

SENATE BILL NO. 363—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to death benefits paid to surviving spouses under industrial insurance. (BDR 53-1130)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to industrial insurance; authorizing the surviving spouse of a deceased employee to continue to receive death benefits under industrial insurance after the surviving spouse remarries; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 2** of this bill revises provisions relating to the death benefit that is paid
2 to the surviving spouse of an employee under industrial insurance to eliminate the
3 requirement that death benefit payments cease upon the remarriage of the surviving
4 spouse. (NRS 616C.505)

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

1 **Section 1.** NRS 616C.070 is hereby amended to read as
2 follows:
3 616C.070 1. A person is conclusively presumed to be totally
4 dependent upon an injured or deceased employee if:
5 (a) The person is a natural, posthumous or adopted child,
6 whether legitimate or illegitimate, under the age of 18 years; or
7 (b) The person is a natural, posthumous or adopted child, there
8 is no surviving parent and the person is:
9 (1) Over the age of 18 years and physically or mentally
10 incapacitated from wage earning; or



(2) Over the age of 18 years but under the age of 22 years and enrolled as a full-time student in an accredited vocational or educational institution.

2. Stepparents may be regarded in chapters 616A to 616D, inclusive, or chapter 617 of NRS as parents if the fact of dependency is shown, and a stepchild or stepchildren may be regarded in chapters 616A to 616D, inclusive, or chapter 617 of NRS as a natural child or children if the existence and fact of dependency are shown.

3. Except as otherwise provided in subsection ~~14~~ 13 of NRS 616C.505, questions as to who constitute dependents and the extent of their dependency must be determined as of the date of the accident or injury to the employee, and their right to any benefit becomes fixed at that time, irrespective of any subsequent change in conditions, and the benefits are directly recoverable by and payable to the dependent or dependents entitled thereto or to their legal guardians or trustees.

4. The presumptions of this section do not apply in favor of aliens who are nonresidents of the United States at the time of the accident, injury to, or death of the employee.

Sec. 2. NRS 616C.505 is hereby amended to read as follows:

616C.505 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:

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 2/3 percent of the average monthly wage is payable until his death. ~~for 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 ; ~~for 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.]~~ **11**, 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.]~~ **11**, 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 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 2/3 percent of the average monthly wage for his support.

~~[7.]~~ **6.** Except as otherwise provided in subsection ~~[8.]~~ **7**, 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 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 2/3 percent of the average monthly wage.

(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 2/3 percent of the average monthly wage.



~~[8-]~~ 7. The aggregate compensation payable pursuant to subsection ~~[7]~~ 6 must not exceed 66 2/3 percent of the average monthly wage.

~~[9-]~~ 8. 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-]~~ 9. 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-]~~ 10. 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-]~~ 11. 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]~~ 12 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



1 this subsection, "incompetent" has the meaning ascribed to it in
2 NRS 159.019.

3 ~~H3.1~~ 12. Except as otherwise provided in paragraphs (a) and
4 (b), the entitlement of any child to receive his proportionate share of
5 compensation pursuant to this section ceases when he dies, marries
6 or reaches the age of 18 years. A child is entitled to continue to
7 receive compensation pursuant to this section if he is:

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

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

13 ~~H4.1~~ 13. As used in this section, "surviving spouse" means a
14 surviving husband or wife who was married to the employee at the
15 time of the employee's death.

16 **Sec. 3.** NRS 616C.507 is hereby repealed.

17 **Sec. 4.** 1. The amendatory provisions of section 2 of this act
18 do not apply to a surviving spouse if the surviving spouse is
19 remarried before October 1, 2007.

20 2. If a surviving spouse is remarried between October 1, 2007,
21 and September 30, 2009, inclusive and, because of the remarriage
22 and pursuant to NRS 616C.505, he has received payment of a lump
23 sum and his monthly benefits have ceased:

24 (a) The Division of Industrial Relations of the Department of
25 Business and Industry shall calculate the amount of a payment that
26 the surviving spouse could make, on what date the surviving
27 spouse's monthly benefits could recommence, for what period and
28 by what amount the surviving spouse's monthly benefits could be
29 reduced and various combinations thereof, so that by October 1,
30 2011, the surviving spouse would be in the same position as if he
31 had not received a lump sum and his monthly benefits had not
32 ceased. Notwithstanding the provisions of NRS 616C.505 or the
33 amendatory provisions of this act, the Division shall contact
34 the surviving spouse, present various options derived from the
35 calculations required by this paragraph and arrange for the
36 commencement of the surviving spouse's monthly benefits in such
37 a manner as to leave the surviving spouse, by October 1, 2011, in
38 the same position as if he had not received a lump sum and his
39 monthly benefits had not ceased. Nothing in this paragraph requires
40 a surviving spouse to make a payment of any amount.

41 (b) Any monthly benefits being paid to a child pursuant to NRS
42 616C.505 because of the remarriage must cease. Those monthly
43 benefits are not required to be repaid. Any other benefits to which
44 the child may be entitled must not be reduced or adjusted to account



- 1 for any monthly benefits paid to the child pursuant to NRS
- 2 616C.505 because of the remarriage.

TEXT OF REPEALED SECTION

616C.507 Duration of compensation for surviving spouse of police officer or firefighter.

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:

(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and

(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.

2. A surviving spouse of a deceased police officer or firefighter who was retired from employment as a police officer or firefighter at the time of death is entitled to receive compensation to the same extent and in the same manner as a surviving spouse specified in subsection 1 if:

(a) The police officer or firefighter retired because of the injury or occupational disease for which compensation is paid to the surviving spouse pursuant to this section; and

(b) The death of the police officer or firefighter was the direct and proximate result of the injury or occupational disease.

3. If the surviving spouse of a deceased police officer or firefighter specified in subsection 1 or 2 becomes the spouse of another employee or retiree who thereafter dies under circumstances that would otherwise entitle the surviving spouse 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 with respect to the other employee, the surviving spouse:

(a) Must not be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 with respect to the other employee; and

(b) Shall be deemed to have predeceased the other employee for the purposes of chapters 616A to 616D, inclusive, and 617 of NRS.



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4. Except as otherwise provided in subsections 1 and 2, the provisions of this section do not affect any compensation payable under chapter 617 of NRS.



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