SPONSOR: Sen. Poore & Sen. Pettyjohn & Rep. Longhurst
Sens. Hansen, S. McBride, Wilson; Reps. Dorsey Walker, Lambert, Lynn

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 123

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS' COMPENSATION BENEFITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2330 of Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2330. Compensation for death.

(a) In case of death, compensation shall be computed on the following basis and distributed to the following persons:

(1) To the child or children if there is no surviving spouse entitled to compensation, $66^{2}/_{3}$% of the wages of the deceased, with 10% additional for each child in excess of 2, with a maximum of 80% to be paid to their guardian;

(2) To the surviving spouse, if there are no children, $66^{2}/_{3}$% of wages provided that the minimum amount payable shall not be less than $15 per week;

(3) To the surviving spouse, if there is 1 child, $66^{2}/_{3}$% of wages;

(4) To the surviving spouse, if there are 2 children, 70% of wages;

(5) To the surviving spouse, if there are 3 children, 75% of wages;

(6) To the surviving spouse, if there are 4 or more children, 80% of wages;

(7) If there is no surviving spouse or children, then to the parents, or the survivor of them, if actually dependent upon the employee for at least 50% of their support at the time of the worker’s death, 20% of wages;

(8) If there is no surviving spouse, children or dependent parent, then to the siblings, if actually dependent upon the decedent for at least 50% of their support at the time of the worker’s death, 15% of wages for 1 sibling, and 5% additional for each additional sibling, with a maximum of 25%, such compensation to be paid to their guardian.

(b) The wages upon which death compensation shall be based shall not in any case be taken to exceed the average weekly wage per week as announced by the Secretary of the Department of Labor for the last calendar year for which a determination of the average weekly wage has been made. However, the minimum amount payable to a surviving

spouse entitled to compensation shall not be less than 22$^{2}/_{9}$% of the said average weekly wage per week. Subject to § 2332 of this title, this compensation shall be paid during 400 weeks and in case of children entitled to compensation under this section, the compensation of each child shall continue after such period of 400 weeks until such child reaches the age of 18 years, or if enrolled as a full-time student in an accredited educational institution, until such child ceases to be so enrolled or reaches the age of 25 years, and in the case of a surviving spouse entitled to compensation under this section the compensation shall continue after such period of 400 weeks until the surviving spouse ~~dies~~ dies. ~~or remarries, unless otherwise authorized under subsection (h) of this section~~. Children are not entitled to compensation during the period that compensation is payable to their parent, except as provided in this section; provided, however, that the compensation for any child shall not be less than $10 per week unless the total maximum benefits are being paid.

(c) Compensation shall be payable under this section to or on account of any sibling only if and while such sibling is under the age of 18 years. Compensation shall be payable under this section to or on account of any child only if and while such child is under the age of 18 years, or if over 18 years and enrolled as a full-time student, until such time as such child ceases to be so enrolled or reaches the age of 25 years. Compensation shall be payable under this section to or on account of any child beyond the age of 18 years if and while mentally or physically handicapped and actually dependent upon the deceased for at least 50 percent of their support at the time of the worker's death.

(d) Compensation shall be payable under this section to a surviving spouse: (1) If living with deceased at the time of death; (2) if receiving or had the right to receive support at the time of death; (3) if deserted prior to and continued at the time of death; otherwise, compensation shall be distributed to the persons who would be dependents in case there was no surviving spouse.

(e) Compensation payable to the surviving spouse shall be for the use and benefit of such surviving spouse and of the dependent children, and the Board may from time to time apportion such compensation between them in such way as it deems best. The Board may require payments to be made directly to a minor who has been injured and may also require payments to be made to the person caring for any dependent minor, when, in the opinion of the Board, the expense of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such minor.

(f) If the compensation payable under this section to or on account of any person shall for any cause cease, the compensation of the remaining persons entitled thereunder shall thereafter be computed at the same rate as would have been payable to the remaining persons had they been the only persons entitled to compensation at the time of the death of the deceased, which computation shall be based upon the rates in effect at the time of the death of the deceased.

~~(g) Should any dependent of a deceased employee die, or should the surviving spouse remarry, the right of such dependent or such surviving spouse to compensation under this section shall cease, unless otherwise authorized under subsection (h) of this section. However, 2 years' indemnity benefits in 1 lump sum shall be payable to a surviving spouse upon remarriage.~~

(h) If a surviving spouse is entitled to a benefit under this ~~chapter~~ chapter, ~~and the surviving spouse is the surviving spouse of a "covered person," as defined in § 6601 of Title 18, and where benefits under this subsection would be paid from the Delaware General Fund, that surviving spouse is entitled to the benefit until the surviving spouse dies. If~~ and the surviving spouse remarries, the surviving spouse's benefit must be reduced to 90% of the original benefit for the first 10 years after the remarrying and must be reduced to 75% of the original benefit thereafter until the death of the surviving spouse.

SYNOPSIS

This bill will allow all surviving spouses of persons killed in the course and scope of employment to receive the same level of death benefits as the surviving spouses of those persons defined as "covered persons" in Section 6601(2), Title 18 of the Delaware Code, in the event that the surviving spouse remarries. This expansion of the death benefit beyond the surviving spouses of those persons specified in Section 6601(2) will result in all surviving spouses, who decide to remarry, being treated equally under Delaware's Workers' Compensation laws.

Author: Senator Poore