

4090

2013-2014 Regular Sessions

I N   S E N A T E

March 8, 2013

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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.

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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
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 proximi-  
30 mate 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.