STATE OF NEW YORK

8650

2017-2018 Regular Sessions

IN ASSEMBLY

September 1, 2017

Introduced by M. of A. MAYER -- read once and referred 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:

Section 1. Subdivisions 1-b, 1-c, 1-d, 2, 2-a and 2-b of section 16 of the workers' compensation law, subdivisions 1-b, 1-c and 2 as amended by chapter 168 of the laws of 1979, subdivisions 1-d and 2-b as added by chapter 689 of the laws of 2007, and subdivision 2-a as amended by chapter 174 of the laws of 1981, are amended and a new subdivision 2-c is added to read as follows:

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 [~~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 [~~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 [~~during widowhood or~~

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

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~~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 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 or widowerhood with two years' compensation in one sum, upon remarriage~~]; and the additional amount of twenty per centum of such wages 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, 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. 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 [~~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 [~~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 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 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.

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 physically 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 [~~during widowhood or widowerhood with two years' compensation in one sum, upon remarriage~~]; and thirty per centum of such wages 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 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 educa-

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 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, 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 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 [~~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.

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 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 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 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 [~~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~~]. 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. 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 [~~during widowhood or widowerhood with two years' compensation in one sum upon remarriage~~]; and thirty-five 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 seventy-five 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 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, and if there are surviving more than two children under the age of eighteen years, or under the age of twen-~~

~~ty-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 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 [~~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.

2-c. For the purposes of the payment of benefits to a surviving spouse pursuant to this section, the remarriage of such spouse shall not affect his or her status as a widow or widower for purposes of this section.

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