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Survivor's benefits.

Sec. 3309.45. In lieu of accepting the payment of the accumulated contributions of a member who dies before superannuation or commuted superannuation retirement, a survivor, if nominated as a sole beneficiary, may elect to forfeit the accumulated contributions and to substitute certain other benefits either under division (A) or division (B) of this section.

(A) If the deceased member was eligible for a superannuation or commuted superannuation retirement allowance as provided in sections 3309.36 and 3309.38 of the Revised Code, a surviving spouse, or other sole dependent beneficiary, may elect to receive a monthly benefit computed as the joint-survivor allowance designated as option 1 in section 3309.46 of the Revised Code, which the member would have received had he retired as of the last day of the month of death and had he at that time selected such joint-survivor plan. Payment shall begin with the month subsequent to the member's death.

(B) If the deceased member had at least one and one-half years of contributing service credit, with at least one-quarter year of contributing service credit within the two years prior to the date of death, or was receiving at the time of death a disability retirement allowance as provided in section 3309.40 of the Revised Code, certain nominated beneficiaries may elect to receive monthly benefits, provided they meet the following requirements:

(1) A widow sixty-two years of age, or a widower sixty-five years of age, married to the member at least three years, and not remarried subsequent to the member's death, shall be paid ninety dollars per month or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that the benefit payable under this paragraph shall not be less than seventy-five dollars per month. Such benefit shall be payable the month subsequent to the death of the member, or thereafter upon attainment of the age requirement by the beneficiary. Such benefit shall terminate upon the remarriage or death of such beneficiary. Such spouse may qualify for this benefit in addition to any payments received as provided by division (B) (3) of this section, but such spouse shall not receive the benefit provided by this paragraph while receiving benefits under divisions (B) (2) or (B) (3) of this section.

(2) A widow, or a dependent widower, fifty or more years of age, married to the member at least three years, and not remarried subsequent to the member's death, shall be paid one hundred dollars per month, if the deceased member had fifteen or more years of service credit at the time of

death. For the purposes of this *** section, a widower is a "dependent" only if he received at least one-half of his support from the member during the twelve-month period immediately prior to the time of the member's death. Such benefit shall be payable the month subsequent to the death of the member, or thereafter upon attainment of age fifty by the beneficiary. Such benefit shall terminate upon the remarriage or death of such beneficiary. Such widow or dependent widower may qualify for this benefit in addition to any payments received as provided by division (B) (3) of this section, but such widow, or dependent widower, shall not receive the benefit provided by this paragraph while receiving benefits under division (B) (3) of this section.

(3) A widow, or a dependent widower, who had the care of unmarried children of the deceased member under eighteen years of age, or who had the care of any other financially dependent progeny of the deceased member, regardless of age, adjudged physically or mentally incompetent by a *** court *** having jurisdiction, or found to be physically or mentally incompetent by a physician or physicians appointed by the board, shall be paid as follows:

(a) Having one such child, one hundred *** eighty dollars per month or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that the benefit payable under this paragraph shall not be less than one hundred *** fifty dollars per month.

(b) Having two or more such children, two hundred *** thirty dollars per month or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that the benefit payable under this paragraph shall not be less than one hundred *** fifty dollars per month.

(c) Benefits payable under the above paragraphs (a) and (b) shall commence with the month subsequent to the death of the member. Such benefits shall terminate upon the death or remarriage of the beneficiary; or when such children are no longer in the care of the beneficiary; or upon the attainment of age eighteen by the youngest child, except a financially dependent incompetent progeny. After all but one child have attained age eighteen, the benefit shall be reduced to that payable under paragraph (a) of this division.

(d) If the beneficiary taking under the provisions of the above paragraphs (a) and (b) remarries or dies, while having the care of such unmarried children under eighteen years of age, or while having the care of such financially dependent incompetent progeny, then benefits shall be paid such children in the amounts provided under division (B) (4) of this section.

(4) (a) One unmarried child of the deceased member under eighteen years of age, who received at least one-half of his support from the member during the twelve month period immediately prior to the time of the member's death, or a financially dependent incompetent progeny at any age, shall be paid ninety dollars per month or a monthly amount, which on an annual basis shall not exceed seventy-five per cent of the member's

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earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that such benefit shall not be less than seventy-five dollars per month.

(b) If such child, by his guardian, elects to take under the above paragraph (a), and there is another unmarried child of the deceased member under eighteen years of age, who received at least one-half of his support from the member during the twelve month period immediately prior to the time of the member's death, or a financially dependent incompetent progeny at any age, there shall be paid a total amount of one hundred *** fifty dollars per month or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that such benefit shall not be less than one hundred *** fifty dollars per month. Such benefit shall be divided equally between the children.

(c) If such child, by his guardian, elects to take under the above paragraph (a), and there are two or more other children of the deceased member under eighteen years of age, who received at least one-half of their support from the member during the twelve month period immediately prior to the time of the member's death, or one other such child and a financially dependent incompetent progeny at any age, there shall be paid a total amount of two hundred *** ten dollars per month or a monthly amount, which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that such benefit shall not be less than one hundred *** fifty dollars per month. Such benefit shall be divided equally among all such qualified children.

(d) Benefits payable under the above paragraphs (a), (b), and (c) shall commence with the month subsequent to the death of the member, or, if payable by reason of the death or remarriage of a beneficiary who received benefits under division (B) (3) of this section, commencing the month subsequent to such death or remarriage. *A child of a deceased member under age eighteen or a financially dependent incompetent progeny at any age, who was denied a monthly benefit after the remarriage of the primary beneficiary of such deceased member and who otherwise qualifies for a monthly benefit on or after November 1, 1961, shall receive a monthly benefit, commencing on or after November 1, 1961, in the amount provided by the law in effect at the time of such marriage.* Such benefit shall terminate with respect to any child upon his adoption, death, marriage, or upon his attaining eighteen years of age, except a financially dependent incompetent progeny.

(5) A dependent parent sixty-five or more years of age, who received at least one-half of his support from the member during the twelve month period immediately preceding the member's death, and who does not remarry subsequent to the member's death, shall be paid ninety dollars per month or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a member, whichever is the lesser; provided, *** that such benefit shall not be less than seventy-five dollars per month. If such parent elects to take under this paragraph and if

the other parent of the member also meets the qualifications of this paragraph, such other parent shall also be paid the amount provided in this paragraph. Such benefit shall commence with the month subsequent to the death of the member, or thereafter upon attainment of age sixty-five by the beneficiary. Such benefit shall terminate upon the remarriage or death of the beneficiary.

(C) The term "child" as used in this section includes a legally adopted child. If legal proceedings for adoption had been initiated prior to the time of the member's death, the beneficiary shall qualify for the monthly benefit notwithstanding the fact that the final decree of adoption, adjudging the surviving spouse as the adoptive parent, is made subsequent to the death of the member, and such benefit shall commence with the month subsequent to the final decree. The term "child" as used in this section includes a child of the deceased born subsequent to the death of the member, and such benefit shall commence with the month subsequent to the birth of such child.

(D) If benefits are paid under this section, the accumulated account of the deceased member shall be transferred to the survivors' benefit fund, and the estimated additional funds required for the payment of survivors' benefits shall be collected from employers based upon a rate which shall be included in the contribution rate provided by section 3309.49 of the Revised Code, and deposited in the "survivors' benefit fund."

(E) The beneficiary of a member who is also a member of the public employees retirement system or the state teachers retirement system shall forfeit the member's accumulated contributions if he elects to receive a benefit as provided in this section. Total contributions and service credit in all the retirement systems shall be used in determining the eligibility for, and amount of, such benefit. Determination and payment of such benefit shall be governed by the provisions of section 3309.35 of the Revised Code and, in no event, shall the beneficiary be permitted to draw such benefits separately from more than one system.

(F) If the survivor benefit due and paid under the provisions of this section is in a total amount less than the accumulated contributions standing to the credit of the member at the time of his death, then the difference between the total amount of the benefit paid and the accumulated contributions shall be paid to *** the beneficiary last receiving a benefit under this section or to his estate.

(G) The school employees retirement board shall formulate and adopt the necessary rules and regulations for the administration of this section and its decisions shall be final.