so only in the context of the provisions relating to educational benefits. (With respect to the other parts of the PSOBA, the term “dependent” was removed more than twenty years ago, by the Anti-Drug Abuse Amendments Act of 1988, Pub. L. No. 100-690, § 6105(c), 102 Stat. 4181, 4341.) The term “dependent spouse” is a concept unknown to the tax code, and the remaining use of the term “dependent” here in the PSOBA has created unnecessary bureaucratic obstacles and hurdles to paying otherwise-eligible claimants. The principal effect of the current language is merely to add paperwork burdens to claimants and the agency, and to delay the processing of valid educational-benefits claims. These provisions of the bill harmonize the statutory language applicable to educational benefits with other provisions of the PSOBA, by striking the term “dependent.” Additionally, these provisions remove language that has created unnecessary paperwork burdens on claimants and the agency, caused administrative delays in claims processing and payment, and disproportionately and negatively affected low-income children of public safety officers.

Section 3. AUTHORIZATION OF APPROPRIATIONS; DETERMINATIONS; APPEALS

This section of the bill is largely technical. It principally amends 42 U.S.C. § 3796c-2 to remove unnecessary surplusage and to harmonize the statutory language with other provisions of the PSOBA so as to create consistency in terms across the statute. Furthermore, it makes clear that the general authorization of appropriations for the PSOBA applies to all related claims and makes certain other technical and administrative clarifications (relating to the agency acceptance of certifications as prima facie evidence, determination authority, and pre-existing statutory limitations). Finally, it establishes a time limit for appeals (which is intended to have jurisdictional effect) and a uniform rule for regulations promulgated to implement the provisions of the PSOBA.

Section 4. EFFECTIVE DATE

This section of the bill sets out the effective dates of the various amendments it makes to the PSOBA.