

## CHAPTER 46

( HB 271 )

*AN ACT relating to death-in-line-of-duty benefits and declaring an emergency.*

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→Section 1. KRS 16.601 is amended to read as follows:

- (1) If a member dies as a direct result of an act in line of duty as defined in KRS 16.505 and is survived by a spouse:
  - (a) The surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased member's retirement account except as provided in KRS 61.542(2)(e);
  - (b) ~~{1. —}The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the ~~surviving spouse remarries or until the~~ death of the ~~unmarried~~ surviving spouse;~~
  - ~~2. —The monthly payment to the surviving spouse upon remarriage shall be twenty five percent (25%) of the member's monthly average pay beginning in the month following remarriage and continuing each month until death; and~~
  - (c) In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:
    1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
    2. Dependent children, while the surviving spouse is living ~~or prior to the surviving spouse remarrying~~, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.
- (2) If a member dies as a result of an act in line of duty as defined in KRS 16.505 and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:
  - (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
  - (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
  - (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (3) If a member dies as a direct result of an act in line of duty as defined in KRS 16.505 and the member has on file in the retirement office at the time of his or her death a written designation of only one (1) beneficiary other than his or her spouse who has not been superseded by the surviving spouse as provided by subsection (1)(a) of this section, and who is a dependent receiving at least one-half (1/2) of his or her support from the deceased member, the beneficiary may elect to receive a lump-sum payment of ten thousand dollars (\$10,000).
- (4) The payments provided by this section shall commence in the month following the date of death of the member and shall be payable to the spouse, dependent children, beneficiaries, or to a legally appointed guardian or as directed by the system. Benefits to a dependent child under this section shall be payable notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's

accumulated account balance as provided in KRS 61.625 or to elect benefits under any other provisions of KRS 16.510 to 16.652.

- (5) A surviving spouse or beneficiary eligible for benefits under subsection (1) or (3) of this section who is also eligible for benefits under any other provisions of KRS 16.510 to 16.652 may elect benefits under this section or any other section of KRS 16.510 to 16.652 but cannot elect to receive both.
- (6) (a) A surviving spouse or beneficiary applying for benefits under subsection (1) or (3) of this section who is also eligible for benefits under KRS 16.578 may elect to receive benefits under KRS 16.578(2)(a) or (b) while the application for benefits under subsection (1) or (3) of this section is pending.
- (b) If a final determination results in a finding of eligibility for benefits under subsection (1) or (3) of this section, the system shall recalculate the benefits due the surviving spouse or beneficiary in accordance with this subsection.
- (c) If the surviving spouse or beneficiary has been paid less than the amount of benefits to which the surviving spouse or beneficiary was entitled to receive under this section, the system shall pay the additional funds due to the surviving spouse or beneficiary.
- (d) If the surviving spouse or beneficiary has been paid more than the amount of benefits to which the surviving spouse or beneficiary was entitled to receive under this section, the system shall deduct the amount overpaid to the surviving spouse or beneficiary from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.

➔Section 2. KRS 61.621 is amended to read as follows:

- (1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.
- (2) (a) For purposes of this section, "duty-related injury" means:
  1. a. A single traumatic event that occurs while the employee is performing the duties of his position; or
  - b. A single act of violence committed against the employee that is found to be related to his job duties, whether or not it occurs at his job site; and
  2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.
- (b) "Duty-related injury" does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.
- (3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account, except as provided in KRS 61.542(2)(e).
- (b) The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the ~~surviving spouse remarries or until the~~ death of the ~~unmarried~~ surviving spouse.
- (c) ~~The monthly payment to the surviving spouse upon remarriage shall be twenty five percent (25%) of the member's monthly average pay beginning in the month following remarriage and continuing each month until death.~~
- ~~(d)~~ In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:

1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
  2. Dependent children, while the surviving spouse is living ~~or prior to the surviving spouse remarrying~~, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.
- (4) If the employee dies as a result of a duty-related injury and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:
- (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
  - (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
  - (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (5) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay. For purposes of determining disability, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.
- (6) In the period of time following a member's disability during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefits shall not exceed forty percent (40%) of the disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of disability of the member and shall be payable to the beneficiaries, or to a legally appointed guardian, or as directed by the system.
- (7) Benefits for death as a result of a duty-related injury to a dependent child shall be payable under this section notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's accumulated account balance as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.
- (8) (a) A spouse applying for benefits under this section who is also eligible for benefits under KRS 61.640 may elect to receive benefits under KRS 61.640(2)(a) or (b) while the application for benefits under this section is pending.
- (b) If a final determination results in a finding of eligibility for benefits under this section, the system shall recalculate the benefits due the spouse in accordance with this subsection.
- (c) If the spouse has been paid less than the amount of benefits to which the spouse was entitled to receive under this section, the system shall pay the additional funds due to the spouse.
- (d) If the spouse has been paid more than the benefit the spouse was eligible to receive under this section, then the system shall deduct the amount owed by the spouse from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.
- (9) For purposes of this section, "dependent child" has the same meaning as in KRS 16.505.
- (10) This section shall be known as "The Fred Capps Memorial Act."

➔Section 3. Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 161.220 to 161.716, or any provision of Section 1 or 2 of this Act to the contrary:

- (1) In the month following the effective date of this Act, the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death that was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, and who following the member's death has subsequently remarried prior to the effective date of this Act and had their retirement benefit reduced due to remarriage, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of this Act, as applicable, as if the remarriage had occurred after the effective date of this Act, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems.
- (2) In the month following the effective date of the Act, the surviving spouse of a member whose death was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, but who chose to receive lifetime monthly benefits otherwise payable under KRS 16.578 or 61.640 in lieu of the benefits payable under subsection (1) of Section 1 of this Act or subsection (3) of Section 2 of this Act, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of this Act, as applicable, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems.
- (3) The Kentucky Retirement Systems shall establish by administrative regulation a process by which a surviving spouse of a member who died prior to retirement and prior to April 13, 2018, may apply for the death benefits established by Section 1 and 2 of this Act, provided the surviving spouse:
  - (a) Is currently receiving a monthly benefit from the systems;
  - (b) Did not prior to April 13, 2018, seek a determination by the systems of whether or not the death was a direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act; and
  - (c) Submits an application developed by the systems on or before January 1, 2021.

If the systems determines the death was a direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act, then in the month following the determination, the systems shall adjust the surviving spouse monthly benefits prospectively in accordance with Section 1 or 2 of this Act except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the members monthly average pay when combined with any dependent child payments from the systems.

- (4) In the month following the effective date of this Act, the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death that was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, and who following the member's death subsequently remarried prior to April 13, 2018, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of the Act, as applicable, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems.

➔Section 4. The provisions of Sections 1 to 3 of this Act shall not reduce any benefits payable to any surviving spouse or dependent children of a member who died prior to the effective date of this Act and whose death was determined by the systems to be the direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act.

➔Section 5. Whereas protecting and honoring the families of public safety officers and employees who have given their lives in service to the Commonwealth is a value held by all Kentuckians, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 27, 2020.**