

44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.

Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident or injury, all compensation benefits under this section shall be paid to such dependent persons. There shall be an initial payment of \$40,000 to the surviving legal spouse or a wholly dependent child or children or both. The initial payment shall not be subject to the 8% discount as provided in K.S.A. 44-531, and amendments thereto. The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children. Thereafter, such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to 66²/₃% of the average weekly wage of the employee at the time of the accident or injury, computed as provided in K.S.A. 44-511, and amendments thereto, but in no event shall such weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511, and amendments thereto, subject to the following:

(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.

(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

(A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

(B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

(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.

(b) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 50% of the maximum weekly benefits payable shall be apportioned to such spouse and 50% to such dependent children.

(c) If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the injury but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, such percentage of a sum equal to three times the employee's average yearly earnings but not exceeding \$18,500 but not less than \$2,500, as such employee's average annual contributions which the employee made to the support of such dependents during the two years preceding the date of the injury, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to such dependents, in weekly payments as provided in subsection (a), not to exceed \$18,500 to all such dependents.

(d) If an employee does not leave any dependents, either wholly or partially dependent upon the employee, a lump-sum payment of \$25,000 shall be made to the legal heirs of such employee in accordance with Kansas law. However under no circumstances shall such payment escheat to the state. Notwithstanding the provisions of this subsection, no such payment shall be required if the employer has procured a life insurance policy, with beneficiaries designated by the employee, providing coverage in an amount not less than \$18,500.

(e) The administrative law judge, except as otherwise provided in this section, shall have the power and authority to apportion and reapportion the compensation allowed under this section, either to wholly dependent persons or partially dependent persons, in accordance with the degree of dependency as of the date of the injury, except that the weekly payment of compensation to any and all dependents shall not exceed the maximum nor be less than the minimum weekly benefits provided in subsection (a).

(f) In all cases of death compensable under this section, the employer shall pay the reasonable expense of burial not exceeding \$5,000. Where required, the employer shall pay the costs of a court-appointed conservator not to exceed \$1,000.

(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.

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of \$300,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

(i) Persons receiving benefits under this section shall submit an annual statement to the insurance carrier, self-insured employer or group-funded workers compensation pool paying the benefits, in such form and containing such information relating to eligibility for compensation under this section as may be required by rules and regulations of the director. If the person receiving benefits under this section is a surviving spouse or a dependent child who has reached the age of majority, such person shall personally submit an annual statement. If the person receiving benefits

under this section is a dependent child subject to a conservator, the conservator of such child shall submit the annual statement. If such person fails to submit an annual statement, the payer of benefits may notify the director of such failure and the director shall notify the person of the failure by certified mail with return receipt. If such person fails to submit the annual statement or fails to reasonably provide the required information within 30 days after receipt of the notice from the director, all compensation benefits paid under this section to such person shall be suspended until the annual statement is submitted in proper form to the payer of benefits.

History: L. 1968, ch. 102, § 4; L. 1970, ch. 190, § 4; L. 1972, ch. 161, § 11; L. 1974, ch. 203, § 11; L. 1977, ch. 177, § 1; L. 1977, ch. 175, § 1; L. 1979, ch. 156, § 5; L. 1983, ch. 167, § 2; L. 1987, ch. 187, § 4; L. 1993, ch. 286, § 31; L. 1997, ch. 125, § 5; L. 1998, ch. 120, § 4; L. 2000, ch. 160, § 7; L. 2002, ch. 122, § 2; L. 2011, ch. 55, § 6; May 15.