

**16.601 Death in the line of duty -- Payments to surviving spouse, dependent children, and designated beneficiaries -- Election -- Receipt of benefits under KRS 16.578 pending final determination.**

- (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) 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 death of the surviving spouse; 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, 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.

**Effective:** March 27, 2020

**History:** Amended 2020 Ky. Acts ch. 46, sec. 1, effective March 27, 2020. -- Amended 2018 Ky. Acts ch. 107, sec. 24, effective July 14, 2018; and ch. 151, sec. 2, effective April 13, 2018. -- Amended 2016 Ky. Acts ch. 114, sec. 1, effective April 13, 2016. - - Amended 2013 Ky. Acts ch. 120, sec. 42, effective July 1, 2013. -- Amended 2002 Ky. Acts ch. 176, sec. 2, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 385, sec. 5, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 167, sec. 5, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 240, sec. 9, effective July 14, 1992. -- Amended 1978 Ky. Acts ch. 311, sec. 6, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 321, sec. 40. -- Amended 1974 Ky. Acts ch. 128, sec. 9, effective March 26, 1974. -- Amended 1972 Ky. Acts ch. 116, sec. 76. -- Amended 1968 Ky. Acts ch. 25, sec. 6. -- Created 1964 Ky. Acts ch. 91, sec. 14.

**Legislative Research Commission Note (3/27/2020).** KRS 16.601 and 61.621 were amended in 2020 Ky. Acts ch. 46, secs. 1 and 2, respectively. Section 3 of that Act reads as follows:

"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

has 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 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; 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."

**Legislative Research Commission Note (3/27/2020).** KRS 16.601 and 61.621 were

amended in 2020 Ky. Acts ch. 46, secs. 1 and 2, respectively. Section 4 of that Act reads as follows:

"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."

**Legislative Research Commission Note** (12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.

**Legislative Research Commission Note** (4/13/2018). This statute was amended in 2018 Ky. Acts ch. 151, sec. 2. Section 8 of that Act reads as follows:

"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 Sections 1 to 7 of this Act to the contrary, the Kentucky Retirement Systems shall provide the following benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and whose death was determined by the systems to be a direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or whose death resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]:

- (1) In the month following the effective date of this Act [April 13, 2018], the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death, shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, except that the amount shall not be increased above a level that exceeds 100 percent 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 this Act [April 13, 2018], any dependent child who is receiving a monthly benefit due to a member's death shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, if the member was not married at the time of death;
- (3) In the month following the effective date of this Act [April 13, 2018], a surviving spouse who was married to the deceased member at the time of death but who was ineligible for monthly benefits payable to the surviving spouse under KRS 16.601 as codified prior to the effective date of this Act [April 13, 2018], shall receive the monthly benefit payable to the surviving spouse in Section 2 of this Act [this statute], provided the member's death occurred on or after January 1, 2017; and
- (4) In the month following the effective date of this Act [April 13, 2018], any surviving spouse and any dependent child of a deceased member who is receiving a monthly benefit shall be eligible for the health benefits specified by Section 6 of this Act [KRS 61.702].

The provisions of this section shall only be construed to provide benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and only in situations where the member's death was determined by the systems to be the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]."