



Remarriage Prohibition

Comprehensive Report Follow-up
November 19, 2014

Issue

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits

A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits

Overview

Remarriage is not prohibited in any state administered retirement plan

Issue was addressed in 2007-2010

- 2007 & 2008, HB 1545 by Representative Kirby
- 2009 Interim
 - Legislature requested information from L&I
 - Studied by LEOFF 2 Board
- 2010, SB 6407 by LEOFF 2 Board

Background

Retirement Benefits for Survivors

- If a survivor selects a monthly benefit and remarries, there is no impact on their receipt of survivor benefits
- This is true for ALL state plans, not just LEOFF

Background

Worker's Compensation Benefits for Survivors

- **Immediate work-related death:** surviving spouses receive a monthly benefit, until they remarry.
- **Totally disabled, then die and it was related to the claim:** surviving spouses receive a monthly benefit, until they remarry.
 - Final lump sum settlement
 - Decline settlement, keep it in trust
- **Totally disabled, then die and it was not related to the claim:** benefits do not stop if a survivor option was chosen, even if the survivor remarries.

Background

Board Study

- In 2009 found 4 states without Remarriage Prohibition
- One had a specific exemption for LEOs and FFs

Administrative Issues

- Removing the prohibition from the Department of Labor and Industries (LNI) statutes could assist the agency
 - Challenges tracking survivor remarriages = overpayments

Options

Option 1 - Take no further action

Option 2 - Direct staff to provide updated information and a bill draft in a final proposal

Questions?

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COMPREHENSIVE REPORT FOLLOW-UP

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ISSUE

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits.

A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits.

OVERVIEW

None of the current Washington state administered retirement plans contain a prohibition on remarriage for a survivor receiving pension benefits. If a survivor remarries, their survivor pension benefits continue. However, Workers' Compensation benefits provided by the Department of Labor and Industries (LNI) to a survivor of a line of duty death can cease if the survivor remarries.

The Legislature has twice considered bills (HB 1545 in 2007 and 2008 introduced by Representative Steve Kirby, and HB 1212 in 2009 by the LEOFF Plan 2 Board) addressing the policy of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries. Neither bill passed. In the interim of 2009, several Legislative members requested LNI study the issue and to report back.

Also in the interim of 2009, the Board conducted a nationwide search in 2009 and found four states without remarriage prohibition on Worker's Compensation benefits. In fact, for one of those states there was a specific exemption for law enforcement officers and fire fighters.

In 2010, the Board introduced SB 6407 which provided several duty-related death benefits to LEOFF 2 members, including the elimination of the remarriage prohibition of Worker's Compensation benefits. It was overwhelmingly passed in the House, but the provision containing the elimination of remarriage prohibition was removed by the Senate before passing. No action has been taken by the Board since.

Administratively, removing the prohibition from LNI statues could assist the agency, as there has been challenges tracking survivor remarriages, resulting in overpayments.

At the September 24, 2012 Board meeting, a survivor of a law enforcement officer killed in the line of duty came to the Board and asked it to consider another attempt at passing a bill. At that time, the Board asked the staff to provide this follow-up.

BACKGROUND & POLICY ISSUES

Unlike retirement benefits, surviving spouses who are receiving Workers' Compensation death benefits cannot continue to receive the benefit after remarriage. The LEOFF Plan 2 Retirement Board has been contacted by survivors of members killed in the line duty regarding this policy.

Retirement Benefits for Survivors

If a member dies in the line of duty and has 10 or more years of service credit or is eligible to retire, the surviving spouse may choose between the following two benefits:

1. A lump sum payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit calculated as if the member had elected the Joint and 100% Survivor Option.

If the survivor elects the continuing benefit, the survivor will continue to receive the benefit for their lifetime; the benefit is actuarially reduced to reflect the cost of providing the benefit over the survivor's lifetime.

If a survivor remarries, it has no impact on the survivor's receipt of retirement benefits. Since inception, LEOFF Plan 2 has not contained any provisions with a prohibition on remarriage for survivors.

LEOFF Plan 1 at one point contained a prohibition on remarriage, that provision was removed from the plan by the Legislature in 1977. In 2002, a provision was added to LEOFF Plan 1 to make the 1977 legislation retroactive, allowing pre-1977 survivors to remarry and continue receiving survivor retirement benefits.

Workers' Compensation Benefits for Survivors

If a worker dies from a work-related injury or occupational disease, a surviving spouse receives a monthly benefit from Workers' Compensation. The amount of 60% of the worker's monthly wages at the time of death. No actuarial reductions are applied to this survivor benefit.

If the disabled worker dies and the death is related to their disabling work-related injury or occupational disease, the amount the survivor receives is also 60% of the worker's wages, but from the time of disablement. No actuarial reductions are applied to this survivor benefit.

If a surviving spouse in either case remarries, monthly benefit payments stops at the end of the month in which they remarry.

At the time of remarriage, survivors have two options:

1. Receive a final settlement and receive no further benefits under the claim.
2. Leave the settlement in trust with Workers' Compensation.
 - a. If the new marriage ends in death, annulment or divorce, the survivor can apply to reinstate the benefit as of the date of death or date the divorce becomes final.
 - b. Should the survivor die while the settlement is in trust, the survivor's estate is paid 50 percent of the remaining pension reserve or the settlement amount, whichever is less.

If the death is not related to the claim and a survivor option was selected, monthly survivor benefit payments do not stop. Similar to survivor retirement benefits, the worker's benefit was actuarially reduced to reflect the cost of continuing the benefit over the survivor's lifetime.

Legislative History

The Legislature has twice considered bills (HB 1545 – 2007-08, HB 1212 – 2009) addressing the policy of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries.

2007-08 Legislative Session. Legislation first introduced during the 2007 Legislative Session by Representative Steve Kirby would have allowed surviving spouses of LEOFF Plan 2 members, who are receiving Workers' Compensation death benefits, to continue to receive the benefit after remarriage. The 2007 bill did not receive a hearing. During the 2008 session, the bill was passed unanimously by the House of Representatives, but the bill did not move past the Senate Rules Committee. A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$201,662 in the 2007-09 biennium and \$21,536 in each of the 2009-11 and 2011-13 biennia.

2009 Legislative Session. New legislation was introduced in the 2009 session allowing the continuation of workers' compensation benefits after remarriage for surviving spouses of LEOFF Plan 2 members and Washington State Patrol Retirement System members who died in the course of employment or whose death is due to an occupational disease.

The bill passed the House of Representatives, but was amended in the Senate before being passed. The amendment requires the Workers' Compensation Advisory Committee to study issues relating to allowing a surviving spouse to continue to receive industrial insurance death benefits after remarriage. The amended bill was sent to Conference Committee, but did not proceed any further. The bill was returned to the House of Representatives for consideration during the 2010 session.

2009 Interim. Following the 2009 Legislative Session, Representative Steve Conway, Chair of the House Commerce and Labor Committee and Senator Jeanne Kohl-Welles, Chair of the Senate Labor, Commerce, and Consumer Protection Committee, sent a joint letter to Judy Schurke, Director of Labor and Industries requesting a study on the policy of terminating survivors' benefits upon remarriage. LNI's response can be found as Appendix A.

2010 Legislative Session. Legislation, which targeted taking care of the families of law enforcement officers' killed in line of duty during late 2009 and early 2010, was introduced during the 2010 session. This bill provides a comprehensive package of benefits to augment the existing duty-related death benefits.

As introduced, this legislation included a provision which would have eliminated the remarriage prohibition for workers' compensation benefits on surviving spouses of public safety employees killed in the course of employment. Surviving spouses who have already had their benefits suspended due to remarriage would have their benefits resume.

The legislation, as introduced, passed overwhelmingly out of the House of Representatives. However, a Senate amendment removed the remarriage prohibition provision of the bill. In place of the prohibition, the Senate increased the potential lump-sum payout a survivor could choose to take in the case of remarriage¹. Ultimately, the House concurred with the Senate amendment and passed the legislation without the remarriage prohibition.

¹ The surviving spouse may receive a lump sum of thirty-six times (increased from twenty-four times) the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself or fifty percent of the remaining annuity value of his or her pension, whichever is the lesser. HB 2519 (2010), Sec 3.

Administrative Issues

The requirement to determine eligibility for continuing benefits has created administrative challenges for the Department of Labor and Industries. In fact, the Department of Labor and Industries received an audit finding from the State Auditor's Office in 2006² for paying benefits to survivors who were no longer eligible due to remarriage. Eliminating this requirement may help the Department of Labor and Industries.

Policy Treatment in Other States

Preliminary research by the LEOFF Plan 2 Retirement Board has identified at least four states that do not stop survivor benefits upon remarriage. Those states include: Kansas, Minnesota, Nevada, and North Dakota. In the case of Nevada, the continuation of benefits after remarriage is an exception for surviving spouses of police officers or firefighters. See Appendix A.

POLICY OPTIONS

Option 1: Take no further action.

Option 2: Direct staff to provide updated information and a bill draft in a final proposal.

SUPPORTING INFORMATION

Appendix A: Response Letter from Labor and Industries to the Legislature (2009)

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² WA State Auditor's Office, Audit Report 6541, Released May 5, 2006

Appendix A

Report on the Continuation vs. Termination of Death Benefit Pensions Upon Remarriage In Washington's Workers' Compensation System

Issue

The Department has been asked to make recommendations as to whether monthly death benefit pension payments should be continued for surviving spouses of all workers who remarry.

Background

Statutory amendments were considered in the last two legislative sessions (HB1545 in 2008 and HB1212 in 2009) which would direct the continued payment of death benefit pensions to surviving spouses of certain public safety employees who are members of the Law Enforcement Officers and Firefighters (LEOFF) for life, excluding them from the remarriage termination provision.

The law currently provides that the surviving spouse of any fatally injured worker who remarries can choose to receive a one-time payment equal to 24 months of death benefit pension payments, or can have their death benefit pension suspended for reinstatement at a later date should their remarriage end. Death benefit pension payments continue for any eligible dependent child(ren) upon remarriage of the surviving spouse.

History

RCW 51.32.050 is the statute governing death benefits within the industrial insurance laws. This law was enacted in 1911 as part of the original legislation establishing workers' compensation in the State of Washington. This earliest version provided a monthly death benefit pension of \$20.00 to widows and invalid widowers of workers fatally injured on the job.

Payments were directed to be made throughout the life of the surviving spouse ceasing at the end of the month in which remarriage occurred. The one-time payment available upon remarriage (remarriage settlement) was only for widows. The law stated that “. . . she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz.: the sum of \$240.00, but the monthly payment for the child or children shall continue as before”.

Applicable Amendments

The death benefit statute has been amended many times since 1911. Only those amendments applicable to the recipients of death benefit pensions and the remarriage termination provision will be discussed in this writing.

Session laws from 1941 increased the monthly death benefit payment to a widow or invalid widower to fifty dollars and changed the remarriage settlement for widows from a sum equal to twelve times the monthly allowance to a lump sum of \$1000.00. In the 1957 legislative session the monthly death benefit was raised to \$125.00 with the widows'

Appendix A

remarriage settlement amount increased to a lump sum of \$1500.00. Another increase in these benefits was implemented in 1965 bringing the monthly death benefit to \$140.00 with a remarriage settlement for widows of \$2000.00.

Amendments in 1971 brought a change in the compensation scheme for industrial insurance benefits. Benefit amounts were changed from a flat monthly amount to a percentage of the worker's wage based upon marital status and number of children, with minimum and maximum benefit levels established. Where a widow or invalid widower with no children would have previously received \$140.00 per month, the benefit was changed to 60% of the wages of the deceased workman but not less than \$185.00. Monthly benefits were not to exceed 75% of the average monthly wage of the state. A remarriage settlement for a widow was increased to a lump sum of \$7500.00 or 50% of the then remaining annuity value of her pension, whichever was lesser.

The statute was again amended in 1975 to give surviving spouses that remarried a choice of taking the one-time remarriage settlement or suspending their benefits for reinstatement in the future should the remarriage end. In 1991 the remarriage settlement amount was increased to 24 times the monthly death benefit pension payment.

Equal Rights Amendment

Constitutional amendments were enacted in 1973 to conform many of the state's statutes to the principles of equal rights between the sexes. The equal rights amendment (ERA) establishes as a principle of constitutional law the inherent equality of males and females. It requires, therefore, that men and woman be treated identically in terms of their legal rights and responsibilities.

Law Review

In assessing the problems with implementation of the ERA, Professor Linda Dybwad wrote, "These changes seek to equalize treatment of spouses by extending to the wife many rights formerly available only to the husband, as well as extending to husbands some benefits previously reserved only to wives. The wife is also now subject to several duties formerly imposed only on the husband."¹

The industrial insurance laws were included in the 1973 amendments implementing the ERA. Previously, some laws extended benefits to women, but not to their male counterparts, on the theory that women were the only sex in need of support or protection. This was seen in the original drafting of RCW 51.32.050 in 1911, which provided death benefits to the *widow or invalid widower* of a fatally injured worker.

Professor Dybwad stated that the "Disparity in treatment of widows and widowers under prior statutes was common. This disparity reflected two underlying assumptions: (1) That a widow is usually dependent on the deceased for support; and (2) that survivor's benefits should be available only where dependency exists. The first assumption, although still

¹ Washington Law Review Volume 49, Number 2, February 1974, University of Washington School of Law, Implementing Washington's ERA: Problems with Wholesale Legislative Revision by Professor Linda Dybwad

Appendix A

valid as a general proposition, is not always the case, and in the years to come, as increasing numbers of women enter and remain in various occupations, will become less valid. The second assumption, interestingly enough, appears to have been discarded by the drafters of Chapter 154² who have uniformly extended survivor's benefits to spouses regardless of dependency.

This extension, of course, is not the only way to conform survivor's benefits to the equal rights amendment. The available alternative is restriction of benefits to surviving spouses, regardless of sex, who were dependent on the deceased for support. The legislative decision should be made after consideration of several factors, including the cost to employers to provide benefits to nondependent survivors and the economic impact on married persons. Generally speaking, pensions do not provide living income to retired individuals. The sudden loss of one pension, even if his or her own pension remains, could be a severe economic blow to the surviving spouse. On the other hand, removal of a dependency test converts the pension into a form of property similar to other property that may be inherited as a matter of right, regardless of need.”

No actual bill file could be found that documents the reasoning or intent of the original language in RCW 51.32.050 from 1911 or for early amendments. Given the year in which the industrial insurance laws were established, it is known that the workforce was predominantly male. Death benefits were provided to a fatally injured worker's widow or invalid widower. If an able-bodied husband lost his wife in an industrial fatality, there were no provisions to provide him with a death benefit pension. The assumptions discussed by Professor Dybwad appear to be embodied in the initial draft of the death benefit statute. It is not believed that death benefit pensions were adjudicated with a dependency test. Rather, wives were assumed to be dependent upon their husbands and invalid husbands assumed to be dependent upon their wives due to their condition.

With the 1973 ERA, the statute was rewritten substituting “surviving spouse” for “widow”. In doing so, as Professor Dybwad noted, the assumption that survivor's benefits should be available only where dependency exists was essentially eliminated.

Current Statutory Language

The sections of RCW 51.32.050 applicable to this discussion currently state:

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule: . . .

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: . . .

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving

² Chapter 154 refers to the Washington Session Laws of the 1973 First Extraordinary Session implementing the constitutional amendments to enact the Equal Rights Amendment

Appendix A

spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 18, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received. . . .

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

Retirement Pension vs. Workers' Compensation Pension

There is a distinct difference between a retirement pension and a pension granted under workers' compensation. A worker must be vested in their retirement plan in accordance with the plan's requirements prior to being eligible to receive retirement benefits. Typically this requires an accrual of years of employment in a specific retirement plan or

Appendix A

industry. Under workers' compensation, a worker in covered employment is eligible for benefits even if they sustain an injury on their first day of employment.

Consistent Application

The industrial insurance laws currently provide consistent eligibility for benefits. Benefits are granted to a surviving spouse on the basis of assumed dependency through marriage with the worker, and those death benefits are terminated upon remarriage, based on an assumed dependency on the new spouse.

Applicable Recipients

The remarriage termination with lump sum award, or suspension of death benefit pension payments, only applies to surviving spouses of workers that die as a result of an accepted industrial injury or disease (fatality) or surviving spouses of workers that were awarded total permanent disability pensions³ before the legislature adopted the pension options in 1986.

Current Data

Using data through September 2009, the number of surviving spouses currently receiving death benefit pensions (fatalities) or pre-option total permanent disability pensions is:

Department of Energy	State Funded	Self Insured	Total
35	4,452	564	5,051

The numbers of such surviving spouses that have remarried are presented in the table below, listed by year of remarriage:

Year	No Liability Listed	Department of Energy	State Funded	Self Insured	Total
1945			1		1
1946			1		1
1966			1		1
1972			1		1
Year	No Liability Listed	Department of Energy	State Funded	Self Insured	Total
1975			1		1
1976			6	1	7

³ If a worker is awarded a total permanent disability pension on a claim that was received in the Department on or after July 1, 1986, it is classified as an "option pension". The worker selects one of three options that determines the amount of the current monthly pension benefit as well as if benefits will continue to be paid to a nominated beneficiary upon the worker's death. If providing for a beneficiary, the worker's benefit is reduced. Because the worker has taken a reduced benefit to provide for a beneficiary, the remarriage termination provision does not apply. The option choice only applies if the worker's death is unrelated to the accepted injury or disease. If the worker's death is related to the accepted injury or disease, it is classified as a "fatality". "Pre-option" total permanent disability pensions are total permanent partial disability pensions awarded to the worker on claims received prior to July 1, 1986.

Appendix A

1977	1		11		12
1978			12	3	16
1979	1		24	2	28
1980	1		18	2	21
1981			15	1	16
1982			13	3	16
1983			16	3	19
1984			11		11
1985			12		12
1986			17	1	18
1987	1		19	1	21
1988			12	1	13
1989			15		15
1990			10	1	11
1991			15	2	17
1992			11	1	12
1993			9	3	12
1994			11	1	12
1995			10		10
1996		1	9		10
1997		1	10	1	12
1998			13	4	17
1999	1		8	2	11
2000			8	1	9
2001			5	3	8
2002			7	1	8
2003			5	1	6
2004			6	1	7
2005			7	1	8
2006			7		7
2007			4	2	6
2008		1	6	3	10
2009*		1	3	1	5

*Not a full year

Future Assumptions

In considering the potential benefit and rate impacts of modifying the remarriage termination provision, it was necessary to make some assumptions. This was done in consultation with the department's actuarial staff.

In projecting the number of new surviving spouse recipients, the number of fatalities (related deaths compared to the number of new time-loss claims) for the last several years was reviewed. The actuaries advised there have been about 60 fatal pensions allowed per year over the past four years. With the inclusion of domestic partners, this figure is

Appendix A

estimated to increase approximately one percent, thereby resulting in a projected average of 61 future fatal pensions per year.

The actuaries currently have projections of remarriages, as a remarriage forecast is built into the pension table. The table assumes a probability of remarriage of about 2.5% annually at age 20 reducing to 1.5% annually at age 40 and declining rapidly after that. This means that for 100 surviving spouses at age 20, one can expect 2 ½ remarriages per year; for 100 surviving spouses at age 40, one can expect 1 ½ remarriages per year.

Benefit/Rate Impacts for Surviving spouses of LEOFF workers

Based upon the actuaries' calculations, the termination of the remarriage provision for surviving spouses of LEOFF workers would result in costs to the accident fund of:

\$292,023 one-time cost increase on existing state fund pensions
\$ 63,757 cost for future fatal pensions on existing injuries
\$355,780 total cost to the accident fund, and a
\$124,476 one-time cost to self-insurers

Should the remarriage termination provision only be applied to new claims, this would result in an annual increase of \$36,131 and would result in a negligible increase in accident fund rates only for those employers of LEOFF members.

Benefit/Rate Impacts for Surviving spouses of all workers

The actuaries projected the termination of the remarriage provision for surviving spouses of all workers would result in costs to the accident fund of:

\$10,594,993 one-time cost increase on existing state fund pensions
\$ 1,618,205 cost for future fatal pensions on existing injuries
\$12,213,198 total cost to accident fund, and a
\$ 2,577,679 one-time cost to self-insurers

Should the remarriage termination provision only be applied to new claims, this would result in an annual increase of \$917,035. The ongoing increase for new claims would result in a 0.09% increase in accident fund rates.

The actuarial analysis assumes that widows who previously chose to take the remarriage settlement prior to any legislative action to provide benefits for life, do not have the right to change their decision and that no benefits will be paid for prior periods.

Alternatives to Offset Potential Costs

- 1) Electing a Reduced Benefit to Provide for a Life-Time Pension

Appendix A

One suggestion to reduce potential costs was a possible “option” approach in which a surviving spouse would opt to select a reduced monthly death benefit pension in order to provide for ongoing benefits upon remarriage. This method was not given serious consideration.

It goes without saying that an industrial death is a traumatic event. Survivors find themselves suddenly hurled into a life-changing event. As individuals, surviving spouses will react differently with a full range of emotions and must face harsh realities with all the implications that accompany the loss of a loved one. To expect a grieving spouse to make an “option choice”, which has long-term financial ramifications is unrealistic. Usually immediately following the worker’s death, most surviving spouses don’t believe they will ever remarry and would likely find the suggestion offensive.

2) Eliminating the Remarriage Termination Provision on New Claims

As discussed previously the cost impact of continuing death benefits upon remarriage could be lessened by only eliminating the remarriage termination provision for fatal injuries that occur on or after the effective date of any law change. Such would avoid an impact on the contingency reserves, but would potentially impact rates.

Potential Administrative Savings

To consider potential savings from eliminating the remarriage termination provisions, one must first understand the department’s expenditures for discovery and enforcement of the existing law:

1) Declaration of Entitlement

Every surviving spouse receiving a death benefit pension is sent a Declaration of Entitlement annually. This form must be completed in full, signed, notarized and returned to the department within 30 days to avoid an interruption in the payment of benefits. The declaration is used for a variety of purposes: to verify the mailing address, update children and dependent status, report a change in marital status and/or to report being convicted of a crime.

If the current remarriage termination provisions were eliminated, the question concerning a change in marital status could be removed from the form. However, the form would continue to be necessary to gather the other information listed above. This would not result in a change in costs to the department.

2) Cross-Match with Department of Health (DOH)

The department receives marriage and death information monthly from DOH. The marriage information is matched against the list of surviving spouses receiving death benefits.

As part of an information sharing agreement between state agencies, the marriage and death information is obtained at no cost. If the remarriage termination provisions

Appendix A

changed, there would be no need for the marriage data from DOH; however, there would be no cost savings to the department.

There is a future plan to expand cross-match capabilities to minimally include marriage information from Oregon, Idaho, Nevada and California. Until such time as data sharing agreements are executed with these regional neighboring states, the interim plan under consideration is to use a private data organization for searches on vital statistics.

The estimated cost per record request will be \$100 dollars per state. The \$100 fee does not include the staff time required to request a records check, submit payment for the information and analyze the results. This plan does not have a confirmed start date due to costs.

In the long-term plan to share data with these states through a government-to-government exchange, it is doubtful such data will be obtained at no cost. With the elimination of the remarriage termination provision the record checks would no longer be needed, however, because the plan to address out-of-state records has not been executed, there is no immediate cost savings to the department.

3) Investigations

When the department receives information from a cross-match report or a tip/complaint from the public that a surviving spouse receiving death benefits has remarried without notifying the department, an investigation is initiated.

Investigations are requested electronically and an “investigation type” is designated. There is no method of specifically identifying a remarriage investigation within the pension investigation type.

An attempt was made to ascertain how many remarriage investigations had been done in the past ten years. Very conservatively, it is estimated that 13 cases were completed. Four of these investigations warranted a more in-depth review. It is estimated that on average 35 staff hours were spent on each of these four cases, with an average of 13 hours spent on each of the remaining nine cases. This would represent a total of 257 staff hours in conjunction with remarriage investigations over the past ten years.

If the remarriage termination provision was eliminated, such investigations would no longer be necessary. This would not result in any savings, but would allow investigative resources to be assigned to other cases.

What do other States do?

Appendix A

The following table was compiled using data from *Workers' Compensation Laws, 2nd Edition*. Information from all fifty states and the District of Columbia was included. Of those 51 jurisdictions, only five states do not have a remarriage termination provision. Of the five states without a remarriage termination, only one provides a lifetime benefit, with pensions in the other four states being statutorily limited by a specified number of weeks or a monetary cap.

Forty-six jurisdictions terminate spousal death benefit pensions upon remarriage. One of those jurisdictions, Nevada, excludes surviving spouses of police officers and fire fighters from the remarriage termination.

Appendix A

FATALITY BENEFITS PAID UNDER WORKERS' COMPENSATION PROGRAMS AS OF JULY 2008 – REMARRIAGE & DEPENDENCY PROVISIONS⁴

State	Lifetime Pension ⁵	Statutorily Limited Pension	Remarriage Termination Provision	No Remarriage Termination Provision
Alabama		Maximum of 500 weeks to dependents	X	
Alaska ⁶		12 years	X	
Arizona	X		X	
Arkansas ⁷		450 weeks for partial dependents	X	
California	X			X
Colorado	X		X	
Connecticut	X		X	
Delaware	X		X	
District of Columbia	X		X	
Florida		\$150,000	X	
Georgia ⁸		\$150,000 for spouse w/o kids	X	
Hawaii		312 weeks	X	
Idaho		500 weeks	X	
Illinois		\$500,000 or 25 years	X	
Indiana		500 weeks	X	
Iowa	X		X	
Kansas		\$250,000		X

⁴ Materials compiled from *Workers' Compensation Laws, 2nd Edition*. Joint publication of IAIABC and WCRI. June 2009.

⁵ These pensions have no statutory limits for dependency benefits.

⁶ Spouse 52 years of age or older or permanently disabled is not subject to 12 year limitation.

⁷ Dependent benefits are outlined in Arkansas statute, § 11-9-527. See appendix for full statute.

⁸ Until age 65 or 400 weeks from date of injury, whichever provides greater benefits.

Appendix A

State	Lifetime Pension	Statutorily Limited Pension	Remarriage Termination Provision	No Remarriage Termination Provision
Kentucky ⁹	X		X	
Louisiana	X		X	
Maine ¹⁰		If a dependent spouse becomes a dependent of another person, the payments must cease upon the payment to the spouse of the balance of the compensation to which the spouse would otherwise have been entitled but not to exceed \$500.		
Maryland ¹¹		Partial dependency benefits may not exceed \$60,000	X	
Massachusetts	X		X	
Michigan		500 weeks	X	
Minnesota		10 years or 10 years after last child no longer dependent		X
Mississippi		450 weeks	X	
Missouri	X		X	
Montana		500 weeks	X	
Nebraska	X		X	
Nevada ¹²		No limit unless there are partial dependents only, then 100 months	X	Exception - spouses of deceased police & firefighters, NRS 616C.507

⁹ Issue of termination date for spouse's benefit is currently being litigated.

¹⁰ Dependent definitions are located in Maine statute Title 39-A § 102. See Appendix for full statute.

¹¹ Partly dependent individual is defined in Maryland statute § 9-682. See Appendix for full statute.

¹² Partly dependent is defined in Nevada statute NRS 616C.505 (9). See Appendix for full statute.

Appendix A

State	Lifetime Pension	Statutorily Limited Pension	Remarriage Termination Provision	No Remarriage Termination Provision
New Hampshire	X		X	
New Jersey	X		X	
New Mexico		100% of the state average weekly wage for 700 weeks	X	
New York	X		X	
North Carolina ¹³		400 weeks unless widow/er is physically or mentally disabled		X
North Dakota ¹⁴		\$250,000	X	
Ohio	X		X	
Oklahoma	X		X	
Oregon	X		X	
Pennsylvania	X		X	
Rhode Island	X		X	
South Carolina		500 weeks		X
South Dakota	X		X	
Tennessee	X		X	
Texas		Minimum of 364 weeks would be paid in a fatal claim	X	
Utah		312 weeks of combined benefits excluding permanent total disability	X	
Vermont		After minimum of 330 weeks, spousal benefits end at age 62, when eligible for Social Security	X	
Virginia		500 weeks	X	

¹³ Information is effective as of January 1, 2007 and does not reflect any legislative or rule changes made since that time.

¹⁴ Remarriage payment only applies to remarriages that occur before August 1, 2003. See Appendix for Title 65 § 05 (21), spousal marriage settlements text.

Appendix A

State	Lifetime Pension	Statutorily Limited Pension	Remarriage Termination Provision	No Remarriage Termination Provision
Washington	X		X	
West Virginia	X		X	
Wisconsin ¹⁵		\$241,500	X	
Wyoming	X		X	

¹⁵ Department will reassign the death benefits to children designated in 102.51(1) and 102.49 Wisconsin Statutes, unless a showing is made that reassignment results in an undue hardship for the spouse. See Appendix for full statute.

Appendix A

Points for Consideration

- The remarriage termination provision was part of the original 1911 legislation establishing Workers' Compensation.
- As a reflection of the era in which it was written, the original statute provided death benefit pensions to widows or invalid widowers assuming wives to be dependent upon their husbands and invalid husbands upon their wives due to their condition.
- The implementation of the ERA, substituting "surviving spouse" for "widow", essentially eliminated the assumption that survivor benefits only be available where dependency exists.
- Current law provides consistent eligibility application; assumed dependency on the worker grants survivor benefits, assumed dependency on a new spouse terminates the survivor benefits.
- Currently approximately 5,051 surviving spouses are receiving death benefit pensions (fatalities) or pre-option total permanent disability pensions.
- A small percentage of surviving spouses remarry each year.
- Eliminating the remarriage provision would not result in a cost savings to the department.
- Only five states do not have a remarriage termination provision. Of those, only one provides a life-time pension benefit, similar to Washington State.
- Forty-six jurisdictions terminate spousal death benefit pensions upon remarriage. One of those, Nevada, excludes surviving spouses of police officers and fire fighters from the remarriage termination.
- Termination of the remarriage provision for surviving spouses of *only law enforcement officers and fire fighters (LEOFF) workers* would result in a cost to the contingency reserve of \$355,780 and would cost self-insurers \$124,476.
- Applying the termination of the remarriage provision to only *new LEOFF claims* would result in an annual increase of \$36,131 and result in a negligible increase in accident fund rates.
- Termination of the remarriage provision for surviving spouses of *all workers* would result in a cost to the contingency reserve of \$12,213,198 and would cost self-insurers \$2,577,679.
- Applying the termination of the remarriage provision to only *new claims* would result in an annual increase of \$917,035 and result in a 0.09% increase in accident fund rates.

Appendix A

Discussion/Summary

Should monthly death benefit pension payments be continued for surviving spouses of all workers who remarry?

Termination of death benefit pensions upon remarriage of the surviving spouse is a common established practice within 46 jurisdictions. Such a change would impact a small population of pension recipients and result in a small increase in accident fund costs and ultimately rates.

A pension granted under workers' compensation distinctly differs from a retirement pension. Retirement pensions are accrued over years of working in a specific industry or retirement system. A worker must become vested as required by their specific retirement plan prior to being eligible to receive retirement benefits. During the first day on the job, workers in covered employment are eligible for workers' compensation benefits, up to and including pension benefits if their injury results in permanent disability or death.

A consistent benefit plan for all workers who are covered by workers' compensation insurance is an important element of our system. When a worker dies on the job, the family's suffering is significant no matter what industry employed the worker. Benefits exclusive to the type of work or employer should come from public sources or by means that are supported by workers and/or employers who are at similar risk of harm.

A consistent application of the law is also appropriate. It is not equitable to grant a death benefit pension to a surviving spouse on the basis of assumed dependency through marriage and not have those death benefits terminated upon remarriage, based upon an assumption of dependency on the new spouse. If elimination of the remarriage termination provision is based on the argument that the surviving spouse is not in fact dependent upon the new spouse, then one could also argue that the initial eligibility requirements should also include proof of the surviving spouse's dependency on the worker.

Such an approach would prove difficult. A husband and wife are equal, capable adults in a special relationship. A dependency test would attempt to determine if the surviving spouse was capable of providing for his or her own basic necessities; shelter, food, clothing, or was dependent upon the worker. Factors such as age, education, job skills, child care responsibilities, physical and emotional conditions could be taken into consideration in determining if the surviving spouse was incapable of providing for his or her own support.

Appendix A

Appendix: Statute definitions

Arkansas

11-9-527. Compensation for death.

(c) Beneficiaries - Amounts

§§ 11-9-501 — 11-9-506, compensation for the death of an employee shall be paid to those persons who were wholly and actually dependent upon the deceased employee in the following percentage of the average weekly wage of the employee and in the following order of preference:

(1)(A)(i) To the widow if there is no child, thirty-five percent (35%), and the compensation shall be paid until her death or remarriage.

(ii) However, the widow shall establish, in fact, some dependency upon the deceased employee before she will be entitled to benefits as provided in this section;

(B)(i) To the widower if there is no child, thirty-five percent (35%), and the compensation shall be paid until his death or remarriage.

(ii) However, the widower shall establish, in fact, some dependency upon the deceased employee before he will be entitled to benefits as provided in this section;

(2) To the widow or widower if there is a child, the compensation payable under subdivision (c)(1) of this section and fifteen percent (15%) on account of each child;

(3)(A) To one (1) child if there is no widow or widower, fifty percent (50%).

(B) If more than one (1) child, and there is no widow or widower, fifteen percent (15%) for each child, and in addition thereto, thirty-five percent (35%) to the children as a class, to be divided equally among them;

(4) To the parents, twenty-five percent (25%) each;

(5) To brothers, sisters, grandchildren, and grandparents, fifteen percent (15%) each.

(d) Terminations of Dependence

(1) In the event the widow remarries before full and complete payment to her of the benefits provided in subsection (c) of this section, there shall be paid to her a lump sum equal to compensation for one hundred four (104) weeks, subject to the limitation set out in §§ 11-9-501 — 11-9-506

(2) A physically or mentally incapacitated child, grandchild, brother, or sister shall be entitled to compensation as a dependent of the deceased employee without regard to age or marital status, but if physically or mentally capacitated to earn a livelihood, dependency shall terminate with the attainment of eighteen (18) years of age or upon marriage. However, benefits to an otherwise eligible child shall not terminate at the age of eighteen (18) years provided the child is a full-time student who has not attained the age of twenty-five (25) years.

Appendix A

(i) Partial Dependency

(1) If the employee leaves dependents who are only partially dependent upon his or her earnings for support at the time of injury, the compensation payable for partial dependency shall be in the proportion that the partial dependency bears to total dependency.

(2) In any claim for partial dependency where the average weekly contributions for support were not such as to entitle all dependents to compensation in the aggregate sum of seven dollars (\$7.00) per week, the dependents shall receive compensation for a period not to exceed four hundred fifty (450) weeks in an amount not to exceed the amount of average weekly contributions of the deceased employee for the support of the dependents.

History. Init. Meas. 1948, No. 4, § 15, Acts 1949, p. 1420; Acts 1961, No. 479, § 1; Init. Meas. 1968, No. 1, § 4, Acts 1969; Acts 1975 (Extended Sess., 1976), No. 1227, §§ 12, 13; 1981, No. 290, § 5; 1985, No. 842, § 1; 1986 (2nd Ex. Sess.), No. 10, § 6; A.S.A. 1947, § 81-1315; reen. Acts 1987, No. 1015, §§ 12, 13; Acts 1993, No. 796, § 25.

Maine: Dependent definitions, Title 39-A § 102

8. Dependent. "Dependent" means a member of an employee's family or that employee's next of kin who is wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee:

A. A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent in any way at the time of the injury. A wife living apart from her husband shall produce a court order or other competent evidence as to separation and actual dependency; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. A husband upon a wife with whom he lives, or upon whom he is actually dependent in any way at the time of the injury; and [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. A child, including an adopted child or a stepchild, under the age of 18 years, or under the age of 23 years if a student or over the age of 18 years but physically or mentally incapacitated from earning, who is dependent upon the parent with whom the dependent is living or upon whom the dependent is actually dependent in any way at the time of the injury to the parent, there being no surviving dependent parent. For the purposes of this paragraph, "child" includes any dependent posthumous child whose mother is not living. If there is more than one child dependent, the compensation must be divided equally among them.

For the purposes of this paragraph, the term "student" means a person regularly pursuing a full-time course of study or training at an institution that is:

(1) A school, college or university operated or directly supported by the United States or by any state or local government or political subdivision thereof;

(2) A school, college or university that has been accredited by a state or by a state-recognized or nationally recognized accrediting agency or body;

Appendix A

(3) A school, college or university not accredited pursuant to subparagraph (2) but whose credits are accepted, on transfer, for credit on the same basis as if transferred from an accredited institution by not fewer than 3 institutions accredited pursuant to subparagraph (2); or

(4) An additional type of educational or training institution as defined by the board, but not after the dependent reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, when the dependent's 23rd birthday occurs during a semester or other enrollment period, the dependent continues to be considered a student until the end of the semester or other enrollment period. A child is not deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if the dependent shows to the satisfaction of the board that the dependent has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the board, the dependent is prevented by factors beyond the dependent's control from pursuing the dependent's education. A child is not deemed to be a student under this Act during a period of service in the Armed Forces of the United States. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

In all other cases, questions of total or partial dependency must be determined in accordance with the fact as the fact was at the time of the injury. If there is more than one person wholly dependent, the compensation must be divided equally among them and persons partly dependent, if any, are not entitled to a part of the compensation during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person who is partly dependent, the compensation must be divided among them according to the relative extent of their dependency. [1999, c. 201, §1 (AMD); 1999, c. 201, §2 (AFF) .]

9. Dependent of another person. For purposes of the payment or the termination of compensation under section 215, "dependent of another person" means a widow or widower of a deceased employee that over 1/2 of that person's support during a calendar year was provided by the other person. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF) .]

Maryland: § 9-682. Partly dependent individuals.

(a) *In general.*- The employer or its insurer shall pay a death benefit in accordance with this section if:

(1) there are no individuals who were wholly dependent on the deceased covered employee at the time of death, but there are individuals who were partly dependent; or

(2) a surviving spouse who was wholly dependent on the deceased covered employee at the time of death becomes partly self-supporting.

(b) *Amount of death benefit.*-

(1) The maximum weekly death benefit payable under this section shall equal two-thirds of the average weekly wage of the deceased covered employee, but may not exceed two-thirds of the State average weekly wage.

Appendix A

(2) The weekly death benefit payable under this section shall be the percentage of the maximum weekly death benefit under paragraph (1) of this subsection that:

(i) the weekly earnings of the deceased covered employee bears to the combined weekly earnings of the deceased covered employee and the partly dependent individuals; and

(ii) does not exceed the maximum weekly death benefit.

(c) *Duration of payment - In general.*- Except as otherwise provided in this section, the employer or its insurer shall pay the weekly death benefit:

(1) for the period of partial dependency; or

(2) until \$75,000 has been paid, including any payments made during a period of total dependency under § 9-681 of this subtitle.

(d) *Duration of payment - Surviving spouse who remarries.*-

(1) Subject to paragraph (2) of this subsection, if a surviving spouse who is partly dependent remarries and does not have dependent children at the time of the remarriage, the employer or its insurer shall make payments to the surviving spouse for 2 years after the date of the remarriage.

(2) The total of the payments made before the remarriage may not exceed \$75,000.

(e) *Duration of payment - Child who becomes 18.*-

(1) Except as provided in paragraphs (2) and (3) of this subsection, the employer or its insurer shall continue to make payments to, or for the benefit of, a surviving child until the child reaches 18 years of age.

(2) If a child who is 18 years old or older remains partly dependent on the deceased covered employee, the employer or its insurer shall continue to make payments in accordance with subsections (b) and (c) of this section.

(3) The employer or its insurer shall continue to make payments to, or for the benefit of, a child who is 18 years old or older for up to 5 years after reaching the age of 18 if:

(i) the child is attending school on a full-time basis; and

(ii) the school offers an educational program or a vocational training program and the program is accredited or approved by the Maryland State Department of Education.

Nevada: Amount and duration of compensation, NRS 616C.505 (9)

Death Benefits

NRS 616C.505 Amount and duration of compensation. If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:

Appendix A

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed \$5,000. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer.

2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, $66 \frac{2}{3}$ percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.

3. If there is a surviving spouse and any surviving children of the deceased employee who are not the children of the surviving spouse, the compensation otherwise payable pursuant to subsection 2 must be paid as follows until the entitlement of all children of the deceased employee to receive compensation pursuant to this subsection ceases:

(a) To the surviving spouse, 50 percent of the death benefit is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage; and

(b) To each child of the deceased employee, regardless of whether the child is the child of the surviving spouse, his proportionate share of 50 percent of the death benefit and, except as otherwise provided in subsection 12, if the child has a guardian, the compensation he is entitled to receive may be paid to the guardian.

4. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee, in addition to any amount the child may be entitled to pursuant to subsection 3, must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection 12, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

5. Upon the remarriage of a surviving spouse with children:

(a) The surviving spouse must be paid 2 years' compensation in one lump sum and further benefits must cease; and

(b) Each child must be paid 15 percent of the average monthly wage, up to a maximum family benefit of $66 \frac{2}{3}$ percent of the average monthly wage.

□ The provisions of this subsection do not apply to the remarriage of a surviving spouse of a deceased police officer or firefighter if the provisions of NRS 616C.507 apply to the surviving spouse.

6. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his proportionate share of $66 \frac{2}{3}$ percent of the average monthly wage for his support.

7. Except as otherwise provided in subsection 8, if there is no surviving spouse or child under the age of 18 years, there must be paid:

(a) To a parent, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, $33 \frac{1}{3}$ percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, $66 \frac{2}{3}$ percent of the average monthly wage.

Appendix A

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of the injury causing his death, his proportionate share of $66 \frac{2}{3}$ percent of the average monthly wage.

8. The aggregate compensation payable pursuant to subsection 7 must not exceed $66 \frac{2}{3}$ percent of the average monthly wage.

9. In all other cases involving a question of total or partial dependency:

(a) The extent of the dependency must be determined in accordance with the facts existing at the time of the injury.

(b) If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the deceased employee to the partial dependents bears to the average monthly wage of the deceased employee at the time of the injury resulting in his death.

(c) The duration of compensation to partial dependents must be fixed in accordance with the facts shown, but may not exceed compensation for 100 months.

10. Compensation payable to a surviving spouse is for the use and benefit of the surviving spouse and the dependent children, and the insurer may, from time to time, apportion such compensation between them in such a way as it deems best for the interest of all dependents.

11. In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to him, funeral expenses are payable in an amount not to exceed \$5,000.

12. If a dependent is entitled to receive a death benefit pursuant to this section and is less than 18 years of age or incompetent, the legal representative of the dependent shall petition for a guardian to be appointed for that dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in excess of \$3,000, other than burial expenses, to the dependent until a guardian is appointed and legally qualified. Upon receipt of a certified letter of guardianship, the insurer shall make all payments required by this section to the guardian of the dependent until the dependent is emancipated, the guardianship terminates or the dependent reaches the age of 18 years, whichever occurs first, unless paragraph (a) of subsection 13 is applicable. The fees and costs related to the guardianship must be paid from the estate of the dependent. A guardianship established pursuant to this subsection must be administered in accordance with chapter 159 of NRS, except that after the first annual review required pursuant to NRS 159.176, a court may elect not to review the guardianship annually. The court shall review the guardianship at least once every 3 years. As used in this subsection, "incompetent" has the meaning ascribed to it in NRS 159.019.

13. Except as otherwise provided in paragraphs (a) and (b), the entitlement of any child to receive his proportionate share of compensation pursuant to this section ceases when he dies, marries or reaches the age of 18 years. A child is entitled to continue to receive compensation pursuant to this section if he is:

(a) Over 18 years of age and incapable of supporting himself, until such time as he becomes capable of supporting himself; or

(b) Over 18 years of age and enrolled as a full-time student in an accredited vocational or educational institution, until he reaches the age of 22 years.

Appendix A

14. As used in this section, “surviving spouse” means a surviving husband or wife who was married to the employee at the time of the employee’s death.

[Part 59:168:1947; A 1949, 659; 1951, 485; 1953, 292; 1955, 901]—(NRS A 1957, 732; 1959, 614; 1963, 1144; 1965, 264; 1966, 46; 1967, 686; 1969, 476; 1973, 533; 1975, 600; 1979, 764, 1059; 1981, 1495; 1989, 333; 1991, 804; 1993, 751; 1999, 1224; 2007, 679, 3358)

North Dakota. Title 65 § 05 (21) Spousal marriage settlements

65-05-21. Marriage settlement to spouse. If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.

65-05-38. Death of permanently and totally disabled employee - Surviving spouse. In the case of the death of an injured employee who is receiving permanent total disability benefits, or additional benefits payable, if the injured employee was permanently and totally disabled for at least ten years and was married to the surviving spouse for at least ten years, the decedent's surviving spouse is eligible to receive no more than six months of the decedent's permanent total disability benefits, supplementary benefits, and additional benefits payable in the same manner as the deceased spouse would have been entitled to receive the benefits. A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16. The eligibility of the surviving spouse to receive benefits under this section terminates upon the remarriage of the surviving spouse.

Wisconsin Chapter 102, Workers’ Compensation Act

102.45 Benefits payable to minors; how paid. Compensation and death benefit payable to an employee or dependent who was a minor when the employee’s or dependent’s right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employee or dependent as may be found best calculated to conserve the employee’s or dependent’s interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employee’s or dependent’s 18th birthday.

History: 1973 c. 150; 1993 a. 492.

Appendix A

102.46 Death benefit. Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit shall equal 4 times his or her average annual earnings, but when added to the disability indemnity paid and due at the time of death, shall not exceed two-thirds of weekly wage for the number of weeks set out in s.

102.44 (3).

History: 1979 c. 278; 1981 c. 92.

Death benefits under the worker's compensation law. Fortune. WBB Apr. 1987.

102.47 Death benefit, continued. If death occurs to an injured employee other than as a proximate result of the injury, before disability indemnity ceases, death benefit and burial expense allowance shall be as follows:

(1) Where the injury proximately causes permanent total disability, they shall be the same as if the injury had caused death, except that the burial expense allowance shall be included in the items subject to the limitation stated in s. 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s.

102.49 (5) (b), to the fund created under s. 102.65.

(2) Where the injury proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed the amount specified in s.

102.50. Any remaining sum shall be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there is no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.

History: 1971 c. 148; 1977 c. 195; 1983 a. 98; 1987 a. 179.

When a deceased worker dies before the level of permanent partial disability is established, the dependent's death benefit is not wiped out. "Unaccrued compensation" under sub. (2) is compensation that has not become due, or compensation for which a claim is not yet enforceable. It is not limited to compensation awarded but not yet paid. *Edward Brothers, Inc. v. LIRC*, 2007 WI App 128, 300 Wis. 2d 638, 731 N.W.2d 302, 06-2398.

102.475 Death benefit; law enforcement and correctional officers, fire fighters, rescue squad members, diving team members, national or state guard members and emergency management personnel. (1) SPECIAL BENEFIT. If the deceased employee is a law enforcement officer, correctional officer, fire fighter, rescue squad member, diving team member, national guard member or state defense force member on state active duty as described in s. 102.07 (9) or if a deceased person is an employee or volunteer performing emergency management activities under ch. 166 during a state of emergency or a circumstance described in s. 166.04, who sustained an accidental injury while performing services growing out of and incidental to that employment or volunteer activity so that benefits are payable under s. 102.46 or 102.47 (1), the department shall

Appendix A

voucher and pay from the appropriation under s. 20.445 (1) (aa) a sum equal to 75% of the primary death benefit as of the date of death, but not less than \$50,000 to the persons wholly dependent upon the deceased. For purposes of this subsection, dependency shall be determined under ss. 102.49 and 102.51.

(2) PAYMENTS TO DEPENDENTS. (a) If there are more than 4 persons who are wholly dependent upon the deceased employee an additional benefit of \$2,000 shall be paid for each dependent in excess of 4.

(b) If there is more than one person who is wholly dependent upon the deceased employee, the benefits under this section shall be apportioned between such dependents on the same proportional basis as the primary death benefit.

(c) Notwithstanding sub. (1), if there are partial dependents of the deceased employee who are entitled to benefits under s.

102.48, they shall be entitled to such portion of the benefit determined under sub. (1) that their partial dependency benefit bears to the primary benefit payable to one wholly dependent upon the deceased. No payment to a partial dependent shall be less than \$1,000.

(3) DISPUTES. In case of dispute, dependents may file applications as provided in s. 102.17, and ss. 102.17 to 102.27 shall apply. In such case, if the claim for a primary death benefit is compromised, any claim under this section shall be compromised on the same proportional basis. The attorney general shall represent the interests of the state in case of such dispute.

(5) MINORS. Benefits due to minors under this section may be paid as provided in s. 102.45.

(6) PROOF. In administering this section the department may require reasonable proof of birth, marriage, domestic partnership under ch. 770, relationship, or dependency.

(7) NOT TO AFFECT OTHER RIGHTS, BENEFITS OR COMPENSATION.

The compensation provided for in this section is in addition to, and not exclusive of, any pension rights, death benefits or other compensation otherwise payable by law.

(8) DEFINITIONS. As used in this section:

(a) "Correctional officer" means any person employed by the state or any political subdivision as a guard or officer whose principal duties are supervision and discipline of inmates at a penal institution, prison, jail, house of correction or other place of penal detention.

(am) "Diving team member" means a member of a legally organized diving team.

(b) "Fire fighter" means any person employed by the state or any political subdivision as a member or officer of a fire department or a member of a volunteer department, including the state fire marshal and deputies.

(c) "Law enforcement officer" means any person employed by the state or any political subdivision for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances.

(d) "Political subdivision" includes counties, municipalities and municipal corporations.

(dm) "Rescue squad member" means a member of a legally organized rescue squad.

(e) "State" means the state of Wisconsin and its departments, divisions, boards, bureaus, commissions, authorities and colleges and universities.

Appendix A

History: 1975 c. 274, 421; 1977 c. 29 ss. 1029m to 1029s, 1650; 1977 c. 48, 203, 418; 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 325; 1983 a. 98, 189; 1985 a. 29; 1987 a. 63; 1991 a. 85; 1993 a. 81; 1995 a. 247; 1999 a. 14; 2009 a. 28.

102.48 Death benefit. If no person who survives the deceased employee is wholly dependent upon the deceased employee for support, partial dependency and death benefits therefor shall be as follows:

(1) An unestranged surviving parent or parents to whose support the deceased has contributed less than \$500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of \$6,500. If the parents are not living together, the department shall divide this sum in such proportion as it deems to be just, considering their ages and other facts bearing on dependency.

(2) In all other cases the death benefit shall be such sum as the department shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or 4 times the contributions of the deceased to the support of such dependents during the year immediately preceding the deceased employee's death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort.

(3) A death benefit, other than burial expenses, except as otherwise provided, shall be paid in weekly installments corresponding in amount to two-thirds of the weekly earnings of the employee, until otherwise ordered by the department.

History: 1975 c. 147; 1979 c. 278; 1989 a. 64; 1993 a. 492.

Cross Reference: See also s. DWD 80.46, Wis. adm. code.

102.49 Additional death benefit for children, state fund. (1) When the beneficiary under s. 102.46 or 102.47 (1) is the spouse or domestic partner under ch. 770 of the deceased employee and is wholly dependent for support, an additional death benefit shall be paid from the funds provided by sub. (5) for each child by their marriage or domestic partnership under ch. 770 who is living at the time of the death of the employee, and who is likewise wholly dependent upon the employee for support. That payment shall commence at the time that primary death benefit payments are completed or, if advancement of compensation has been paid, at the time when payments would normally have been completed. Payments shall continue at the rate of 10% of the surviving parent's weekly indemnity until the child's 18th birthday. If the child is physically or mentally incapacitated, payments may be continued beyond the child's 18th birthday but the payments may not continue for more than a total of 15 years.

(2) A child lawfully adopted by the deceased employee and the surviving spouse or domestic partner under ch. 770, prior to the time of the injury, and a child not the deceased employee's own by birth or adoption but living with the deceased employee as a member of the deceased employee's family at the time of the injury shall for the

Appendix A

purpose of this section be taken as a child by their marriage or domestic partnership under ch. 770.

(3) If the employee leaves a spouse or domestic partner under ch. 770 wholly dependent and also a child by a former marriage, domestic partnership under ch. 770, or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the child were the child of the surviving spouse or partner, and the entire benefit shall be apportioned to the dependents in the amounts that the department determines to be just, considering the ages of the dependents and other factors bearing on dependency. The benefit awarded to the surviving spouse or partner shall not exceed 4 times the average annual earnings of the deceased employee.

(4) Dependency of any child for the purposes of this section shall be determined according to s. 102.51 (1), in like manner as would be done if there was no surviving dependent parent.

(5) (a) In each case of injury resulting in death, the employer or insurer shall pay into the state treasury the sum of \$20,000. (b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall pay into the state treasury the amount of the death benefit otherwise payable, minus any payment made under s. 102.48 (1), in 5 equal annual installments with the first installment due as of the date of death. (c) In addition to the payment required under par. (a), in each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent. (d) The payment into the state treasury shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employee commence action against a third party under s. 102.29. If the payment is not made within 20 days after the department makes request therefor, any sum payable shall bear interest at the rate of 7% per year. (e) The adjustments in liability provided in ss. 102.57, 102.58, and 102.60 do not apply to payments made under this section.

(6) The department may award the additional benefits payable under this section to the surviving parent of the child, to the child's guardian or to such other person, bank or trust company for the child's use as may be found best calculated to conserve the interest of the child. In the case of death of a child while benefits are still payable there shall be paid the reasonable expense for burial, not exceeding \$1,500.

(7) All payments received under this section shall be deposited in the fund established by s. 102.65.

History: 1971 c. 260 s. 92 (4); 1975 c. 147, 199; 1977 c. 195; 1979 c. 110 s. 60 (13); 1979 c. 278, 355; 1985 a. 83; 1991 a. 85; 1993 a. 492; 1997 a. 253; 2003 a. 144; 2005 a. 172; 2009 a. 28.

Cross Reference: See also s. DWD 80.48, Wis. adm. code.

Death benefits for dependent children are not increased by s. 102.57. *Schwartz v. DILHR*, 72 Wis. 2d 217, 240 N.W.2d 173 (1976).

102.51 Dependents. (1) WHO ARE. (a) The following persons are entitled to death benefits as if they are solely and wholly dependent for support upon a deceased employee:

Appendix A

1. A wife upon a husband with whom she is living at the time of his death.
 2. A husband upon a wife with whom he is living at the time of her death.
 - 2m. A domestic partner under ch. 770 upon his or her partner with whom he or she is living at the time of the partner's death.
 3. A child under the age of 18 years upon the parent with whom he or she is living at the time of the death of the parent, there being no surviving dependent parent.
 4. A child over the age of 18 years, but physically or mentally incapacitated from earning, upon the parent with whom he or she is living at the time of the death of the parent, there being no surviving dependent parent.
- (b) Where a dependent who is entitled to death benefits under this subsection survives the deceased employee, all other dependents shall be excluded. The charging of any portion of the support and maintenance of a child upon one of the parents, or any voluntary contribution toward the support of a child by a parent, or an obligation to support a child by a parent constitutes living with any such parent within the meaning of this subsection.

(2) WHO ARE NOT. (a) No person shall be considered a dependent unless that person is a spouse, a domestic partner under ch. 770, a divorced spouse who has not remarried, or a lineal descendant, lineal ancestor, brother, sister, or other member of the family, whether by blood or by adoption, of the deceased employee. (b) If for 8 years or more prior to the date of injury a deceased employee has been a resident of the United States, it shall be conclusively presumed that no person who has remained a nonresident alien during that period is either totally or partially dependent upon the deceased employee for support. (c) No person who is a nonresident alien shall be found to be either totally or partially dependent on a deceased employee for support who cannot establish dependency by proving contributions from the deceased employee by written evidence or tokens of the transfer of money, such as drafts, letters of credit, microfilm or other copies of paid share drafts, canceled checks, or receipts for the payment to any bank, express company, United States post office, or other agency commercially engaged in the transfer of funds from one country to another, for transmission of funds on behalf of said deceased employee to such nonresident alien claiming dependency. This provision shall not be applicable unless the employee has been continuously in the United States for at least one year prior to his or her injury, and has been remuneratively employed therein for at least 6 months.

(3) DIVISION AMONG DEPENDENTS. If there is more than one person wholly or partially dependent, the death benefit shall be divided between such dependents in such proportion as the department shall determine to be just, considering their ages and other facts bearing on such dependency.

(4) DEPENDENCY AS OF THE DATE OF DEATH. Questions as to who is a dependent and the extent of his or her dependency shall be determined as of the date of the death of the employee, and the dependent's right to any death benefit becomes fixed at that time,

Appendix A

regardless of any subsequent change in conditions. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto or their legal guardians or trustees. In case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the benefit as is then unpaid is payable to the dependent's personal representatives in gross, unless the department determines that the unpaid benefit shall be reassigned, under sub. (6), and paid to any other dependent who is physically or mentally incapacitated or a minor. A posthumous child is for the purpose of this subsection a dependent as of the date of death.

(5) **WHEN NOT INTERESTED.** No dependent of an injured employee shall be deemed a party in interest to any proceeding by the employee for the enforcement of the employee's claim for compensation, nor with respect to the compromise thereof by such employee. A compromise of all liability entered into by an employee is binding upon the employee's dependents, except that any dependent of a deceased employee may submit the compromise for review under s. 102.16 (1).

(6) **DIVISION AMONG DEPENDENTS.** Benefits accruing to a minor dependent child may be awarded to either parent in the discretion of the department. Notwithstanding sub. (1), the department may reassign the death benefit, in accordance with their respective needs for the death benefit as between a surviving spouse or a domestic partner under ch. 770 and children designated in sub. (1) and s. 102.49.

(7) **CERTAIN DEFENSE BARRED.** In proceedings for the collection of primary death benefit or burial expense it shall not be a defense that the applicant, either individually or as a partner or member, was an employer of the deceased.

History: 1975 c. 94, 147; 1977 c. 195; 1981 c. 92; 1983 a. 98, 368; 1993 a. 112, 492; 1995 a. 225; 1997 a. 253; 1999 a. 162; 2009 a. 28.

Cross Reference: See also s. DWD 80.48, Wis. adm. code.

A posthumously born illegitimate child does not qualify as a dependent under sub.

(4). Claimants not falling within one of the classifications under sub. (2) (a) will not qualify for benefits, regardless of dependency in fact. *Larson v. DILHR*, 76 Wis. 2d 595, 252 N.W.2d 33 (1977).

Sub. (5) has no application to a claim for a death benefit because a death benefit claim is not an "employee's claim for compensation." While sub. (5) prohibits a dependent from being a party to a worker's claim for disability benefits, a dependent claiming a death benefit is prosecuting only his or her own claim. *Edward Brothers, Inc. v. LIRC*, 2007 WI App 128, 300 Wis. 2d 638, 731 N.W.2d 302, 06-2398.

Appendix B

States Allowing Continuation of Benefits after Survivor Remarriage (2009)

<p>Kansas</p>	<p><u>44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.</u></p> <p>(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.</p> <p>(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.</p> <p>(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.</p> <p style="padding-left: 40px;">(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent except the marriage of the surviving legal spouse shall not terminate benefits to such spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.</p>
<p>Minnesota</p> <p>a</p> <p>Per MN worker's comp staff, benefits do not cease or suspend due to remarriage after 10/1/83, per Ott v. Krans</p>	<p><u>176.111 Dependents, allowances.</u></p> <p>Subd. 1. Persons wholly dependent, presumption. For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent: (a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;</p> <p>Subd. 6. Spouse, no dependent child. If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.</p> <p>Subd. 9a. Remarriage of spouse. A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.</p> <p><i>Winter, deceased by Winter Ott v. D.J. Kranz, 3/31/04* DOD: 11/24/97</i></p> <p>Dependency Benefits – Remarriage of Spouse</p> <p>Minnesota Statutes §176.111, subd. 8</p> <p>Minnesota Statutes §176.111, subd. 9a</p> <p>Minnesota Statutes §176.111, subd. 16</p> <p>The purpose of Minnesota Statutes §176.111 is to provide wage replacement benefits to a surviving spouse and dependent children. We cannot conclude the phrase "continue to be eligible to receive" requires that benefits to the surviving spouse be suspended upon remarriage. Rather, the dependency statute, as amended effective Jan. 1, 1984, continues to provide for the continuation of benefits to a surviving spouse upon remarriage. Affirmed.</p>

Nevada	<p><u>NRS 616C.505 Amount and duration of compensation.</u></p> <p>1. If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:</p> <p>2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.</p> <p><u>NRS 616C.507 Duration of compensation for surviving spouse of police officer or firefighter.</u></p> <p>1. Except as otherwise provided in this section, if the surviving spouse of a deceased police officer or firefighter who died while actively employed as a police officer or firefighter is entitled to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487, the surviving spouse:</p> <p style="padding-left: 40px;">(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and</p> <p style="padding-left: 40px;">(b) Must not be paid any compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 in one lump sum upon remarriage.</p> <p>(Added to NRS by 2007, 678)</p>
North Dakota	<p><u>65-05-21. Marriage settlement to spouse.</u></p> <p>If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.</p>