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

5000

2011-2012 Regular Sessions

I N A S S E M B L Y

February 10, 2011

Introduced by M. of A. SCHROEDER -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to providing for cost-of-living adjustments to death benefits, increasing certain wage percentages for calculation of benefits and the frequency of required doctor visits

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

Section 1. Section 16 of the workers' compensation law, as amended by chapter 550 of the laws of 1978, subdivision 1 as amended by chapter 245 of the laws of 2005, subdivisions 1-a, 1-b, 1-c, 2, 3, 3-a and 4 as amended by chapter 168 of the laws of 1979, subdivisions 1-d, 2-b, 3-b, 4-c and 4-d as added and subdivision 5 as amended by chapter 689 of the laws of 2007, subdivision 2-a as amended by chapter 174 of the laws of 1981, subdivision 4-a as amended by chapter 509 of the laws of 1985 and subdivision 4-b as added by chapter 296 of the laws of 1990, is amended to read as follows:

S 16. Death benefits. If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

1. Funeral expenses. The chair shall prepare and establish a schedule for the state or schedules limited to defined localities of maximum charges and fees for such funeral expenses, to be determined in accordance with, and to be subject to change pursuant to[,] rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities, the chair shall request the president of the New York state funeral directors' association to submit to the chair a report on the amount of remuneration deemed by such association to be fair and adequate for the types of funeral services rendered under this chapter, but consideration shall also be given to the views of other interested parties. The amounts payable by the employer for such

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

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services shall be the actual fees and charges up to the maximum established by such schedule. Provided, however, no such schedule of charges and fees shall apply where a firefighter dies from injuries received in the line of duty as a direct result of firefighting or where a police officer dies from injuries received in the line of duty as a direct result of law enforcement activities, where such funeral expenses are reasonable. If such funeral expenses shall have been paid by the claimants entitled to compensation under this section or by others, the funeral expenses awarded shall be made payable to such claimants or others, otherwise they shall be made payable to the undertaker who shall have provided burial. Funeral expenses shall be awarded in case of all injuries causing death including cases in which there are no persons entitled to other compensation under this chapter.

1-a. For the purpose of this section, (1) the term "dependent blind or physically disabled" as used herein in relation to dependent children shall be deemed to mean totally blind or physically disabled children whose disablement is total and permanent, (2) the term "surviving spouse" shall be deemed to mean the legal spouse but shall not include a spouse who has abandoned the deceased, and (3) the term "abandoned" shall be deemed to mean such an abandonment as would be sufficient under section two hundred of the domestic relations law to sustain a judgment of separation on that ground PROVIDED THAT A SPOUSE WHO RECONCILED WITH THE DECEASED PRIOR TO THE DATE OF THE DEATH SHALL NOT BE CONSIDERED TO HAVE ABANDONED THE DECEASED.

1-b. If there be a surviving spouse and no child of the deceased under the age of eighteen years and no child 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 forty per centum of the average wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and where the death occurred prior to July first, nineteen hundred forty-eight, to such wife (or dependent husband) thirty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage.

1-c. If there be a surviving spouse 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, and the death occurs on or after January first, nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds per centum of the average wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation, in one sum, upon remarriage. 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] I 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. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF

THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

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
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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and the additional amount of twenty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for each such child until the age of eighteen years or until the removal of the dependency of the blind or physically disabled child or children; in case of the subsequent death or remarriage of such surviving spouse any surviving child of the deceased employee, at the time under eighteen years of age or dependent through mental or physical infirmity, shall have his compensation increased to thirty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same shall be payable until he shall reach the age of eighteen years or until such dependent blind or physically disabled condition shall have been removed; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. Upon statutory termination of compensation payments to all such children, the compensation of the surviving spouse shall be increased to forty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years' compensation, at such rate, in one sum, upon remarriage.

If there be a surviving wife (or dependent husband) and any of the aforementioned surviving children, and the death occurred prior to July first, nineteen hundred forty-eight, to such wife (or dependent husband) thirty per centum of the average wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood (or dependent widowerhood) with two years' compensation in one sum, upon remarriage; and the additional amount of ten per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for each such child until eighteen years of age or until the removal of the dependency of the blind or physically disabled child or children; in case of the subsequent death or remarriage of such surviving wife (or dependent husband) any surviving child of the deceased shall have his compensation increased to fifteen per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, until he shall reach the age of eighteen years or until such dependent blind or physically disabled condition shall have been removed; provided that the total amount payable shall in no case exceed sixty-six and two-thirds per centum of such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

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

2-a. If there be a surviving spouse 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 phys-

ically disabled and the death occurs on or after January first, nineteen hundred seventy-eight, to such spouse thirty-six and two-thirds per centum of the average wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation in one sum, upon remarriage; and thirty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, to such 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; in the case of the subsequent death of such surviving spouse the surviving child shall have his compensation increased to sixty-six and two-thirds per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same shall be payable so long as he is 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; 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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. 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. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation in one sum upon remarriage; and thirty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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 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. Upon remarriage of such surviving spouse, if there be two surviving children each shall receive twenty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and if there are surviving more than two children under the age of eighteen years or under the age of twenty-three 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 sixty-six and two-thirds per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, share and share alike. Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years' compensation, at such rate, in one sum, upon remarriage. 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 benefits 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 fifty 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. II below. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT

APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

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 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 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, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, of the deceased during widowhood or widowerhood, with two years' compensation in one sum, upon remarriage; and thirty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, to such 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; in the case of the subsequent death of such surviving spouse the surviving child shall have his or her compensation increased to seventy-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same shall be payable so long as he or she is 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; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. Where such death

occurs, 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 such spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I in subdivision one-c of this section. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE. 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 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 September eleventh, two thousand one, to such spouse forty per centum of the average wage of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two years' compensation in one sum upon remarriage; and thirty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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 seventy-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, 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 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. Upon remarriage of such surviving spouse, if there be two surviving children each shall receive thirty-seven and one-half per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and if there are surviving more than two children under the age of eighteen years, or under the age of twenty-three 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 dependant blind or physically disabled, seventy-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, share and share alike. Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years' compensation, at such rate, in one sum,

upon remarriage. Where the death occurs on or after September eleventh, two thousand one, and the spouse is receiving survivors insurance benefits under the social security act, the death benefits 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 fifty 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. II in subdivision two-a of this section. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

3. If there be a surviving child or children of the deceased under the age of eighteen years or a dependent blind or physically disabled child or children of any age, but no surviving spouse then where the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, for the support of each such child until the age of eighteen years, or until the removal of the dependency of such blind or physically disabled child or children, thirty per centum of the wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and where the death occurred prior to July first, nineteen hundred forty-eight, for the support of each such child until the age of eighteen years, or until the removal of the dependency of such blind or physically disabled child or children, fifteen per centum of the wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, of the deceased; provided that the aggregate shall in no case exceed sixty-six and two-thirds per centum of such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

3-a. If there be a surviving child or children 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 or a dependent blind or physically disabled child or children of any age, but no surviving spouse then where the death occurs on or after January first, nineteen hundred seventy-eight, for the support of such child or children until 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 until the removal of the dependency of such blind or physically disabled child or children, sixty-six and two-thirds per centum of the wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. Where there are two or more children, the compensation payable shall be divided among such children share and share alike.

3-b. If there be a surviving child or children, 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, 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 dependent blind or physically disabled child, or children of any age, but no surviving spouse then, where such death occurs, for the support of each such child until 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 until the removal of the dependency of such blind or physically disabled child or children, seventy-five per centum of the wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. Where there are two or more children, the compensation payable shall be divided among such children share and share alike.

4. If there be no surviving spouse or child under the age of eighteen years, or dependent blind or physically disabled child of any age, or if the amount payable to surviving spouse and to children under the age of eighteen years or such dependent blind or physically disabled children shall be less in the aggregate than sixty-six and two-thirds per centum of the average wages of the deceased EXCLUSIVE OF APPLICABLE COST-OF-LIVING ADJUSTMENTS, then where the death occurs on or after July first, nineteen hundred forty-eight, and prior to January first, nineteen hundred seventy-eight, for the support of grandchildren or brothers and sisters under the age of eighteen years, if dependent upon the deceased at the time of the accident, twenty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for the support of each such person until the age of eighteen years; and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the accident, forty per centum of such wages during such dependency; and where the death occurred prior to July first, nineteen hundred forty-eight, to such dependent grandchildren or brothers and sisters, fifteen per centum of such wages until eighteen years of age, and to such dependent parent or grandparent, twenty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between sixty-six and two-thirds per centum of such wages, and the amount payable as hereinbefore provided to surviving spouse or for the support of surviving child or children. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

4-a. If there be no surviving spouse or 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 dependent blind or physically disabled child of any age, then where the death occurs on or after January first, nineteen hundred seventy-eight, for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, 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 blind or physically disabled grandchildren or brothers and sisters of any age, twenty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for the support of each such person until the age of eighteen years; or until the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution or until the removal of the dependency of such blind or physically disabled grandchildren or brothers and sisters, and such enrollment and full time attendance is certified by such institution and for the support of each parent, or grandparent, of the deceased if dependent upon him or her at the time of the accident, forty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed sixty-six and two-thirds per centum of such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

4-b. If there be no surviving spouse or 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 dependent blind or physically disabled child of any age or grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, 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 disabled blind or physically disabled grandchildren or brothers and sisters of any age, then a sum of fifty thousand dollars shall be paid to the deceased's surviving parents or if there be no surviving parents to the deceased's estate.

4-c. If there be no surviving spouse or child, or children 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, 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 dependent blind or physically disabled child of any age, then where the death occurs on or after September eleventh, two thousand one, for the support of grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, 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 blind or physically disabled grandchildren or brothers and sisters of any age, twenty-five per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for the support of each such person until the age of eighteen years; or until the age of twenty-three years if enrolled and attending as a full-time student in an accredited educational institution, or until the removal of the dependency of such blind or physically disabled grandchildren or brothers and sisters, and such enrollment and full-time attendance is certified by such institution and for the

support of each parent, or grandparent, of the deceased if dependent upon him or her at the time of the accident, forty per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed seventy-five per centum of such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE. NOTWITHSTANDING THE FOREGOING, COST-OF-LIVING ADJUSTMENTS SHALL NOT APPLY TO A COMPENSATION AWARD WHEN THE SURVIVING SPOUSE ELECTS TO RECEIVE SUCH AWARD IN A LUMP SUM PURSUANT TO SECTION THIRTY-TWO OF THIS ARTICLE.

4-d. If there be no surviving spouse or child, or children 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, 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 dependent blind or physically disabled child of any age, or grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, 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 disabled blind or physically disabled grandchildren or brothers and sisters of any age, then a sum of fifty thousand dollars shall be paid to the deceased's surviving parents or if there be no surviving parents to the deceased's estate.

5. Any excess of wages over: (1) seven hundred fifty dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand seven, (2) eight hundred twenty-five dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand eight, (3) nine hundred dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand nine, and (4) where the death occurs on or after July first, two thousand ten, or when the death occurs on or after July first of each succeeding year, an amount equal to the New York state average weekly wage for the year in which it is reported shall not be taken into account in computing compensation under this section. Any excess of wages over five hundred ten dollars and five cents per week shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred ninety, nor shall any excess of wages over five hundred twenty-five dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-one, nor shall any excess of wages over six hundred dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-two with the exception that wages earned over six hundred dollars per week shall be taken into account in computing compensation under this section in cases involving an employee of a private voluntary hospital resulting from 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; nor shall any excess of wages over three hundred eighty-two dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-three, nor shall any excess of wages over four hundred twelve dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-four, nor shall any excess of wages over four hundred fifty dollars per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-five; nor shall any excess of wages over one hundred eighty-seven dollars and fifty cents per week on or after January first, nineteen hundred seventy-eight or over two hundred seventy dollars per week on or after July first, nineteen hundred seventy-eight or over three hundred twenty-two dollars and fifty cents per week on or after January first, nineteen hundred seventy-nine, and prior to July first, nineteen hundred eighty-three, be taken into account in computing compensation under this section nor shall any excess of wages over six hundred and seventeen dollars and fifty cents a month be taken into account in computing compensation under this section in cases where the death occurred on or after July first, nineteen hundred seventy-four, and prior to January first, nineteen hundred seventy-eight, nor shall any excess of wages over five hundred and twenty dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four, nor shall any excess of wages over four hundred and fifty-five dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred seventy, nor shall any excess of wages over three hundred and ninety dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-five and prior to July first, nineteen hundred sixty-eight, nor shall any excess of wages over three hundred and fifty-seven dollars and fifty cents a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-two and prior to July first, nineteen hundred sixty-five, nor shall any excess of wages over three hundred and twenty-five dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty and prior to July first, nineteen hundred sixty-two, nor shall any excess of wages over two hundred and ninety-two dollars and fifty cents a month be taken into account in computing compensation where death occurred on or after July first, nineteen hundred fifty-eight and prior to July first, nineteen hundred sixty, nor shall any excess of wages over two hundred and sixty dollars a month be taken into account in computing compensation where death occurred on or after July first, nineteen hundred fifty-four and prior to July first, nineteen hundred fifty-eight, nor shall any excess of wages over two hundred and twenty-seven dollars and fifty cents a month be taken into account in computing compensation where death occurred on or after July first, nineteen hundred forty-eight and prior to July first, nineteen hundred fifty-four, nor shall any excess of wages over one hundred and eighty-two dollars a month be taken into account in computing compensation where the death occurred on or after June first, nineteen hundred forty-six and prior to July first, nineteen hundred forty-eight. When death occurred on or after July first, nine-

teen hundred forty-eight and prior to January first, nineteen hundred seventy-eight, computing compensation to the widow or widower and children of a deceased employee in no event shall wages be deemed to be less than one hundred and thirty dollars a month. All questions of dependency shall be determined as of the time of the accident. When death occurred on or after January first, nineteen hundred seventy-eight, in no event shall wages be deemed to be less than forty-five dollars a week in computing compensation to the widow or widower and/or children of the deceased employee.

6. If there be a person entitled to death benefits under the provisions of this section, who shall be under the age of eighteen years, and who shall be an inmate of any institution and a public charge upon the department of social services of the city of New York, or any other department or body, the benefits allowed hereunder WITH REGARD TO SUCH PERSON shall be payable to the said department of public welfare of the city of New York or any other department or body to the extent of the reasonable charges for the care and maintenance, during the continuance as a public charge in said institution, of said beneficiary and until the said person shall have attained the age of eighteen years. Any sum or sums remaining after the said payment out of the benefits shall be distributed as provided by the other subdivisions of this section.

7. In computing the offsets under subdivisions one-c and two-a of this section any increase in survivors insurance benefits under social security that occurs after the date of death shall not be considered, and any such offset shall be equally applicable to the survivors insurance benefits under the social security act which are received retroactively but such offset shall not apply to increases of such benefits received retroactively.

8. COST-OF-LIVING ADJUSTMENTS OF DEATH BENEFITS. A. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ADDITION TO ANY OTHER AMOUNT RECEIVED PURSUANT TO THIS ARTICLE AS DEATH BENEFITS, A DEPENDENT OF A DECEASED EMPLOYEE ENTITLED TO BENEFITS UNDER THIS SECTION SHALL BE ENTITLED TO AN ADDITIONAL ALLOWANCE, TO BE KNOWN AS A COST-OF-LIVING ADJUSTMENT ALLOWANCE, WHICH SHALL BE PAYABLE ANNUALLY.

B. THE COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE COMPUTED ANNUALLY BY THE BOARD ON FEBRUARY FIRST AND SHALL BE BASED ON SIXTY-SEVEN PERCENT OF THE INCREASE IN THE CONSUMER PRICE INDEX AS FOR THE PRECEDING CALENDAR YEAR AS PROMULGATED BY THE UNITED STATES DEPARTMENT OF LABOR. IF THE CONSUMER PRICE INDEX FOR THE PRECEDING YEAR IS LESS THAN TWO PERCENT, NO COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE PAYABLE, PROVIDED THAT, IF NO COST-OF-LIVING INCREASE IS PAYABLE IN A GIVEN YEAR BECAUSE THE CONSUMER PRICE INDEX FOR THE PRECEDING YEAR WAS LESS THAN TWO PERCENT, THE NEXT SUCCEEDING ANNUAL CALCULATION SHALL CONSIDER THE CHANGE IN THE CONSUMER PRICE INDEX OVER THE PRECEDING TWO CALENDAR YEARS. NO INCREASE SHALL EXCEED THE SUM OF TEN DOLLARS PER WEEK IN ANY YEAR. THE COST-OF-LIVING ALLOWANCE THUS COMPUTED SHALL BE PAYABLE FOR THE TWELVE-MONTH PERIOD BEGINNING THE FOLLOWING JULY FIRST.

C. THIS SUBDIVISION SHALL NOT BE DEEMED OR CONSTRUED TO DIMINISH THE RIGHT OF ANY BENEFICIARY TO ANY BENEFITS TO WHICH SUCH BENEFICIARY WOULD OTHERWISE BE ENTITLED PURSUANT TO LAW.

D. THE BOARD SHALL COMPUTE THE ALLOWANCES PROVIDED BY THIS SUBDIVISION COMMENCING FEBRUARY FIRST, TWO THOUSAND SEVEN AND SHALL AWARD SUCH ALLOWANCES IN ALL CLAIMS TO WHICH THIS SUBDIVISION APPLIES.

S 2. Subdivision 1, paragraph (a) of subdivision 6 and paragraph (c) of subdivision 8 of section 15 of the workers' compensation law, subdivision 1 as amended by chapter 675 of the laws of 1977, paragraph (a) of

subdivision 6 as amended by chapter 689 of the laws of 2007, paragraph (c) of subdivision 8 as amended by chapter 635 of the laws of 1996, are amended and a new subdivision 10 is added to read as follows:

1. Permanent total disability. In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS, shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts. Notwithstanding any other provision of this chapter, an injured employee disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs, or of any two thereof shall not suffer any diminution of his compensation by engaging in business or employment provided his earnings or wages, when combined with his compensation, shall not be in excess of the wage base, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS, on which the maximum weekly compensation benefit is computed under the law in effect at time of such earning; further provided, that if the combination exceeds such wage base, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS, the compensation shall be diminished to an amount which, together with his earnings or wages, shall equal the wage base, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS; and further provided that the application of this subdivision shall not result in reduction of compensation which an injured employee who is disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs or of any two thereof, would otherwise be entitled to under any other provision of this section.

(a) Compensation for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs, (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (2) on or after July first, nineteen hundred seventy-eight, shall not exceed one hundred eighty dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (3) on or after January first, nineteen hundred seventy-nine, shall not exceed two hundred fifteen dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (4) on or after July first, nineteen hundred eighty-three, shall not exceed two hundred fifty-five dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (5) on or after July first, nineteen hundred eighty-four, shall not exceed two hundred seventy-five dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (6) on or after July first, nineteen hundred eighty-five, shall not exceed three hundred dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES, that occurs (7) on or after July first, nineteen hundred ninety, shall not exceed three hundred forty dollars per week, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS FOR PERMANENT TOTAL DISABILITIES; and in the case of temporary total disability shall not be less than thirty dollars per week and in the case of permanent total disability shall not be less than twenty dollars per week, TOGETHER WITH APPLICABLE WEEKLY

COST-OF-LIVING ADJUSTMENTS, except that if the employee's wages at the time of injury are less than thirty or twenty dollars per week respectively, he or she shall receive his or her full weekly wages. Compensation for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred five dollars per week, that occurs (2) on or after July first, nineteen hundred eighty-three, shall not exceed one hundred twenty-five dollars per week, that occurs (3) on or after July first, nineteen hundred eighty-four, shall not exceed one hundred thirty-five dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-five, shall not exceed one hundred fifty dollars per week, that occurs (5) on or after July first, nineteen hundred ninety, shall not exceed two hundred eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he or she shall receive his or her full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, nineteen hundred ninety-one and prior to July first, nineteen hundred ninety-two, shall not exceed three hundred fifty dollars per week; (2) on or after July first, nineteen hundred ninety-two, shall not exceed four hundred dollars per week; nor be less than forty dollars per week except that if the employee's wages at the time of injury are less than forty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, two thousand seven shall not exceed five hundred dollars per week, (2) on or after July first, two thousand eight shall not exceed five hundred fifty dollars per week, (3) on or after July first, two thousand nine shall not exceed six hundred dollars per week, and (4) on or after July first, two thousand ten, and on or after July first of each succeeding year, shall not exceed two-thirds of the New York state average weekly wage for the year in which it is reported. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand seven shall not be less than one hundred dollars per week except that if the employee's wages at the time of injury are less than one hundred dollars per week, the employee shall receive his or her full wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease or injury that occurred as a result of World Trade Center rescue activity by an employee of a private voluntary hospital, 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 disablement or occupational disease or injury, shall not exceed three-quarters of a claimant's wage on September eleventh, two thousand one. In no event shall compensation when combined

with decreased earnings or earning capacity exceed the amount of wages the employee was receiving on September eleventh, two thousand one.

(c) Permanent total disability after permanent partial disability. Notwithstanding the provisions of paragraph (d) of this subdivision, if an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the loss of another member or organ, he/she shall be paid, in addition to the compensation for permanent partial disability provided in this section and after the cessation of the payments for the prescribed period of weeks special additional compensation during the continuance of such total disability to the amount of sixty-six and two-thirds per centum of the average weekly wage earned by him/her at the time the total permanent disability was incurred, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS. If such employee shall establish an earning capacity by employment he OR SHE shall be paid during the period of such employment, instead of the additional compensation above provided, two-thirds of the difference between his average weekly wages at the time the total disability was incurred and his OR HER wage earning capacity as determined by his OR HER actual earnings in such employment, TOGETHER WITH APPLICABLE WEEKLY COST-OF-LIVING ADJUSTMENTS, subject to the limitations in subdivision six of this section. Such additional compensation, and expense as in this subdivision provided, shall be paid out of the special disability fund and in the manner as hereinafter in this subdivision provided.

10. COST-OF-LIVING ADJUSTMENTS OF PERMANENT TOTAL DISABILITY BENEFITS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN ADDITION TO ANY OTHER AMOUNT RECEIVED PURSUANT TO THIS ARTICLE AS PERMANENT TOTAL DISABILITY BENEFITS, AN EMPLOYEE ENTITLED TO BENEFITS UNDER THIS SECTION SHALL BE ENTITLED TO AN ADDITIONAL ALLOWANCE, TO BE KNOWN AS A COST-OF-LIVING ADJUSTMENT ALLOWANCE, WHICH SHALL BE PAYABLE ANNUALLY.

(B) THE COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE COMPUTED ANNUALLY BY THE BOARD ON FEBRUARY FIRST AND SHALL BE BASED ON SIXTY-SEVEN PERCENT OF THE INCREASE IN THE CONSUMER PRICE INDEX AS FOR THE PRECEDING CALENDAR YEAR AS PROMULGATED BY THE UNITED STATES DEPARTMENT OF LABOR. IF THE CONSUMER PRICE INDEX FOR THE PRECEDING YEAR IS LESS THAN TWO PERCENT, NO COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE PAYABLE, PROVIDED THAT, IF NO COST-OF-LIVING INCREASE IS PAYABLE IN A GIVEN YEAR BECAUSE THE CONSUMER PRICE INDEX FOR THE PRECEDING YEARS WAS LESS THAN TWO PERCENT, THE NEXT SUCCEEDING ANNUAL CALCULATION SHALL CONSIDER THE CHANGE IN THE CONSUMER PRICE INDEX OVER THE PRECEDING TWO CALENDAR YEARS. NO INCREASE SHALL EXCEED THE SUM OF TEN DOLLARS PER WEEK IN ANY YEAR. THE COST-OF-LIVING ALLOWANCE THUS COMPUTED SHALL BE PAYABLE FOR THE TWELVE-MONTH PERIOD BEGINNING THE FOLLOWING JULY FIRST.

(C) THIS SUBDIVISION SHALL NOT BE DEEMED OR CONSTRUED TO DIMINISH THE RIGHT OF ANY BENEFICIARY TO ANY BENEFITS TO WHICH SUCH BENEFICIARY WOULD OTHERWISE BE ENTITLED PURSUANT TO LAW.

S 3. Paragraph (a) of subdivision 4 of section 13-a of the workers' compensation law, as amended by chapter 473 of the laws of 2000, is amended to read as follows:

(a) No claim for medical or surgical treatment shall be valid and enforceable, as against such employer, or employee, unless within forty-eight hours following the first treatment the physician giving such treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports if requested in writing by the chair, board, employer or insur-

ance carrier at intervals of not less than [three weeks] SIXTY DAYS apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

S 4. This act shall take effect January 1, 2012 and shall apply to all claims for payment of death benefits pursuant to section 16 of the workers' compensation law, regardless of the date of death and claims for payment of permanent total disability pursuant to section 15 of the workers' compensation law, regardless of the date of the injury.