

4090

2013-2014 Regular Sessions

I N S E N A T E

March 8, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the continuation of death benefits to a surviving spouse regardless of remarriage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1-b, 1-c, 1-d, 2, 2-a and 2-b of section 16 of
2 the workers' compensation law, subdivisions 1-b, 1-c and 2 as amended by
3 chapter 168 of the laws of 1979, subdivision 2-a as amended by chapter
4 174 of the laws of 1981 and subdivisions 1-d and 2-b as added by chapter
5 689 of the laws of 2007, are amended to read as follows:
6 1-b. If there be a surviving spouse and no child of the deceased under
7 the age of eighteen years and no child of any age dependent blind or
8 physically disabled, and the death occurs on or after July first, nine-
9 teen hundred forty-eight, and prior to January first, nineteen hundred
10 seventy-eight, to such spouse forty per centum of the average wages of
11 the deceased during widowhood or widowerhood [with two years' compen-
12 sation in one sum, upon remarriage]; and where the death occurred prior
13 to July first, nineteen hundred forty-eight, to such wife (or dependent
14 husband) thirty per centum of such wages during widowhood (or dependent
15 widowerhood) [with two years' compensation in one sum, upon remarriage].
16 1-c. If there be a surviving spouse and no child of the deceased under
17 the age of eighteen years or under the age of twenty-three years if
18 enrolled and attending as a full time student in an accredited educa-
19 tional institution and such enrollment and full time attendance is
20 certified by such institution and no child of any age dependent blind or
21 physically disabled, and the death occurs on or after January first,
22 nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds
23 per centum of the average wages of the deceased during widowhood or
24 widowerhood [with two years' compensation, in one sum, upon remarriage].

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD05484-01-3

Where the death occurs on or after January first, nineteen hundred seventy-eight, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. 1 below by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act.

TABLE No. I

Offset provisions applicable in death benefits
where there is a sole surviving spouse

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
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over \$100 up to and including \$110	5
over \$110 up to and including \$120	10
over \$120 up to and including \$130	15
over \$130 up to and including \$140	20
over \$140 up to and including \$150	25
over \$150 up to and including \$160	30
over \$160 up to and including \$170	35
over \$170 up to and including \$180	40
over \$180 up to and including \$190	45
over \$190 up to and including \$200	50
over \$200	50

1-d. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and no child of the deceased under the age of eighteen years, or under the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, and no child of any age dependent blind or physically disabled, to such spouse seventy-five per centum of the average wages of the deceased during widowhood or widowerhood[, with two years' compensation, in one sum, upon remarriage]. Where such death occurs, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. I in subdivision one-c of this section by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars; provided that in no case shall such reduction exceed fifty per centum of such spouse's share of the survivors insurance benefits under the social security act.

2. If there be a surviving spouse and a surviving child or children of the deceased under the age of eighteen years or a surviving child or children of any age dependent blind or physically disabled, and the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, to such spouse thirty per centum of the average wages of the deceased during widowhood

1 or widowhood [with two years' compensation in one sum, upon remar-
2 riage]; and the additional amount of twenty per centum of such wages for
3 each such child until the age of eighteen years or until the removal of
4 the dependency of the blind or physically disabled child or children; in
5 case of the subsequent death [or remarriage] of such surviving spouse
6 any surviving child of the deceased employee, at the time under eighteen
7 years of age or dependent through mental or physical infirmity, shall
8 have his compensation increased to thirty per centum of such wages, and
9 the same shall be payable until he shall reach the age of eighteen years
10 or until such dependent blind or physically disabled condition shall
11 have been removed; provided that the total amount payable shall in no
12 case exceed sixty-six and two-thirds per centum of such wages. Upon
13 statutory termination of compensation payments to all such children, the
14 compensation of the surviving spouse shall be increased to forty per
15 centum of such wages [with two years' compensation, at such rate, in one
16 sum, upon remarriage].

17 If there be a surviving wife (or dependent husband) and any of the
18 aforementioned surviving children, and the death occurred prior to July
19 first, nineteen hundred forty-eight, to such wife (or dependent husband)
20 thirty per centum of the average wages of the deceased during widowhood
21 (or dependent widowhood) [with two years' compensation in one sum,
22 upon remarriage]; and the additional amount of ten per centum of such
23 wages for each such child until eighteen years of age or until the
24 removal of the dependency of the blind or physically disabled child or
25 children; in case of the subsequent death [or remarriage] of such
26 surviving wife (or dependent husband) any surviving child of the
27 deceased shall have his compensation increased to fifteen per centum of
28 such wages until he shall reach the age of eighteen years or until such
29 dependent blind or physically disabled condition shall have been
30 removed; provided that the total amount payable shall in no case exceed
31 sixty-six and two-thirds per centum of such wages.

32 The board may in its discretion require the appointment of a guardian
33 for the purpose of receiving the compensation of a minor child or a
34 dependent blind or physically disabled child. In the absence of such a
35 requirement by the board the appointment of a guardian for such purposes
36 shall not be necessary.

37 2-a. If there be a surviving spouse and a surviving child under the
38 age of eighteen years or under the age of twenty-three years if enrolled
39 and attending as a full time student in an accredited educational insti-
40 tution and such enrollment and full time attendance is certified by such
41 institution or a surviving child of any age dependent blind or phys-
42 ically disabled and the death occurs on or after January first, nineteen
43 hundred seventy-eight, to such spouse thirty-six and two-thirds per
44 centum of the average wages of the deceased during widowhood or widower-
45 hood [with two years' compensation in one sum, upon remarriage]; and
46 thirty per centum of such wages to such child under the age of eighteen
47 years or under the age of twenty-three years if enrolled and attending
48 as a full time student in an accredited educational institution and such
49 enrollment and full time attendance is certified by such institution or
50 a surviving child of any age dependent blind or physically disabled; in
51 the case of the subsequent death of such surviving spouse the surviving
52 child shall have his compensation increased to sixty-six and two-thirds
53 per centum of such wages and the same shall be payable so long as he is
54 under the age of eighteen years or under the age of twenty-three years
55 if enrolled and attending as a full time student in an accredited educa-
56 tional institution and such enrollment and full time attendance is

certified by such institution or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages [with two years' compensation, at such rate, in one sum, upon remarriage. Upon remarriage of such surviving spouse, the surviving child shall continue to receive thirty per centum of such wages]. Where the death occurs on or after January first, nineteen hundred seventy-eight and the spouse is receiving survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I below.

TABLE No. I

Offset provisions applicable in death benefits
where there is a surviving spouse and one child

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$100 up to and including \$110	5
over \$110 up to and including \$120	10
over \$120 up to and including \$130	15
over \$130 up to and including \$140	20
over \$140 up to and including \$150	25
over \$150 up to and including \$160	30
over \$160 up to and including \$170	35
over \$170 up to and including \$180	40
over \$180 up to and including \$190	45
over \$190 up to and including \$200	50
over \$200	50

If there be a surviving spouse and two or more surviving children under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled and a death occurs on or after January first, nineteen hundred seventy-eight, to such spouse thirty-six and two-thirds per centum of the average wage of the deceased during widowhood or widowerhood [with two years' compensation in one sum upon remarriage]; and thirty per centum of such wages to such children under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to sixty-six and two-thirds per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are under the age of eighteen years or under the age of twenty-three years if enrolled and attending

1 as a full time student in an accredited educational institution and such
 2 enrollment and full time attendance is certified by such institution or
 3 a surviving child or children of any age dependent blind or physically
 4 disabled. [Upon remarriage of such surviving spouse, if there be two
 5 surviving children each shall receive twenty-five per centum of such
 6 wages, and if there are surviving more than two children under the age
 7 of eighteen years or under the age of twenty-three if enrolled and
 8 attending as a full time student in an accredited educational institu-
 9 tion and such enrollment and full time attendance is certified by such
 10 institution or a surviving child or children of any age dependent blind
 11 or physically disabled sixty-six and two-thirds per centum of such wages
 12 share and share alike.] Upon statutory termination of compensation paya-
 13 ble to such children, the compensation of the surviving spouse shall be
 14 increased to sixty-six and two-thirds per centum of such wages [with two
 15 years' compensation, at such rate, in one sum, upon remarriage]. Where
 16 the death occurs on or after January first, nineteen hundred seventy-
 17 eight, and the spouse is receiving survivors insurance benefits under
 18 the social security act, the death benefits payable under this section
 19 shall be reduced by five per centum of the spouse's share of the survi-
 20 vors insurance benefits under the social security act for each ten
 21 dollars of deceased's average weekly wage in excess of one hundred fifty
 22 dollars provided that in no case shall such reduction exceed fifty per
 23 centum of said spouse's share of the survivors insurance benefits under
 24 the social security act as set forth in table No. II below.

TABLE No. II

Offset provisions applicable in death benefits
 where there is a surviving spouse and two or more children

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$150 up to and including \$160	5
over \$160 up to and including \$170	10
over \$170 up to and including \$180	15
over \$180 up to and including \$190	20
over \$190 up to and including \$200	25
over \$200 up to and including \$210	30
over \$210 up to and including \$220	35
over \$220 up to and including \$230	40
over \$230 up to and including \$240	45
over \$240 up to and including \$250	50
over \$250	50

2-b. If there be a surviving spouse of an employee of a private volun-
 tary hospital killed in a World Trade Center rescue, who passed a phys-
 ical examination upon employment as a rescue worker that failed to
 reveal evidence of a condition that was the proximate cause of death,
 and a surviving child under the age of eighteen years, or under the age
 of twenty-three years if enrolled and attending as a full-time student
 in an accredited educational institution and such enrollment and full-
 time attendance is certified by such institution, or a surviving child
 of any age dependent blind or physically disabled, to such spouse forty
 per centum of the average wages of the deceased during widowhood or
 widowerhood[, with two years' compensation in one sum, upon remarriage];
 and thirty-five per centum of such wages to such child under the age of

1 eight years, or under the age of twenty-three years if enrolled and
2 attending as a full-time student in an accredited educational institu-
3 tion and such enrollment and full-time attendance is certified by such
4 institution, or a surviving child of any age dependent blind or phys-
5 ically disabled; in the case of the subsequent death of such surviving
6 spouse the surviving child shall have his or her compensation increased
7 to seventy-five per centum of such wages and the same shall be payable
8 so long as he or she is under the age of eighteen years, or under the
9 age of twenty-three years if enrolled and attending as a full-time
10 student in an accredited educational institution and such enrollment and
11 full-time attendance is certified by such institution, or a surviving
12 child of any age dependent blind or physically disabled; upon statutory
13 termination of compensation payable to such child, the compensation of
14 the surviving spouse shall be increased to seventy-five per centum of
15 such wages [with two years' compensation, at such rate, in one sum, upon
16 remarriage. Upon remarriage of such surviving spouse, the surviving
17 child shall continue to receive thirty-five per centum of such wages].
18 Where such death occurs, and the spouse is receiving survivors insurance
19 benefits under the social security act, the death benefit payable under
20 this section shall be reduced by five per centum of the spouse's share
21 of the survivors insurance benefits under the social security act for
22 each ten dollars of deceased's average weekly wage in excess of one
23 hundred dollars; provided that in no case shall such reduction exceed
24 fifty per centum of such spouse's share of the survivors insurance bene-
25 fits under the social security act as set forth in table No. I in subdi-
26 vision one-c of this section. If there be a surviving spouse of an
27 employee of a private voluntary hospital killed in a World Trade Center
28 rescue, who passed a physical examination upon employment as a rescue
29 worker that failed to reveal evidence of a condition that was the prox-
30 imate cause of death, and two or more surviving children under the age of
31 eight years, or under the age of twenty-three years if enrolled and
32 attending as a full-time student in an accredited educational institu-
33 tion and such enrollment and full-time attendance is certified by such
34 institution, or a surviving child or children of any age dependent blind
35 or physically disabled and a death occurs on or after September elev-
36 enth, two thousand one, to such spouse forty per centum of the average
37 wage of the deceased during widowhood or widowerhood [with two years'
38 compensation in one sum upon remarriage]; and thirty-five per centum of
39 such wages to such children under the age of eighteen years, or under
40 the age of twenty-three years if enrolled and attending as a full-time
41 student in an accredited educational institution and such enrollment and
42 full-time attendance is certified by such institution, or a surviving
43 child or children of any age dependent blind or physically disabled,
44 share and share alike; in case of the subsequent death of such surviving
45 spouse the surviving children shall have their compensation increased to
46 seventy-five per centum of such wages and the aggregate sum shall be
47 payable, share and share alike, so long as they are under the age of
48 eighteen years, or under the age of twenty-three years if enrolled and
49 attending as a full-time student in an accredited educational institu-
50 tion and such enrollment and full-time attendance is certified by such
51 institution, or a surviving child or children of any age dependent blind
52 or physically disabled. [Upon remarriage of such surviving spouse, if
53 there be two surviving children each shall receive thirty-seven and
54 one-half per centum of such wages, and if there are surviving more than
55 two children under the age of eighteen years, or under the age of twen-
56 ty-three if enrolled and attending as a full-time student in an accred-

1 ited educational institution and such enrollment and full-time attend-
2 ance is certified by such institution, or a surviving child or children
3 of any age dependant blind or physically disabled, seventy-five per
4 centum of such wages share and share alike.] Upon statutory termination
5 of compensation payable to such children, the compensation of the
6 surviving spouse shall be increased to seventy-five per centum of such
7 wages [with two years' compensation, at such rate, in one sum, upon
8 remarriage]. Where the death occurs on or after September eleventh, two
9 thousand one, and the spouse is receiving survivors insurance benefits
10 under the social security act, the death benefits payable under this
11 section shall be reduced by five per centum of the spouse's share of the
12 survivors insurance benefits under the social security act for each ten
13 dollars of deceased's average weekly wage in excess of one hundred fifty
14 dollars; provided that in no case shall such reduction exceed fifty per
15 centum of said spouse's share of the survivors insurance benefits under
16 the social security act as set forth in table No. II in subdivision
17 two-a of this section.

18 S 2. This act shall take effect on the sixtieth day after it shall
19 have become a law.