S T A T E O F N E W Y O R K

281

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. PHEFFER, CLARK, GREENE, KOON, COLTON, BENJAMIN, WEISENBERG, AUBRY -- Multi-Sponsored by -- M. of A. ABBATE, BRODSKY, CYMBROWITZ, GIANARIS, GOTTFRIED, MAYERSOHN, MILLMAN, PRETLOW, SEMINERIO, WEINSTEIN -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to providing death benefits for the heirs of employees killed in the line of duty

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

Section 1. The correction law is amended by adding a new section 624 to read as follows:

S 624. DEATH BENEFITS; NON-UNIFORM DEPARTMENT EMPLOYEES KILLED IN THE LINE OF DUTY. 1. IN THE EVENT THAT A NON-UNIFORM DEPARTMENT EMPLOYEE DIES AS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED FROM AN ACT OF VIOLENCE IN THE LINE OF DUTY AT A CORRECTIONAL FACILITY, HIS OR HER HEIRS SHALL BE ENTITLED TO A BENEFIT OF FIFTY THOUSAND DOLLARS TO BE PAID BY THE COMPTROLLER OF THE STATE OF NEW YORK OUT OF THE TREASURY OF THE STATE OF NEW YORK IN ACCORDANCE WITH RULES AND REGULATIONS ESTABLISHED BY THE COMPTROLLER AS FOLLOWS:

A. IF THERE IS NO SURVIVING CHILD OF SUCH EMPLOYEE, TO THE SURVIVING SPOUSE OF SUCH EMPLOYEE;

B. IF THERE IS A SURVIVING CHILD OR CHILDREN AND A SURVIVING SPOUSE, ONE-HALF TO THE SURVIVING CHILD OR CHILDREN OF SUCH EMPLOYEE IN EQUAL SHARES AND ONE-HALF TO THE SURVIVING SPOUSE;

C. IF THERE IS NO SURVIVING SPOUSE, TO THE CHILD OR CHILDREN OF SUCH EMPLOYEE IN EQUAL SHARES; OR

D. IF NONE OF THE ABOVE, TO THE DEPENDENT PARENT OR PARENTS OF SUCH EMPLOYEE IN EQUAL SHARES.

2. WHENEVER THE COMPTROLLER DETERMINES, UPON A SHOWING OF NEED AND PRIOR TO TAKING FINAL ACTION, THAT THE DEATH OF AN EMPLOYEE IS ONE WITH RESPECT TO WHICH A BENEFIT HEREUNDER WILL PROBABLY BE PAID, THE COMP-

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

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TROLLER MAY MAKE AN INTERIM BENEFIT PAYMENT NOT EXCEEDING THREE THOUSAND DOLLARS TO THE PERSON ENTITLED TO RECEIVE A BENEFIT UNDER THIS SECTION.

3. THE AMOUNT OF AN INTERIM PAYMENT UNDER SUBDIVISION TWO OF THIS SECTION SHALL BE DEDUCTED FROM THE AMOUNT OF ANY FINAL BENEFIT PAID TO SUCH PERSON.

4. WHERE THERE IS NO FINAL BENEFIT PAID, THE RECIPIENT OF ANY INTERIM PAYMENT UNDER SUBDIVISION TWO OF THIS SECTION SHALL BE LIABLE FOR REPAYMENT OF SUCH AMOUNT. THE COMPTROLLER MAY WAIVE ALL OR PART OF SUCH REPAYMENT, CONSIDERING FOR THIS PURPOSE THE HARDSHIP WHICH WOULD RESULT FROM SUCH REPAYMENT.

5. THE BENEFIT PAYABLE UNDER THIS SECTION SHALL BE IN ADDITION TO ANY OTHER BENEFIT THAT MAY BE DUE FROM ANY OTHER SOURCE, BUT SHALL BE REDUCED BY ANY ENTITLEMENT PURSUANT TO THE PUBLIC SAFETY OFFICERS' BENEFITS ACT OF 1976 (42USC3796) AND/OR THE PAYMENTS AUTHORIZED BY SECTION 8191 OF TITLE FIVE OF THE UNITED STATES CODE.

6. NO PAYMENT UNDER THIS SECTION SHALL BE SUBJECT TO EXECUTION OR ATTACHMENT.

7. NO BENEFIT SHALL BE PAID UNDER THIS SECTION:

A. IF THE DEATH WAS CAUSED BY THE INTENTIONAL MISCONDUCT OF THE EMPLOYEE OR BY SUCH EMPLOYEE'S INTENTION TO BRING ABOUT HIS OR HER DEATH;

B. IF VOLUNTARY INTOXICATION OF THE EMPLOYEE WAS A CONTRIBUTING CAUSE OF SUCH EMPLOYEE'S DEATH; OR

C. TO ANY PERSON WHO WOULD OTHERWISE BE ENTITLED TO A BENEFIT UNDER THIS SECTION IF SUCH PERSON'S ACTIONS WERE A SUBSTANTIAL CONTRIBUTING FACTOR TO THE DEATH OF THE EMPLOYEE.

S 2. This act shall take effect immediately.