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**Benefits paid to survivors of deceased members.**

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) 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

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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.

(b) A widow or widower of a member who died on or after January 1, 1967, regardless of age married to the member at least three years, and not remarried subsequent to the member's death, adjudged physically or mentally incompetent by a court having jurisdiction, or determined to be physically or mentally incompetent by a physician or physicians appointed by the retirement board, shall be paid the monthly benefit provided in division (B) (1) (a) of this section. Such benefit shall also be payable and shall be terminated under the conditions provided in division (B) (1) (a) of this section, except that such benefit shall not be payable prior to the date such widow or widower first became mentally or physically incompetent, and such benefit shall also be terminated if it is determined by the court having jurisdiction or the physician appointed by the retirement board that such widow or widower is no longer physically or mentally incompetent. A spouse may qualify for the benefit provided by division (B) (1) (a) or (B) (1) (b) of this section 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 division (B) (1) (a) or (B) (1) (b) of this section while receiving benefits under division (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 paragraphs (3) (a) and (3) (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 by reason of the following: (1) adoption, (2) active military service, (3) the attainment of age eighteen by the youngest child, excepting a financially dependent incompetent progeny, (4) relinquishing fifty per cent or more of their financial support to an institutional authority or other person or persons. 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 paragraph (3) (a) and (3) (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, or if said beneficiary relinquishes fifty per cent or more of financial support to such children, then benefits shall be paid such children in the amounts provided under division (B) (4) of this section.

*(e) If the widower of a deceased member cannot establish dependency under this division and has the care of such unmarried children under eighteen years of age, or financially dependent incompetent progeny of the deceased member, then benefits shall be paid such children in the amounts provided under division (B) (4) of this section. Benefits payable under this paragraph shall commence with the month subsequent to the death of the member and*

*shall terminate with respect to any child upon his adoption, marriage, active military service, or upon his attaining eighteen years of age, except such benefit to a financially dependent incompetent progeny shall not terminate upon attainment of age eighteen. Such children shall not receive the benefits payable under this paragraph while eligible for and receiving benefits in accordance with the qualifications 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 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 paragraph (4) (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. Such benefit shall be divided equally between the children.

(c) If such child, by his guardian, elects to take under paragraph (4) (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 paragraphs (4) (a), (b), and (c) shall commence with the month subsequent to the date of the happenings provided in division (B) (3) (d) of this section. 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 bene-

fit, 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, active military service, or upon his attaining eighteen years of age, except such benefit to a financially dependent incompetent progeny shall not terminate upon attainment of age eighteen.

(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) "Child" as used in this section includes a legally adopted child. If a court hearing for an interlocutory decree for adoption had been held 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. "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.

If the validity of marriage cannot be established to the satisfaction of the retirement board for the purpose of disbursing any amount due under this section, the retirement board may accept a decision rendered by a court having jurisdiction in the state in which the member was domiciled at the time of death that (1) the relationship constituted a valid marriage at time of death, or (2) the "spouse" would have the same status as a widow or widower for purposes of sharing in the distribution of the member's intestate personal property.

(D) If benefits are paid under this section, the accumulated account of the deceased member shall be transferred to 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 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 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.

If any amount due under this section is payable to a beneficiary who has been found guilty by a court of law of feloniously contributing to the death of the member, then such payment shall not be paid to such beneficiary in the absence of a court order to the contrary filed with the retirement board.

(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.

(H) Effective November 1, 1965, any annual benefit payable under division (B) of section 3309.45 of the Revised Code to a beneficiary of a member deceased subsequent to October 31, 1965, shall be increased by seventy-two dollars annually. (*Amended in Amended Substitute House Bill No. 959*)