

RCW 43.43.270 Retirement allowances—Survivors of disabled members—Members commissioned before January 1, 2003. For members commissioned prior to January 1, 2003:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty percent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse or lawful domestic partner shall continue as long as the spouse or domestic partner lives: PROVIDED, That if a surviving spouse or domestic partner who is receiving benefits under this subsection marries, or enters into a domestic partnership with, another member of this retirement system who subsequently predeceases such spouse or domestic partner, the spouse or domestic partner shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse or domestic partner shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse or lawful domestic partner of a retired member shall have been married to, or in a domestic partnership with, the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to, or in a domestic partnership with, the retired member at least two years prior to the member's death. The allowance paid to the lawful spouse or lawful domestic partner may be divided with an ex spouse or ex domestic partner of the member by a dissolution order as defined in RCW 41.50.500(3) incident to a dissolution occurring after July 1, 2002. The dissolution order must specifically divide both the member's benefit and any spousal or domestic partner survivor benefit, and must fully comply with RCW 41.50.670 and 41.50.700.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under

this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent of the final average salary of the member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5)(a) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement.

(b) For the purposes of this subsection, average final salary as used in subsection (2) of this section means:

(i) For members commissioned prior to January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the two years prior to the death of the disabled member; and

(ii) For members commissioned on or after January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the five years prior to the death of the disabled member.

(c) The changes to the definitions of average final salary for the survivors of disabled members in this subsection shall apply retroactively. The department shall correct future payments to eligible survivors of members disabled prior to June 7, 2006, and, as soon as administratively practicable, pay each survivor a lump sum payment reflecting the difference, as determined by the director, between the survivor benefits previously received by the member, and those the member would have received under the definitions of average final salary created in chapter 94, Laws of 2006. [2009 c 522 § 3; 2009 c 226 § 3; 2006 c 94 § 1; 2002 c 158 § 15; 2001 c 329 § 6; 1989 c 108 § 1; 1984 c 206 § 1; 1982 1st ex.s. c 52 § 28; 1973 2nd ex.s. c 14 § 3; 1973 1st ex.s. c 180 § 4. Prior: 1969 c 12 § 6; 1965 c 8 § 43.43.270; prior: 1963 c 175 § 3; 1961 c 93 § 2; 1951 c 140 § 6; 1947 c 250 § 16; Rem. Supp. 1947 § 6362-96.]

Reviser's note: This section was amended by 2009 c 226 § 3 and by 2009 c 522 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2001 c 329: See note following RCW 43.43.120.

Effective date—1989 c 108: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 108 § 2.]

Applicability—1984 c 206: "This act shall apply only to surviving spouses receiving benefits under RCW 43.43.270(2) on or after March 27, 1984. No surviving spouse whose benefits under RCW 43.43.270(2) were terminated before March 27, 1984, due to remarriage shall be governed by this act, and this act shall neither retroactively nor prospectively restore such terminated benefits. This act shall apply only to surviving unmarried children receiving benefits under RCW 43.43.270 (3) or (4) on or after March 27, 1984. No benefits shall be paid under RCW 43.43.270 (3)(b) or (4)(b) for any period before March 27, 1984." [1984 c 206 § 2.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.