



HOUSE BILL No. 5105

September 21, 1995, Introduced by Reps. DeLange, Perricone, Dalman and Llewellyn and referred to the Committee on Human Resources and Labor.

A bill to amend sections 131, 222, 301, 305, 319, 354, 371, 375, 381, 383, 385, 401, 441, 827, 835, 845, and 853 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," sections 131 and 827 as amended by Act No. 198 of the Public Acts of 1993, section 222 as added and sections 319, 381, and 385 as amended by Act No. 103 of the Public Acts of 1985, sections 301, 354, and 401 as amended by Act No. 28 of the Public Acts of 1987, section 371 as amended by Act No. 32 of the Public Acts of 1982, sections 375, 835, and 853 as amended by Act No. 271 of the Public Acts of 1994, and section 441 as amended by Act No. 357 of the Public Acts of 1980, being sections 418.131, 418.222, 418.301, 418.305, 418.319, 418.354, 418.371, 418.375, 418.381, 418.383, 418.385, 418.401, 418.441, 418.827, 418.835, 418.845, and 418.853 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 131, 222, 301, 305, 319, 354, 371, 375,
2 381, 383, 385, 401, 441, 827, 835, 845, and 853 of Act No. 317 of
3 the Public Acts of 1969, sections 131 and 827 as amended by Act
4 No. 198 of the Public Acts of 1993, section 222 as added and
5 sections 319, 381, and 385 as amended by Act No. 103 of the
6 Public Acts of 1985, sections 301, 354, and 401 as amended by Act
7 No. 28 of the Public Acts of 1987, section 371 as amended by Act
8 No. 32 of the Public Acts of 1982, sections 375, 835, and 853 as
9 amended by Act No. 271 of the Public Acts of 1994, and
10 section 441 as amended by Act No. 357 of the Public Acts of 1980,
11 being sections 418.131, 418.222, 418.301, 418.305, 418.319,
12 418.354, 418.371, 418.375, 418.381, 418.383, 418.385, 418.401,
13 418.441, 418.827, 418.835, 418.845, and 418.853 of the Michigan
14 Compiled Laws, are amended to read as follows:

15 Sec. 131. (1) The right to the recovery of benefits as pro-
16 vided in this act shall be the employee's SOLE AND exclusive
17 remedy against the employer for a personal injury or occupational
18 disease WITHOUT EXCEPTION. ~~The only exception to this exclusive~~
19 ~~remedy is an intentional tort. An intentional tort shall exist~~
20 ~~only when an employee is injured as a result of a deliberate act~~
21 ~~of the employer and the employer specifically intended an~~
22 ~~injury. An employer shall be deemed to have intended to injure~~
23 ~~if the employer had actual knowledge that an injury was certain~~
24 ~~to occur and willfully disregarded that knowledge. The issue of~~
25 ~~whether an act was an intentional tort shall be a question of law~~

1 ~~for the court. This subsection shall not enlarge or reduce~~
2 ~~rights under law.~~

3 (2) As used in this section and section 827, "employee"
4 includes the person injured, his or her personal representatives,
5 and any other person to whom a claim accrues by reason of the
6 injury to, or death of, the employee, and "employer" includes the
7 employer's insurer and a service agent to a self-insured employer
8 insofar as they furnish, or fail to furnish, safety inspections
9 or safety advisory services incident to providing worker's com-
10 pensation insurance or incident to a self-insured employer's
11 liability servicing contract.

12 Sec. 222. (1) After March 31, 1986, the bureau, upon
13 receiving a completed application for mediation or hearing from a
14 claimant, shall forward a copy of the application to the employer
15 and carrier. Within 30 days of receiving a completed application
16 for mediation or hearing from the bureau, the carrier shall file
17 a written response to the application with the bureau upon a form
18 provided by the bureau. Any application for mediation or hearing
19 or any written response which is determined by the bureau to be
20 incomplete shall be returned with an explanation of the addi-
21 tional information needed.

22 (2) At the time of filing an application for hearing or
23 mediation OR AT ANY TIME THEREAFTER, OR DURING THE PENDENCY OF A
24 CLAIM, WHETHER OR NOT AN APPLICATION FOR HEARING OR MEDIATION HAS
25 BEEN FILED, the claimant shall also provide the carrier with any
26 medical records relevant to the claim that are in the claimant's
27 possession OR THAT MAY COME INTO THE POSSESSION OF THE CLAIMANT

1 AT ANY TIME DURING THE PENDENCY OF A CLAIM. At the time of
2 filing the written response, the carrier shall also provide the
3 claimant with any medical records of the carrier or employer con-
4 cerning the employee that are relevant to the claim and in exis-
5 tence at the time of filing AS WELL AS ANY OTHER MEDICAL RECORDS
6 RELEVANT TO THE CLAIM DEVELOPED OR RECEIVED DURING THE PENDENCY
7 OF THE CLAIM. The parties shall submit proof of compliance with
8 this subsection with the bureau.

9 (3) ANY MEDICAL RECORDS WHICH HAVE NOT BEEN SUPPLIED TO THE
10 OPPOSING PARTY IN COMPLIANCE WITH THIS SECTION SHALL BE BARRED
11 FROM ADMISSION AS EVIDENCE AT MEDIATION OR HEARING. IN ADDITION,
12 AN INFERENCE SHALL BE DRAWN THAT THE MEDICAL RECORDS NOT SUPPLIED
13 OR ADMITTED INTO EVIDENCE ARE ADVERSE TO THE INTERESTS OF THE
14 NONCOMPLYING PARTY.

15 (4) ~~(3)~~ The application for mediation or hearing shall be
16 as prescribed by the bureau and shall contain factual information
17 regarding the nature of the injury, the date of injury, the names
18 and addresses of any witnesses, except employees currently
19 employed by the employer, the names and addresses of any doctors,
20 hospitals, or other health care providers who treated the
21 employee with regard to the personal injury, the name and address
22 of the employer, the dates on which the employee was unable to
23 work because of the personal injury, whether the employee had any
24 other employment at the time of, or subsequent to, the date of
25 the personal injury and the names and addresses of the employers,
26 and any other information required by the bureau. THE FAILURE TO
27 SUPPLY FACTUAL INFORMATION IN ACCORDANCE WITH THIS SUBSECTION

1 SHALL RESULT IN A FORFEITURE OF BENEFITS UNDER THIS ACT DURING
2 THE PERIOD OF NONCOMPLIANCE AND IN AN IMMEDIATE DISMISSAL OF THE
3 APPLICATION FOR MEDIATION OR HEARING.

4 (5) ~~(4)~~ The written response of the carrier shall be as
5 prescribed by the bureau and shall specify any legal grounds sup-
6 porting its position, any factual matters that are disputed,
7 whether there was a medical examination of the claimant and who
8 performed it, and any other information required by the bureau.

9 (6) ~~(5)~~ The claimant shall notify the carrier of the
10 intention to call witnesses who are currently employed by the
11 employer.

12 (7) ~~(6)~~ The willful failure of a party to comply with this
13 section shall prohibit that party from proceeding under this
14 act.

15 (8) AS USED IN THIS SECTION:

16 (A) "CLAIMANT" MEANS EITHER THE CLAIMANT OR THE CLAIMANT'S
17 LEGAL REPRESENTATIVE.

18 (B) "EMPLOYER" MEANS EITHER THE EMPLOYER OR THE EMPLOYER'S
19 LEGAL REPRESENTATIVE.

20 Sec. 301. (1) An employee, who receives a personal injury
21 arising out of and in the course of employment by an employer who
22 is subject to this act at the time of the injury, shall be paid
23 compensation as provided in this act. In the case of death
24 resulting from the personal injury to the employee, compensation
25 shall be paid to the employee's dependents as provided in this
26 act. Time of injury or date of injury as used in this act in the
27 case of a disease or in the case of an injury not attributable to

1 a single event shall be the last day of work in the employment in
2 which the employee was last subjected to the conditions that
3 resulted in the employee's disability or death.

4 (2) ~~Mental disabilities and conditions~~ CONDITIONS of the
5 aging process, including but not limited to heart, ~~and~~
6 cardiovascular, AND PULMONARY conditions, shall be compensable if
7 ~~contributed to or aggravated or accelerated by~~ the employment
8 ~~in a significant manner~~ IS THE PREDOMINANT CAUSE OF DISABILITY
9 AND IF THE CONDITION ARISES OUT OF OBJECTIVE AND EXTRAORDINARY
10 EVENTS OF EMPLOYMENT. Mental disabilities shall be compensable
11 ~~when arising out of actual~~ IF SUPPORTED BY CLEAR AND CONVINCING
12 EVIDENCE THAT THE EMPLOYMENT IS THE PREDOMINANT CAUSE OF DISABIL-
13 ITY AND THE DISABILITY ARISES OUT OF OBJECTIVE, UNEXPECTED,
14 UNUSUAL, AND EXTRAORDINARY events of employment, not unfounded OR
15 SUBJECTIVE perceptions thereof. FOR MENTAL DISABILITIES, AN
16 EVENT OF EMPLOYMENT, WHICH IS NOT REASONABLY EXPECTED TO RESULT
17 IN DISABILITY, SHALL NOT BE A PREDOMINANT CAUSE OF DISABILITY.
18 MENTAL DISABILITIES ARE NOT COMPENSABLE IF FOUNDED ON GENERAL
19 CONCLUSIONS OF STRESS, ANXIETY, PERSONALITY CONFLICTS, MISPERCEP-
20 TIONS OF STIMULI OR EVENTS, OR EXERTION OVER A PERIOD OF TIME, OR
21 FROM EVENTS THAT RESULT IN A HYPERSENSITIVE OR AN IDIOSYNCRATIC
22 REACTION BY THE EMPLOYEE. MENTAL DISABILITIES ARE NOT COMPENSA-
23 BLE IF THEY ARISE OUT OF AN EMPLOYEE PERSONNEL TRANSACTION,
24 INCLUDING A TRANSFER, PROMOTION, DEMOTION, TERMINATION, EVALU-
25 ATION, OR ORAL DISAGREEMENT. THE LEGISLATURE DECLARES THAT THE
26 DECISION OF THE MICHIGAN SUPREME COURT IN GARDNER V VAN BUREN
27 PUBLIC SCHOOLS, 445 MICH 23 (1994), WAS ERRONEOUSLY RENDERED

1 INSOFAR AS IT INTERPRETS THIS ACT SINCE IT WAS THE INTENT OF THE
2 LEGISLATURE TO ESTABLISH A HIGHER STATUTORY STANDARD FOR COMPEN-
3 SABILITY DUE TO MENTAL DISABILITY. THE ISSUE OF CAUSAL RELATION-
4 SHIP BETWEEN EMPLOYMENT AND DEVELOPMENT OF MENTAL DISABILITY BY
5 AN EMPLOYEE AND THE COMPENSABILITY OF THE EMPLOYEE'S DISABILITY
6 ARE MATTERS OF FACT TO BE DETERMINED BY THE BOARD OF
7 MAGISTRATES. THIS REMEDIAL AND CURATIVE AMENDMENT SHALL BE
8 FAIRLY CONSTRUED TO EFFECTUATE THIS PURPOSE AND IS IMMEDIATELY
9 APPLICABLE TO PERSONAL INJURIES OCCURRING ON OR AFTER THE EFFEC-
10 TIVE DATE OF THIS 1995 AMENDATORY ACT. EMPLOYEES WHO RECEIVED A
11 PERSONAL INJURY BEFORE THE EFFECTIVE DATE OF THIS 1995 AMENDATORY
12 ACT THAT RESULTED IN A MENTAL DISABILITY SHALL HAVE THE HIGHER
13 STANDARD APPLIED TO THEIR CLAIMS 12 MONTHS AFTER THE EFFECTIVE
14 DATE OF THIS 1995 AMENDATORY ACT.

15 (3) An employee going to or from his or her work, while on
16 the premises where the employee's work is to be performed, and
17 within a reasonable time before and after his or her working
18 hours, is presumed to be in the course of his or her employment.
19 Notwithstanding this presumption, an injury incurred in the pur-
20 suit of an activity the major purpose of which is social or rec-
21 reational is not covered under this act. Any cause of action
22 brought for such an injury is not subject to section 131.

23 (4) As used in this chapter, "disability" means ~~a limita-~~
24 ~~tion of an employee's wage earning capacity in work suitable to~~
25 ~~his or her qualifications and training resulting from a personal~~
26 ~~injury or work related disease~~ THAT AN EMPLOYEE HAS ESTABLISHED,
27 BY A PREPONDERANCE OF THE EVIDENCE, AN INABILITY TO DO THE WORK

1 BEING PERFORMED AT THE TIME OF THE INJURY, AN INABILITY TO
2 PERFORM WORK OFFERED BY ANY EMPLOYER, AN INABILITY TO PERFORM
3 REASONABLE EMPLOYMENT OFFERED BY ANY EMPLOYER, AN INABILITY TO
4 PERFORM FAVORED WORK OFFERED BY ANY EMPLOYER, AND AN INABILITY TO
5 PERFORM IN ANY EXISTING OR SUBSEQUENT BUSINESS OWNED, OPERATED,
6 OR PARTICIPATED IN BY THE EMPLOYEE. DISABILITY MAY CONTINUE IF
7 SUPPORTED BY MEDICAL EVIDENCE OF DISABILITY, BUT NOT TO EXCEED 26
8 WEEKS AFTER THE DATE OF INJURY. WHEN AN EMPLOYEE REACHES MAXIMUM
9 MEDICAL IMPROVEMENT, OR 26 WEEKS AFTER THE DATE OF INJURY, WHICH-
10 EVER OCCURS FIRST, THE EMPLOYEE WILL ONLY BE CONSIDERED DISABLED
11 IF THE EMPLOYEE PROVES BY A PREPONDERANCE OF THE EVIDENCE AN
12 INABILITY, BASED UPON OBJECTIVE MEDICAL EVIDENCE, TO PERFORM ANY
13 WORK WITHIN THE EMPLOYEE'S QUALIFICATIONS AND TRAINING, INCLUDING
14 VOCATIONAL REHABILITATION TRAINING PROVIDED IN ACCORDANCE WITH
15 SECTION 319. AS USED IN THIS SUBSECTION, "OBJECTIVE MEDICAL
16 EVIDENCE" INCLUDES, BUT IS NOT LIMITED TO, ATROPHY, SPASM, X-RAY
17 STUDIES, ELECTROMYOGRAPHY AND NERVE CONDUCTION STUDIES, MAGNETIC
18 IMAGING, CAT SCANS, AND DIAGNOSTIC EVIDENCE SUBSTANTIATED BY
19 OBJECTIVE CLINICAL FINDINGS, OUTSIDE OF THE CONTROL OF THE
20 PATIENT/EMPLOYEE. SUBJECTIVE MEDICAL EVIDENCE SHALL NOT BE CON-
21 SIDERED IN DETERMINING ONGOING DISABILITY. SUBJECTIVE MEDICAL
22 EVIDENCE INCLUDES, BUT IS NOT LIMITED TO, RANGE OF MOTION, MUSCLE
23 STRENGTH, GAIT, PULMONARY FUNCTION STUDIES, OR ANY DIAGNOSTIC
24 EVIDENCE UNSUBSTANTIATED BY OBJECTIVE CLINICAL FINDINGS AND
25 WITHIN THE CONTROL OF THE PATIENT. THE DEFINITION OF DISABILITY
26 AS AMENDED BY THIS 1995 AMENDATORY ACT SHALL APPLY TO EMPLOYEES
27 WHO RECEIVE A PERSONAL INJURY ON OR AFTER THE EFFECTIVE DATE OF

1 THIS 1995 AMENDATORY ACT. THE DEFINITION OF DISABILITY AS
2 AMENDED BY THIS 1995 AMENDATORY ACT SHALL APPLY TO EMPLOYEES WHO
3 RECEIVED A PERSONAL INJURY BEFORE THE EFFECTIVE DATE OF THIS 1995
4 AMENDATORY ACT 12 MONTHS AFTER THE EFFECTIVE DATE OF THIS 1995
5 AMENDATORY ACT. The establishment of disability does not create a
6 presumption of wage loss.

7 (5) If disability is established pursuant to subsection (4),
8 entitlement to weekly wage loss benefits shall be determined pur-
9 suant to this section and as follows:

10 (a) If an employee receives a bona fide offer of reasonable
11 employment from the previous employer, another employer, or
12 through the Michigan employment security commission and the
13 employee refuses that employment without good and reasonable
14 cause, the employee shall be considered to have voluntarily
15 removed himself or herself from the work force and is no longer
16 entitled to any wage loss benefits under this act during the
17 period of such refusal.

18 (b) If an employee is employed and the average weekly wage
19 of the employee is less than that which the employee received
20 before the date of injury, the employee shall receive weekly ben-
21 efits under this act equal to 80% of the difference between the
22 injured employee's after-tax weekly wage before the date of
23 injury and the after-tax weekly wage which the injured employee
24 is able to earn after the date of injury, but not more than the
25 maximum weekly rate of compensation, as determined under section
26 355. IF THE INJURED EMPLOYEE IS NOT EMPLOYED, BUT THE EMPLOYEE
27 HAS THE CAPACITY TO PERFORM WORK, AND THE WORK THE EMPLOYEE IS

1 ABLE TO PERFORM WOULD RESULT IN A LOWER AVERAGE WEEKLY WAGE THAN
2 THE EMPLOYEE RECEIVED BEFORE THE DATE OF INJURY, THE EMPLOYEE
3 SHALL RECEIVE WEEKLY BENEFITS UNDER THIS ACT EQUAL TO 80% OF THE
4 DIFFERENCE BETWEEN THE INJURED EMPLOYEE'S AFTER TAX WEEKLY WAGE
5 BEFORE THE DATE OF INJURY AND THE AFTER TAX WEEKLY WAGE THE
6 INJURED EMPLOYEE WOULD BE ABLE TO EARN AFTER THE DATE OF INJURY,
7 BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE OF COMPENSATION AS
8 DETERMINED UNDER SECTION 355. A REDUCTION TO PARTIAL BENEFITS
9 DOES NOT REQUIRE A JOB OFFER TO THE EMPLOYEE.

10 (c) If an employee is employed and the average weekly wage
11 of the employee is equal to or more than the average weekly wage
12 the employee received before the date of injury, the employee is
13 not entitled to any wage loss benefits under this act for the
14 duration of such employment.

15 (d) If the employee, after having been employed pursuant to
16 this subsection for 100 weeks or more loses his or her job
17 through no fault of the employee, the employee shall receive com-
18 pensation under this act pursuant to the following:

19 (i) If after exhaustion of unemployment benefit eligibility
20 of an employee, a worker's compensation magistrate or hearing
21 referee, as applicable, determines for any employee covered under
22 this subdivision, that the employments since the time of injury
23 have not established a new wage earning capacity, the employee
24 shall receive compensation based upon his or her wage at the
25 original date of injury. There is a presumption of wage earning
26 capacity established for employments totalling 250 weeks or
27 more.

1 (ii) The employee must still be disabled as determined
2 pursuant to subsection (4). If the employee is still disabled,
3 he or she shall be entitled to wage loss benefits based on the
4 difference between the normal and customary wages paid to those
5 persons performing the same or similar employment, as determined
6 at the time of termination of the employment of the employee, and
7 the wages paid at the time of the injury.

8 (iii) If the employee becomes reemployed and the employee is
9 still disabled, he or she shall then receive wage loss benefits
10 as provided in subdivision (b).

11 (e) If the employee, after having been employed pursuant to
12 this subsection for less than 100 weeks loses his or her job ~~for~~
13 ~~whatever reason~~ THROUGH NO FAULT OR ACTION TAKEN BY THE EMPLOYEE
14 TO TERMINATE EMPLOYMENT, the employee shall receive compensation
15 based upon his or her wage at the original date of injury.
16 COMPENSATION SHALL NOT BE PAYABLE UNDER THIS ACT TO AN EMPLOYEE
17 WHO LOSES HIS OR HER EMPLOYMENT THROUGH HIS OR HER OWN FAULT OR
18 ACTION.

19 (6) A carrier shall notify the Michigan employment security
20 commission of the name of any injured employee who is unemployed
21 and to which the carrier is paying benefits under this act.

22 (7) The Michigan employment security commission shall give
23 priority to finding employment for those persons whose names are
24 supplied to the commission under subsection (6).

25 (8) The Michigan employment security commission shall notify
26 the bureau in writing of the name of any employee who refuses any
27 bona fide offer of reasonable employment. Upon notification to

1 the bureau, the bureau shall notify the carrier who shall
2 terminate the benefits of the employee pursuant to subsection
3 (5)(a).

4 (9) "Reasonable employment", as used in this section, means
5 work that is within the employee's capacity to perform that poses
6 no clear and proximate threat to that employee's health and
7 safety, and that is within a reasonable distance FROM THE PLACE
8 OF EMPLOYMENT OR THE RESIDENCE OF THE EMPLOYEE AT THE TIME THE
9 PERSONAL INJURY OR WORK-RELATED DISEASE OCCURRED OR from ~~that~~
10 ~~employee's~~ ANY SUBSEQUENT residence OF THE EMPLOYEE AT THE TIME
11 THE OFFER IS MADE. The employee's capacity to perform shall not
12 be limited to jobs in work suitable to his or her qualifications
13 and training.

14 (10) Weekly benefits shall not be payable during the period
15 of confinement to a person who is incarcerated in a penal insti-
16 tution for violation of the criminal laws of this state or who is
17 confined in a mental institution pending trial for a violation of
18 the criminal laws of this state, if the violation or reason for
19 the confinement occurred while at work and is directly related to
20 the claim.

21 (11) A person shall not discharge an employee or in any
22 manner discriminate against an employee because the employee
23 filed a complaint or instituted or caused to be instituted a pro-
24 ceeding under this act or because of the exercise by the employee
25 on behalf of himself or herself or others of a right afforded by
26 this act. A CLAIM ALLEGING RETALIATORY DISCHARGE OR
27 DISCRIMINATION SHALL BE BROUGHT WITHIN 6 MONTHS AFTER THE DATE OF

1 THE ALLEGED DISCRIMINATION OR DISCHARGE AND SHALL BE CONSIDERED A
2 CONTRACT ACTION. THE COURT MAY FASHION SUCH RELIEF AS WILL
3 EFFECTUATE THE PURPOSES OF THIS SUBSECTION INCLUDING THE ISSUANCE
4 OF A CEASE AND DESIST ORDER OR ORDERING REINSTATEMENT WITH OR
5 WITHOUT BACK PAY. HOWEVER, AN ORDER SHALL NOT REQUIRE REINSTATE-
6 MENT OF AN EMPLOYEE WHO HAS BEEN SUSPENDED OR DISCHARGED OR THE
7 PAYMENT TO THAT EMPLOYEE OF ANY BACK PAY IF THE EMPLOYEE WAS SUS-
8 PENDED OR DISCHARGED FOR CAUSE. DAMAGES AWARDED UNDER THIS SUB-
9 SECTION SHALL NOT EXCEED BACK PAY. THE REMEDY PROVIDED BY THIS
10 SUBSECTION SHALL BE AN EMPLOYEE'S EXCLUSIVE REMEDY FOR CLAIMS
11 ALLEGING RETALIATORY DISCHARGE OR DISCRIMINATION.

12 (12) AS USED IN THIS SECTION:

13 (A) "FAVORED WORK" MEANS WORK SPECIFICALLY DESIGNED BY AN
14 EMPLOYER TO ACCOMMODATE PHYSICAL OR MENTAL LIMITATIONS IMPOSED BY
15 THE PERSONAL INJURY UPON THE INJURED EMPLOYEE'S ABILITY TO PER-
16 FORM WORK. ALTERNATE OR OTHER WORK PERFORMED BY THE EMPLOYEE
17 AFTER OCCURRENCE OF THE INJURY DOES NOT CONSTITUTE FAVORED WORK
18 FOR PURPOSES OF THIS ACT IF THE ALTERNATE OR OTHER WORK IS REGU-
19 LAR WORK GENERALLY AVAILABLE WITHIN THE RELEVANT LABOR MARKET.

20 (B) "QUALIFICATIONS AND TRAINING" MEANS THE INTELLECTUAL AND
21 PHYSICAL SKILLS POSSESSED BY AN EMPLOYEE BASED UPON THAT
22 EMPLOYEE'S EDUCATION, TRAINING, OR PRIOR WORK EXPERIENCE IN ALL
23 EMPLOYMENTS AND INCLUDES TRAINING AND EXPERIENCE OBTAINED THROUGH
24 APPROVED VOCATIONAL PROGRAMS.

25 (C) "WAGE EARNING CAPACITY" MEANS THE REMUNERATION GENERALLY
26 PAYABLE TO AN EMPLOYEE PERFORMING WORK THAT IS SUITABLE TO HIS OR
27 HER QUALIFICATIONS AND TRAINING.

1 (13) ~~(+2)~~ This section shall apply to personal injuries
2 and work related diseases occurring on or after June 30, 1985.

3 Sec. 305. (1) If the employee is injured by reason of his
4 OR HER intentional and ~~willful~~ WILLFUL misconduct, ~~he~~ THE
5 EMPLOYEE shall not receive compensation under the provisions of
6 this act.

7 (2) AS USED IN THIS SECTION, "INTENTIONAL AND WILLFUL
8 MISCONDUCT" INCLUDES, BUT IS NOT LIMITED TO, INTOXICATION, ILLE-
9 GAL USE OF A CONTROLLED SUBSTANCE OR USE OF ANY OTHER ILLEGAL
10 SUBSTANCE, THEFT OF EMPLOYER PROPERTY, OR ACTING AS THE AGGRESSOR
11 IN AN ALTERCATION.

12 Sec. 319. (1) An employee who has suffered an injury cov-
13 ered by this act shall be entitled to prompt medical rehabilita-
14 tion services AS SELECTED BY THE EMPLOYER. When as a result of
15 the injury he or she is unable to perform work for which he or
16 she has previous training or experience, the ~~employee~~ EMPLOYER
17 shall ~~be entitled to~~ SELECT such vocational rehabilitation
18 services, including retraining and job placement, as may be rea-
19 sonably necessary to restore him or her to useful employment. If
20 such services are not voluntarily offered and accepted, the
21 director on his or her own motion or upon application of the
22 employee, carrier, or employer, after affording the parties an
23 opportunity to be heard, may refer the employee to a
24 bureau-approved facility for evaluation of the need for, and kind
25 of service, treatment, or training necessary and appropriate to
26 render the employee fit for a remunerative occupation. Upon
27 receipt of ~~such~~ A report FROM THE BUREAU-APPROVED FACILITY, the

1 director may order that the training, services, or treatment
2 recommended in the report be provided at the expense of the
3 employer BY A PROVIDER SELECTED BY THE EMPLOYER. The director
4 may order that any employee participating in vocational rehabili-
5 tation shall receive additional payments for transportation or
6 any extra and necessary expenses during the period and arising
7 out of his or her program of vocational rehabilitation.

8 Vocational rehabilitation training, treatment, or service shall
9 not extend for a period of more than 52 weeks except in cases
10 when, by special order of the director after review, the period
11 may be extended for an additional 52 weeks or portion thereof.

12 If there is an unjustifiable refusal to accept rehabilitation
13 pursuant to a decision of the director, the director shall order
14 a loss or reduction of compensation in an amount determined by
15 the director for each week of the period of refusal, except for
16 specific compensation payable under section 361(1) and (2).

17 (2) If a dispute arises between the parties concerning
18 application of any of the provisions of subsection (1), any of
19 the parties may apply for a hearing before a ~~hearing referee or~~
20 worker's compensation magistrate. ~~, as applicable.~~

21 Sec. 354. (1) This section is applicable when either weekly
22 or lump sum payments are made to an employee as a result of
23 liability pursuant to section 351, 361, or 835 with respect to
24 the same time period for which old-age insurance benefit payments
25 under the social security act, 42 U.S.C. 301 to 1397f; payments
26 under a self-insurance plan, a wage continuation plan, A
27 SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN, A SEPARATION, LAYOFF,

1 VOLUNTARY TERMINATION, OR DISMISSAL PLAN, OR ANY OTHER
 2 EMPLOYER-FUNDED PAYMENT, FUNDED IN WHOLE OR IN PART, or a dis-
 3 ability BENEFIT PLAN OR insurance policy provided by the employ-
 4 er; or pension or retirement payments pursuant to a plan or pro-
 5 gram established or maintained by the employer, are also received
 6 or being received by the employee. Except as otherwise provided
 7 in this section, INCLUDING THE EXEMPTION OF ANY DISABILITY PEN-
 8 SION PLAN SUBJECT TO SUBSECTION (14), the employer's obligation
 9 to pay or cause to be paid weekly benefits other than specific
 10 loss benefits under section 361(2) and (3) shall be reduced by
 11 these amounts:

12 (a) Fifty percent of the amount of the old-age insurance
 13 benefits received or being received under the social security
 14 act.

15 (b) The after-tax amount of the payments received or being
 16 received under a self-insurance plan, a wage continuation plan, A
 17 SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN, A SEPARATION, LAYOFF,
 18 VOLUNTARY TERMINATION, OR DISMISSAL PLAN, OR ANY OTHER
 19 EMPLOYER-FUNDED PAYMENT, FUNDED IN WHOLE OR IN PART, or under a
 20 disability BENEFIT PLAN OR insurance policy provided by the same
 21 employer from whom benefits under section 351, 361, or 835 are
 22 received if the employee did not contribute directly to the plan
 23 or to the payment of premiums regarding the disability insurance
 24 policy. If such ~~self-insurance~~ plans, ~~wage continuation~~
 25 ~~plans~~ PAYMENTS, or ~~disability insurance~~ policies are entitled
 26 to repayment in the event of a worker's compensation benefit
 27 recovery, the carrier shall satisfy ~~such~~ THE repayment out of

1 funds the carrier has received through the coordination of
2 benefits provided for under this section. ~~Notwithstanding the~~
3 ~~provisions of this subsection, attorney fees shall be paid pursu-~~
4 ~~ant to section 821 to the attorney who secured the worker's com-~~
5 ~~pensation recovery.~~

6 (c) The proportional amount, based on the ratio of the
7 employer's contributions to the total insurance premiums for the
8 policy period involved, of the after-tax amount of the payments
9 received or being received by the employee pursuant to a disabil-
10 ity insurance policy provided by the same employer from whom ben-
11 efits under section 351, 361, or 835 are received, if the
12 employee did contribute directly to the payment of premiums
13 regarding the disability insurance policy.

14 (d) The after-tax amount of the pension or retirement pay-
15 ments received or being received pursuant to a plan or program
16 established or maintained by the same employer from whom benefits
17 under section 351, 361, or 835 are received, if the employee did
18 not contribute directly to the pension or retirement plan or
19 program. Subsequent increases in a pension or retirement program
20 shall not affect the coordination of these benefits.

21 (e) The proportional amount, based on the ratio of the
22 employer's contributions to the total contributions to the plan
23 or program, of the after-tax amount of the pension or retirement
24 payments received or being received by the employee pursuant to a
25 plan or program established or maintained by the same employer
26 from whom benefits under section 351, 361, or 835 are received,
27 if the employee did contribute directly to the pension or

1 retirement plan or program. Subsequent increases in a pension or
2 retirement program shall not affect the coordination of these
3 benefits.

4 (f) For those employers who do not provide a pension plan,
5 the proportional amount, based on the ratio of the employer's
6 contributions to the total contributions made to a qualified
7 profit sharing plan under section 401(a) of the internal revenue
8 code or any successor to section 401(a) of the internal revenue
9 code covering a profit sharing plan which provides for the pay-
10 ment of benefits only upon retirement, disability, death, or
11 other separation of employment to the extent that benefits are
12 vested under the plan.

13 (2) To satisfy any remaining obligations under section 351,
14 361, or 835, the employer shall pay or cause to be paid to the
15 employee the balance due in either weekly or lump sum payments
16 after the application of subsection (1).

17 (3) In the application of subsection (1) any credit or
18 reduction shall occur pursuant to this section and all of the
19 following:

20 (a) The bureau shall promulgate rules to provide for notifi-
21 cation by an employer or carrier to an employee of possible eli-
22 gibility for social security benefits and the requirements for
23 establishing proof of application for those benefits.
24 Notification shall be promptly mailed to the employee after the
25 date on which by reason of age the employee may be entitled to
26 social security benefits. A copy of the notification of possible
27 eligibility shall be filed with the bureau by the employer or

1 carrier. AFTER FIRST COORDINATING ANY BENEFIT DESCRIBED IN
2 SUBSECTION (1) PAYABLE ON A PERIODIC BASIS, ANY OTHER LUMP SUM
3 PAYMENT OR PAYMENTS SUBJECT TO COORDINATION PAID BY THE EMPLOYER,
4 SHALL BE PRORATED BY DIVIDING THE LUMP SUM BY THE REMAINING
5 WEEKLY WORKER'S COMPENSATION PAYMENT OTHERWISE PAYABLE AND SUS-
6 PENDING THE COMPENSATION PAYMENTS UNTIL THE LUMP SUM PAYMENT OR
7 PAYMENTS ARE COMPLETED.

8 (b) Within 30 days after receipt of the notification of pos-
9 sible employee eligibility the employee shall:

10 (i) Make application for social security benefits.

11 (ii) Provide the employer or carrier with proof of that
12 application.

13 (iii) Provide the employer or carrier with an authority for
14 release of information which shall be utilized by the employer or
15 carrier to obtain necessary benefit entitlement and amount infor-
16 mation from the social security administration. The authority
17 for release of information shall be effective for 1 year.

18 (4) Failure of the employee to provide the proof of applica-
19 tion or the authority for release of information as prescribed in
20 subsection (3) shall allow the employer or carrier with the
21 approval of the bureau to discontinue the compensation benefits
22 payable to the employee under section 351, 361, or 835 until the
23 proof of application and the authority for release of information
24 is provided. Compensation benefits withheld shall be reimbursed
25 to the employee upon the providing of the required proof of
26 application, or the authority for release of information, or
27 both.

1 (5) If the employer or carrier is required to submit a new
2 authority for release of information to the social security
3 administration in order to receive information necessary to
4 comply with this section, the employee shall provide the new
5 authority for release of information within 30 days of a request
6 by the employer or carrier. Failure to provide the new authority
7 for release of information shall allow the employer or carrier
8 with the approval of the bureau to discontinue benefits until the
9 authority for release of information is provided as prescribed in
10 this subsection. Compensation benefits withheld shall be reim-
11 bursed to the employee upon the providing of the new authority
12 for release of information.

13 (6) Within 30 days after either the date of first payment of
14 compensation benefits under section 351, 361, or 835, or 30 days
15 after the date of application for any benefit under subsection
16 (1)(b), (c), (d), or (e), whichever is later, the employee shall
17 provide the employer or carrier with a properly executed author-
18 ity for release of information which shall be utilized by the
19 employer or carrier to obtain necessary benefit entitlement and
20 amount information from the appropriate source. The authority
21 for release of information is effective for 1 year. Failure of
22 the employee to provide a properly executed authority for release
23 of information shall allow the employer or carrier with the
24 approval of the bureau to discontinue the compensation benefits
25 payable under section 351, 361, or 835 to the employee until the
26 authority for release of information is provided. Compensation
27 benefits withheld shall be reimbursed to the employee upon

1 providing the required authority for release of information. If
2 the employer or carrier is required to submit a new authority for
3 release of information to the appropriate source in order to
4 receive information necessary to comply with this section, the
5 employee shall provide a properly executed new authority for
6 release of information within 30 days after a request by the
7 employer or carrier. Failure of the employee to provide a prop-
8 erly executed new authority for release of information shall
9 allow the employer or carrier with the approval of the bureau to
10 discontinue benefits under section 351, 361, or 835 until the
11 authority for release of information is provided as prescribed in
12 this subsection. Compensation benefits withheld shall be reim-
13 bursed to the employee upon the providing of the new authority
14 for release of information.

15 (7) A credit or reduction under this section shall not occur
16 because of an increase granted by the social security administra-
17 tion as a cost of living adjustment.

18 (8) Except as provided in subsections (4), (5), and (6), a
19 credit or reduction of benefits otherwise payable for any week
20 shall not be taken under this section until there has been a
21 determination of the benefit amount otherwise payable to the
22 employee under section 351, 361, or 835 and the employee has
23 begun receiving the benefit payments.

24 (9) Except as otherwise provided in this section, any bene-
25 fit payments under the social security act, or any fund, policy,
26 or program as specified in subsection (1) which the employee has
27 received or is receiving after March 31, 1982 and during a period

1 in which the employee was receiving unreduced compensation
2 benefits under section 351, 361, or 835 shall be considered to
3 have created an overpayment of compensation benefits for that
4 period. The employer or carrier shall calculate the amount of
5 the overpayment and send a notice of overpayment and a request
6 for reimbursement to the employee. Failure by the employee to
7 reimburse the employer or carrier within 30 days after the mail-
8 ing date of the notice of request for reimbursement shall allow
9 the employer or carrier with the approval of the bureau to dis-
10 continue 50% of future weekly compensation payments under section
11 351, 361 or 835. The compensation payments withheld shall be
12 credited against the amount of the overpayment. Payment of the
13 appropriate compensation benefit shall resume when the total
14 amount of the overpayment has been withheld.

15 (10) The employer or carrier taking a credit or making a
16 reduction as provided in this section shall immediately report to
17 the bureau the amount of any credit or reduction, and as
18 requested by the bureau, furnish to the bureau satisfactory proof
19 of the basis for a credit or reduction.

20 (11) Disability insurance benefit payments under the social
21 security act shall be considered to be payments from funds pro-
22 vided by the employer and to be primary payments on the
23 employer's obligation under section 351, 361, or 835 as old-age
24 benefit payments under the social security act are considered
25 pursuant to this section. The coordination of social security
26 disability benefits shall commence on the date of the award
27 certificate of the social security disability benefits. Any

1 accrued social security disability benefits shall not be
2 coordinated. However, social security disability insurance bene-
3 fits shall only be so considered if section 224 of the social
4 security act, 42 U.S.C. 424a, is revised so that a reduction of
5 social security disability insurance benefits is not made because
6 of the receipt of worker's compensation benefits by the
7 employee.

8 (12) Nothing in this section shall be considered to compel
9 an employee to apply for early federal social security old-age
10 insurance benefits or to apply for early or reduced pension or
11 retirement benefits.

12 (13) As used in this section, "after-tax amount" means the
13 gross amount of any benefit under subsection (1)(b), (1)(c),
14 (1)(d), or (1)(e) reduced by the prorated weekly amount which
15 would have been paid, if any, under the federal insurance contri-
16 butions act, 26 U.S.C. 3101 to 3126, state income tax and federal
17 income tax, calculated on an annual basis using as the number of
18 exemptions the disabled employee's dependents plus the employee,
19 and without excess itemized deductions. In determining the
20 "after-tax amount" the tables provided for in section 313(2)
21 shall be used. The gross amount of any benefit under subsection
22 (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the
23 same as the average weekly wage for purposes of the table. The
24 applicable 80% of after-tax amount as provided in the table will
25 be multiplied by 1.25 which will be conclusive for determining
26 the "after-tax amount" of benefits under subsection (1)(b),
27 (1)(c), (1)(d), or (1)(e). IF THE FEDERAL INSURANCE

1 CONTRIBUTIONS ACT, 26 U.S.C. 3101 TO 3126, DOES NOT REQUIRE
2 PAYMENT FOR BENEFITS LISTED IN SUBSECTION (1) OR WHERE OTHER
3 STATE OR FEDERAL TAXES ON SUCH BENEFITS ARE NOT PAYABLE, THEN THE
4 APPLICABLE FICA AMOUNT OR STATE INCOME TAX OR FEDERAL INCOME TAX
5 OTHERWISE PAYABLE USED IN THE TABLE SHALL BE ADDED TO THE TABLE
6 AMOUNT TO DETERMINE THE REDUCED WORKER'S COMPENSATION BENEFIT
7 PAYABLE.

8 (14) This section does not apply to any payments received or
9 to be received under a disability pension plan provided by the
10 same employer which plan is in existence on March 31, 1982. Any
11 disability pension plan entered into or renewed after March 31,
12 1982 may provide that the payments under that disability pension
13 plan provided by the employer shall not be coordinated pursuant
14 to this section.

15 (15) With respect to volunteer fire fighters, volunteer
16 safety patrol officers, volunteer civil defense workers, and vol-
17 unteer ambulance drivers and attendants who are considered
18 employees for purposes of this act pursuant to section 161(1)(a),
19 the reduction of weekly benefits provided for disability insur-
20 ance payments under subsection (1)(b) and (c) and subsection (11)
21 may be waived by the employer. An employer that is not a
22 self-insurer may make the waiver provided for under this subsec-
23 tion only at the time a worker's compensation insurance policy is
24 entered into or renewed.

25 (16) This section shall not apply to payments made to an
26 employee as a result of liability pursuant to section 361(2) and
27 (3) for the specific loss period set forth therein. It is the

1 intent of the legislature that, because benefits under section
2 361(2) and (3) are benefits which recognize human factors sub-
3 stantially in addition to the wage loss concept, coordination of
4 benefits should not apply to such benefits.

5 (17) The decision of the Michigan Supreme Court in Franks v
6 White Pine Copper Division, 422 Mich 636 (1985) is declared to
7 have been erroneously rendered insofar as it interprets this sec-
8 tion, it having been and being the legislative intention not to
9 coordinate payments under this section resulting from liability
10 pursuant to section 351, 361, or 835 for personal injuries occur-
11 ring before March 31, 1982. It is the purpose of this amendatory
12 act to so affirm. This remedial and curative amendment shall be
13 liberally construed to effectuate this purpose.

14 (18) This section applies only to payments resulting from
15 liability pursuant to section 351, 361, or 835 for personal inju-
16 ries occurring on or after March 31, 1982. Any payments made to
17 an employee resulting from liability pursuant to section 351,
18 361, or 835 for a personal injury occurring before March 31, 1982
19 that have not been coordinated under this section as of ~~the~~
20 ~~effective date of this subsection~~ MAY 14, 1987 shall not be
21 coordinated, shall not be considered to have created an overpay-
22 ment of compensation benefits, and shall not be subject to reim-
23 bursement to the employer or carrier.

24 (19) Notwithstanding any other section of this act, any pay-
25 ments made to an employee resulting from liability pursuant to
26 section 351, 361, or 835 for a personal injury occurring before
27 March 31, 1982 that have been coordinated before ~~the effective~~

1 ~~date of this subsection~~ MAY 14, 1987 shall be considered to be
2 an underpayment of compensation benefits, and the amounts with-
3 held pursuant to coordination shall be reimbursed with interest,
4 within 60 days ~~of the effective date of this subsection~~ AFTER
5 MAY 14, 1987, to the employee by the employer or carrier.

6 (20) Notwithstanding any other section of this act, any
7 employee who has paid an employer or carrier money alleged by the
8 employer or carrier to be owed the employer or carrier because
9 that employee's benefits had not been coordinated under this sec-
10 tion and whose date of personal injury was before March 31, 1982
11 shall be reimbursed with interest, within 60 days ~~of the effec-~~
12 ~~tive date of this subsection~~ AFTER MAY 14, 1987, that money by
13 the employer or carrier.

14 (21) If any portion of this section is subsequently found to
15 be unconstitutional or in violation of applicable law, it shall
16 not affect the validity of the remainder of this section.

17 Sec. 371. (1) The weekly loss in wages referred to in this
18 act shall consist of the percentage of the average weekly earn-
19 ings of the injured employee computed according to this section
20 as fairly represents the proportionate extent of the impairment
21 of the employee's earning capacity in the employments covered by
22 this act in which the employee was working at the time of the
23 personal injury. The weekly loss in wages shall be fixed as of
24 the time of the personal injury, and determined considering the
25 nature and extent of the personal injury. The compensation pay-
26 able, when added to the employee's wage earning capacity after
27 the personal injury in the same or other employments, shall not

1 exceed the employee's average weekly earnings at the time of the
2 injury.

3 (2) As used in this act, "average weekly wage" means the
4 weekly wage earned by the employee at the time of the employee's
5 injury in all employment, inclusive of overtime, premium pay, and
6 cost of living adjustment, and exclusive of any fringe or other
7 benefits which continue during the disability. Any fringe or
8 other benefit which does not continue during the disability shall
9 be included for purposes of determining an employee's average
10 weekly wage to the extent that the inclusion of the fringe or
11 other benefit will not result in a weekly benefit amount which is
12 greater than 2/3 of the state average weekly wage at the time of
13 injury. The average weekly wage shall be determined by computing
14 the total wages paid in the highest paid 39 weeks of the 52 weeks
15 immediately preceding the date of injury, and dividing by 39.

16 (3) If the employee worked less than 39 weeks in the employ-
17 ment in which the employee was injured, the average weekly wage
18 shall be based upon the total wages earned by the employee
19 divided by the total number of FULL CALENDAR weeks ~~actually~~
20 ~~worked~~ DURING WHICH WORK WAS PERFORMED. For purposes of
21 DETERMINING THE AVERAGE WEEKLY WAGE UNDER this subsection, ~~only~~
22 ~~those weeks in~~ EACH WEEK OR PORTION OF A WEEK DURING which work
23 is performed shall be considered ~~in computing the total wages~~
24 ~~earned and the number of weeks actually worked~~ A FULL CALENDAR
25 WEEK. THE LEGISLATURE DECLARES THAT THE DECISIONS OF THE
26 MICHIGAN SUPREME COURT IN RIGGS V MOSSER CONSTRUCTION CO., 445
27 MICH 347 (1994), AND ROWELL V SECURITY STEEL PROCESSING CO., 445

1 MICH 347 (1994), WERE ERRONEOUSLY DECIDED AS THEY INTERPRETED
2 THIS ACT AND THAT IT IS THE INTENT OF THE LEGISLATURE THAT AN
3 AVERAGE WEEKLY WAGE IS BASED ON THE TOTAL WAGES EARNED BY THE
4 EMPLOYEE DIVIDED BY THE NUMBER OF FULL CALENDAR WEEKS DURING
5 WHICH WORK WAS PERFORMED AND THAT WHOLE OR PARTIAL WEEKS OF WORK
6 ARE TO BE COUNTED AS A FULL CALENDAR WEEK OF WORK.

7 (4) If an employee sustains a compensable injury before com-
8 pleting his or her first work week, the average weekly wage shall
9 be calculated by determining the number of hours of work per week
10 contracted for by that employee multiplied by the employee's
11 hourly rate, or the weekly salary contracted for by the
12 employee.

13 (5) If the hourly earning of the employee cannot be ascer-
14 tained, or if the pay has not been designated for the work
15 required, the wage, for the purpose of calculating compensation,
16 shall be taken to be the usual wage for similar services if the
17 services are rendered by paid employees.

18 (6) If there are special circumstances under which the aver-
19 age weekly wage cannot justly be determined by applying subsec-
20 tions (2) to (5), an average weekly wage may be computed by
21 dividing the aggregate earnings during the year before the injury
22 by the number of days when work was performed and multiplying
23 that daily wage by the number of working days customary in the
24 employment, but not less than 5.

25 (7) The average weekly wage as determined under this section
26 shall be rounded to the nearest dollar.

1 Sec. 375. (1) ~~The~~ FOR A DEATH OR DISABILITY CLAIM FOR
2 WHICH LIABILITY HAS NOT BEEN REDEEMED, THE death of the injured
3 employee before the expiration of the period within which he or
4 she would receive weekly payments shall be considered to end the
5 disability and all liability for the remainder of such payments
6 which he or she would have received in case he or she had lived
7 shall be terminated, but the employer shall thereupon be liable
8 for the following death benefits in lieu of any further disabil-
9 ity indemnity.

10 (2) If the injury received by ~~such~~ THE employee was the
11 proximate cause of his or her death, and the deceased employee
12 leaves dependents, as hereinbefore specified, wholly or partially
13 dependent on him or her for support, the death benefit shall be a
14 sum sufficient, when added to the indemnity which at the time of
15 death has been paid or becomes payable under ~~the provisions of~~
16 this act to the deceased employee, to make the total compensation
17 for the injury and death exclusive of medical, surgical, hospital
18 services, medicines, and rehabilitation services, and expenses
19 furnished as provided in sections 315 and 319, equal to the full
20 amount which such dependents would have been entitled to receive
21 under ~~the provisions of~~ section 321, in case the injury had
22 resulted in immediate death. Such benefits shall be payable in
23 the same manner as they would be payable under ~~the provisions~~
24 ~~of~~ section 321 had the injury resulted in immediate death.

25 (3) If an application for benefits has been filed but has
26 not been decided by a worker's compensation magistrate, or on
27 appeal and the claimant dies from a cause unrelated to his or her

1 injury, the proceedings shall not abate but may be continued in
2 the name of his or her personal representative. In ~~such~~ THAT
3 case, the benefits payable up to time of death shall be paid to
4 the same beneficiaries and in the same amounts as would have been
5 payable if the employee had suffered a compensable injury result-
6 ing in death.

7 Sec. 381. (1) A proceeding for compensation for an injury
8 OR DISABILITY under this act shall not be maintained unless a
9 claim for compensation for the injury OR DISABILITY, which claim
10 ~~may be either oral or~~ SHALL BE in writing, has been made to the
11 employer or ~~a written claim has been made~~ to the bureau on
12 forms prescribed by the director, within 2 years after the occur-
13 rence of the injury OR DISABILITY. In case of the death of the
14 employee, the claim shall be made within 2 years after death.
15 The employee shall provide a WRITTEN notice of injury OR
16 DISABILITY to the employer within 90 days after the happening of
17 the injury OR DISABILITY, or within 90 days after the employee
18 knew, or should have known, of the injury OR DISABILITY.
19 ~~Failure to give such notice to the employer shall be excused~~
20 ~~unless the employer can prove that he or she was prejudiced by~~
21 ~~the failure to provide such notice.~~ HOWEVER, IF AN EMPLOYER
22 NOTICE OF DISPUTE IS FILED IN RESPONSE TO THE WRITTEN NOTICE OF
23 THE EMPLOYEE, THE EMPLOYEE'S NOTICE AND CLAIM FOR BENEFITS IS
24 BARRED UNLESS FILED WITH THE BUREAU IN WRITING WITHIN 6 MONTHS
25 AFTER THE BUREAU'S RECEIPT OF THE EMPLOYER NOTICE OF DISPUTE.
26 THE BUREAU SHALL PROVIDE THE EMPLOYER WITH A COPY OF ANY
27 CORRESPONDENCE IT DIRECTS TO THE EMPLOYEE AS A RESULT OF THE

1 NOTICE OF DISPUTE FILED BY THE EMPLOYER. In the event of physical
2 or mental incapacity of the employee, the notice and claim shall
3 be made within 2 years from the time the injured employee is not
4 physically or mentally incapacitated from making the claim. A
5 claim shall not be valid or effectual for any purpose under this
6 chapter unless made within 2 years after the later of the date of
7 injury ~~—~~ OR the date disability manifests itself. ~~—, or the~~
8 ~~last day of employment with the employer against whom claim is~~
9 ~~being made.~~ If an employee claims benefits for a work injury and
10 is thereafter compensated for the disability by worker's compen-
11 sation or benefits other than worker's compensation, or is pro-
12 vided favored work by the employer because of the disability, the
13 period of time within which a claim shall be made for benefits
14 under this act shall be extended by the time during which the
15 benefits are paid or the favored work is provided.

16 (2) Except as provided in subsection (3), if any compensa-
17 tion is sought under this act, payment shall not be made for any
18 period of time earlier than 2 years immediately preceding the
19 date on which the employee filed an application for a hearing
20 with the bureau.

21 (3) Payment for nursing or attendant care shall not be made
22 for any period which is more than 1 year before the date an
23 application for a hearing is filed with the bureau.

24 (4) The receipt by an employee of any other occupational or
25 nonoccupational benefit does not suspend the duty of the employee
26 to comply with this section, except under the circumstances
27 described in subsection (1).

1 Sec. 383. A notice of injury or a claim for compensation
2 made under the provisions of this act shall not be held invalid
3 or insufficient by reason of any inaccuracy in stating the time,
4 place or cause of the injury, unless it is shown that it was the
5 intention to mislead, and the employer or the carrier, was in
6 fact misled. ~~Want of written notice shall not be a bar to pro-~~
7 ~~ceedings under this act if it be shown that the employer had~~
8 ~~notice or knowledge of the injury.~~

9 Sec. 385. (1) After the employee has given notice of injury
10 and from time to time thereafter during the continuance of his or
11 her disability, if so requested by the employer or the carrier,
12 he or she shall submit himself or herself to an examination by a
13 physician or surgeon authorized to practice medicine under the
14 laws of the state, furnished and paid for by the employer or the
15 carrier. If an examination relative to the injury is made, the
16 employee or his or her attorney shall be furnished, within 15
17 days of a request, a complete and correct copy of the report of
18 every such physical examination relative to the injury performed
19 by the physician making the examination on behalf of the employer
20 or the carrier. The employee shall have the right to have a phy-
21 sician provided and paid for by himself or herself present at the
22 examination. If he or she refuses to submit himself or herself
23 for the examination, or in any way obstructs the ~~same~~
24 EXAMINATION, his or her right to compensation shall be suspended
25 and his or her compensation during the period of suspension ~~may~~
26 SHALL be forfeited.

1 (2) IN ADDITION TO THE FORFEITURE OF COMPENSATION FOR THE
2 PERIOD OF NONCOMPLIANCE AS PROVIDED IN SUBSECTION (1), WHERE AN
3 EMPLOYEE FAILS, NEGLECTS, OR REFUSES TO APPEAR FOR A MEDICAL
4 EXAMINATION AND IS THEREAFTER RESCHEDULED AND MISSES A SECOND
5 MEDICAL EXAMINATION, THE EMPLOYEE'S APPLICATION FOR MEDIATION OR
6 HEARING, IF PENDING, SHALL BE IMMEDIATELY DISMISSED, AND ANY
7 CHARGES INCURRED BY THE EMPLOYER FOR MISSED EXAMINATIONS SHALL BE
8 ASSESSED AGAINST OR DEDUCTED FROM ANY BENEFITS PAID OR PAYABLE TO
9 THE EMPLOYEE UNDER THIS ACT.

10 (3) Any physician who makes or is present at ~~any such~~ AN
11 examination may be required to testify under oath as to the
12 results ~~thereof~~ OF THE EXAMINATION. If the employee has had
13 other physical examinations relative to the injury but not at the
14 request of the employer or the carrier, he or she shall furnish
15 to the employer or the carrier a complete and correct copy of the
16 report of each ~~such~~ physical examination, if so requested,
17 within 15 days of the request. If a party fails to provide a
18 medical report regarding an examination or medical treatment,
19 that party shall be precluded from taking the medical testimony
20 of that physician only. The opposing party may, however, elect
21 to take the deposition of that physician.

22 (4) MEDICAL EVIDENCE ON ISSUES OF MEDICAL DIAGNOSES, TREAT-
23 MENT, CAUSAL RELATIONSHIP, AND PROGNOSIS SHALL BE BY WITNESS TES-
24 TIMONY ONLY. IF ALL PARTIES AGREE, MEDICAL RECORDS MAY BE SUB-
25 STITUTED IN LIEU OF MEDICAL TESTIMONY. MEDICAL RECORDS OFFERED
26 FOR PURPOSES OF HISTORY ONLY MAY BE SUBMITTED PURSUANT TO THE
27 RULES OF EVIDENCE.

1 (5) IF AN EMPLOYEE MAKES CLAIM FOR COMPENSATION UNDER THIS
2 ACT, ANY PRIVILEGE OR CONFIDENTIALITY RELATED TO THE CLAIM IS
3 WAIVED.

4 (6) FAILURE OF AN EMPLOYEE TO COOPERATE WITH PRODUCTION OR
5 RELEASE OF MEDICAL RECORDS RELATING TO THE CLAIM SHALL BE CONSID-
6 ERED AS OBSTRUCTING THE PURPOSES OF THIS ACT AND SHALL RESULT IN
7 A DISMISSAL OF THE EMPLOYEE'S APPLICATION FOR MEDIATION OR HEAR-
8 ING, IF PENDING, AND SHALL CAUSE A FORFEITURE OF COMPENSATION
9 PAID OR PAYABLE DURING THE PERIOD OF THE OBSTRUCTION.

10 Sec. 401. (1) As used in this chapter, "disability" means
11 ~~a limitation of an employee's wage earning capacity in work~~
12 ~~suitable to his or her qualifications and training resulting from~~
13 ~~a personal injury or work related disease.~~ THAT AN EMPLOYEE HAS
14 ESTABLISHED, BY A PREPONDERANCE OF THE EVIDENCE, AN INABILITY TO
15 DO THE WORK BEING PERFORMED AT THE TIME OF THE INJURY, AN INABIL-
16 ITY TO PERFORM WORK OFFERED BY ANY EMPLOYER, AN INABILITY TO PER-
17 FORM REASONABLE EMPLOYMENT OFFERED BY ANY EMPLOYER, AN INABILITY
18 TO PERFORM FAVORED WORK OFFERED BY ANY EMPLOYER, AND AN INABILITY
19 TO PERFORM IN ANY EXISTING OR SUBSEQUENT BUSINESS OWNED, OPER-
20 ATED, OR PARTICIPATED IN BY THE EMPLOYEE. DISABILITY MAY CON-
21 TINUE IF SUPPORTED BY MEDICAL EVIDENCE OF DISABILITY, BUT NOT TO
22 EXCEED 26 WEEKS AFTER THE INJURY. WHEN AN EMPLOYEE REACHES MAXI-
23 MUM MEDICAL IMPROVEMENT, OR 26 WEEKS AFTER THE DATE OF INJURY,
24 WHICHEVER OCCURS FIRST, THE EMPLOYEE WILL ONLY BE CONSIDERED DIS-
25 ABLED IF THE EMPLOYEE PROVES BY A PREPONDERANCE OF THE EVIDENCE
26 AN INABILITY, BASED UPON OBJECTIVE MEDICAL EVIDENCE, TO PERFORM
27 ANY WORK IN THE EMPLOYEE'S GENERAL FIELD OF EMPLOYMENT, INCLUDING

1 VOCATIONAL REHABILITATION TRAINING PROVIDED IN ACCORDANCE WITH
2 SECTION 319. AS USED IN THIS SUBSECTION, "OBJECTIVE MEDICAL
3 EVIDENCE" INCLUDES, BUT IS NOT LIMITED TO, ATROPHY, SPASM, X-RAY
4 STUDIES, ELECTROMYOGRAPHY AND NERVE CONDUCTION STUDIES, MAGNETIC
5 IMAGING, CAT SCANS, AND DIAGNOSTIC EVIDENCE SUBSTANTIATED BY
6 OBJECTIVE CLINICAL FINDINGS, OUTSIDE OF THE CONTROL OF THE
7 PATIENT/EMPLOYEE. SUBJECTIVE MEDICAL EVIDENCE SHALL NOT BE CON-
8 sidered in determining ongoing disability. SUBJECTIVE MEDICAL
9 EVIDENCE INCLUDES, BUT IS NOT LIMITED TO, RANGE OF MOTION, MUSCLE
10 STRENGTH, GAIT, PULMONARY FUNCTION STUDIES, OR ANY DIAGNOSTIC
11 EVIDENCE UNSUBSTANTIATED BY OBJECTIVE CLINICAL FINDINGS AND
12 WITHIN THE CONTROL OF THE PATIENT. THE DEFINITION OF DISABILITY
13 AS AMENDED BY THIS 1995 AMENDATORY ACT SHALL APPLY TO EMPLOYEES
14 WHO RECEIVE A PERSONAL INJURY ON OR AFTER THE EFFECTIVE DATE OF
15 THIS 1995 AMENDATORY ACT. THE DEFINITION OF DISABILITY AS
16 AMENDED BY THIS 1995 AMENDATORY ACT SHALL APPLY TO EMPLOYEES WHO
17 RECEIVED A PERSONAL INJURY BEFORE THE EFFECTIVE DATE OF THIS 1995
18 AMENDATORY ACT 12 MONTHS AFTER THE EFFECTIVE DATE OF THIS 1995
19 AMENDATORY ACT. The establishment of disability does not create a
20 presumption of wage loss.

21 (2) As used in this act:

22 (a) "Disablement" means the event of becoming so disabled.

23 (b) "Personal injury" shall include a disease or disability
24 which is due to causes and conditions which are characteristic of
25 and peculiar to the business of the employer and which arises out
26 of and in the course of the employment. An ordinary disease of
27 life to which the public is generally exposed outside of the

1 employment is not compensable. ~~Mental disabilities and~~
2 ~~conditions~~ A HERNIA TO BE COMPENSABLE MUST BE CLEARLY RECENT IN
3 ORIGIN AND RESULT FROM A STRAIN ARISING OUT OF AND IN THE COURSE
4 OF THE EMPLOYMENT AND BE PROMPTLY REPORTED TO THE EMPLOYER.
5 CONDITIONS of the aging process, including but not limited to
6 heart, ~~and~~ cardiovascular, AND PULMONARY conditions, shall be
7 compensable if ~~contributed to or aggravated or accelerated by~~
8 the employment ~~in a significant manner~~ IS THE PREDOMINANT CAUSE
9 OF DISABILITY AND IF THE CONDITION ARISES OUT OF OBJECTIVE AND
10 EXTRAORDINARY EVENTS OF EMPLOYMENT. Mental disabilities shall be
11 compensable ~~when arising out of~~ IF SUPPORTED BY CLEAR AND CON-
12 VINCING EVIDENCE THAT THE EMPLOYMENT IS THE PREDOMINANT CAUSE OF
13 DISABILITY AND THE DISABILITY ARISES OUT OF OBJECTIVE, UNEXPECT-
14 ED, UNUSUAL, AND EXTRAORDINARY actual events of employment, not
15 unfounded OR SUBJECTIVE perceptions thereof. ~~A hernia to be~~
16 ~~compensable must be clearly recent in origin and result from a~~
17 ~~strain arising out of and in the course of the employment and be~~
18 ~~promptly reported to the employer.~~ FOR MENTAL DISABILITIES, AN
19 EVENT OF EMPLOYMENT, WHICH IS NOT REASONABLY EXPECTED TO RESULT
20 IN DISABILITY, SHALL NOT BE A PREDOMINANT CAUSE OF DISABILITY.
21 MENTAL DISABILITIES ARE NOT COMPENSABLE IF FOUNDED ON GENERAL
22 CONCLUSIONS OF STRESS, ANXIETY, PERSONALITY CONFLICTS, MISPERCEP-
23 TIONS OF STIMULI OR EVENTS, OR EXERTION OVER A PERIOD OF TIME, OR
24 FROM EVENTS THAT RESULT IN A HYPERSENSITIVE OR AN IDIOSYNCRATIC
25 REACTION BY THE EMPLOYEE. MENTAL DISABILITIES ARE NOT COMPENSA-
26 BLE IF THEY ARISE OUT OF AN EMPLOYEE PERSONNEL TRANSACTION,
27 INCLUDING A TRANSFER, PROMOTION, DEMOTION, TERMINATION,

1 EVALUATION, OR ORAL DISAGREEMENT. THE LEGISLATURE DECLARES THAT
2 THE DECISION OF THE MICHIGAN SUPREME COURT IN GARDNER V VAN BUREN
3 PUBLIC SCHOOLS, 445 MICH 23 (1994), WAS ERRONEOUSLY RENDERED
4 INSOFAR AS IT INTERPRETS THIS ACT SINCE IT WAS THE INTENT OF THE
5 LEGISLATURE TO ESTABLISH A HIGHER STATUTORY STANDARD FOR COMPEN-
6 SABILITY DUE TO MENTAL DISABILITY. THE ISSUE OF CAUSAL RELATION-
7 SHIP BETWEEN EMPLOYMENT AND DEVELOPMENT OF MENTAL DISABILITY BY
8 AN EMPLOYEE AND THE COMPENSABILITY OF THE EMPLOYEE'S DISABILITY
9 ARE MATTERS OF FACT TO BE DETERMINED BY THE BOARD OF
10 MAGISTRATES. THIS REMEDIAL AND CURATIVE AMENDMENT SHALL BE
11 FAIRLY CONSTRUED TO EFFECTUATE THIS PURPOSE AND IS IMMEDIATELY
12 APPLICABLE TO PERSONAL INJURIES OCCURRING ON OR AFTER THE EFFEC-
13 TIVE DATE OF THIS 1995 AMENDATORY ACT. EMPLOYEES WHO RECEIVED A
14 PERSONAL INJURY BEFORE THE EFFECTIVE DATE OF THIS 1995 AMENDATORY
15 ACT THAT RESULTED IN A MENTAL DISABILITY SHALL HAVE THE HIGHER
16 STANDARD APPLIED TO THEIR CLAIMS 12 MONTHS AFTER THE EFFECTIVE
17 DATE OF THIS 1995 AMENDATORY ACT.

18 (3) If disability is established pursuant to subsection (1),
19 entitlement to weekly wage loss benefits shall be determined pur-
20 suant to this section and as follows:

21 (a) If an employee receives a bona fide offer of reasonable
22 employment from the previous employer, another employer, or
23 through the Michigan employment security commission and the
24 employee refuses that employment without good and reasonable
25 cause, the employee shall be considered to have voluntarily
26 removed himself or herself from the work force and is no longer

1 entitled to any wage loss benefits under this act during the
2 period of such refusal.

3 (b) If an employee is employed and the average weekly wage
4 of the employee is less than that which the employee received
5 before the date of injury, the employee shall receive weekly ben-
6 efits under this act equal to 80% of the difference between the
7 injured employee's after-tax weekly wage before the date of
8 injury and the after-tax weekly wage which the injured employee
9 is able to earn after the date of injury, but not more than the
10 maximum weekly rate of compensation, as determined under section
11 355. IF THE INJURED EMPLOYEE IS NOT EMPLOYED, BUT THE EMPLOYEE
12 HAS THE CAPACITY TO PERFORM WORK, AND THE WORK THE EMPLOYEE IS
13 ABLE TO PERFORM WOULD RESULT IN A LOWER AVERAGE WEEKLY WAGE THAN
14 THE EMPLOYEE RECEIVED BEFORE THE DATE OF INJURY, THE EMPLOYEE
15 SHALL RECEIVE WEEKLY BENEFITS UNDER THIS ACT EQUAL TO 80% OF THE
16 DIFFERENCE BETWEEN THE INJURED EMPLOYEE'S AFTER TAX WEEKLY WAGE
17 BEFORE THE DATE OF INJURY AND THE AFTER TAX WEEKLY WAGE THE
18 INJURED EMPLOYEE WOULD BE ABLE TO EARN AFTER THE DATE OF INJURY,
19 BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE OF COMPENSATION AS
20 DETERMINED UNDER SECTION 355. A REDUCTION TO PARTIAL BENEFITS
21 DOES NOT REQUIRE A JOB OFFER TO THE EMPLOYEE.

22 (c) If an employee is employed and the average weekly wage
23 of the employee is equal to or more than the average weekly wage
24 the employee received before the date of injury, the employee is
25 not entitled to any wage loss benefits under this act for the
26 duration of such employment.

1 (d) If the employee, after having been employed pursuant to
2 this subsection for 100 weeks or more loses his or her job
3 through no fault of the employee, the employee shall receive com-
4 pensation under this act pursuant to the following:

5 (i) If after exhaustion of unemployment benefit eligibility
6 of an employee, a worker's compensation magistrate or hearing
7 referee, as applicable, determines for any employee covered under
8 this subdivision, that the employments since the time of injury
9 have not established a new wage earning capacity, the employee
10 shall receive compensation based upon his or her wage at the
11 original date of injury. There is a presumption of wage earning
12 capacity established for employments totalling 250 weeks or
13 more.

14 (ii) The employee must still be disabled as determined pur-
15 suant to subsection (1). If the employee is still disabled, the
16 employee shall be entitled to the wage loss benefits based on the
17 difference between the normal and customary wages paid to those
18 persons performing the same or similar employment as determined
19 at the time of termination of employment of the employee and the
20 wages paid at the time of the injury.

21 (iii) If the employee becomes reemployed and the employee is
22 still disabled, the employee shall then receive wage loss bene-
23 fits as provided in subdivision (b).

24 (e) If the employee, after having been employed pursuant to
25 this subsection for less than 100 weeks, loses his or her job
26 through no fault ~~of~~ OR ACTION TAKEN BY the employee TO
27 TERMINATE EMPLOYMENT, the employee shall receive compensation

1 based upon his or her wage at the original date of injury.
2 COMPENSATION SHALL NOT BE PAYABLE UNDER THIS ACT TO AN EMPLOYEE
3 LOSING HIS OR HER EMPLOYMENT THROUGH HIS OR HER OWN FAULT OR
4 ACTION.

5 (4) A carrier shall notify the Michigan employment security
6 commission of the name of any injured employee who is unemployed
7 and to which the carrier is paying benefits under this act.

8 (5) The Michigan employment security commission shall give
9 priority to finding employment for those persons whose names are
10 supplied to the commission under subsection (4).

11 (6) The Michigan employment security commission shall notify
12 the bureau in writing of the name of any employee who refuses any
13 bona fide offer of reasonable employment. Upon notification to
14 the bureau, the bureau shall notify the carrier who shall termi-
15 nate the benefits of the employee pursuant to subsection (3)(a).

16 (7) As used in this section: ~~, "reasonable"~~

17 (A) "FAVORED WORK" MEANS WORK CREATED SPECIFICALLY BY AN
18 EMPLOYER TO ACCOMMODATE PHYSICAL OR MENTAL LIMITATIONS IMPOSED BY
19 THE PERSONAL INJURY UPON THE INJURED EMPLOYEE'S ABILITY TO PER-
20 FORM WORK. ALTERNATE OR OTHER WORK PERFORMED BY THE EMPLOYEE
21 AFTER OCCURRENCE OF THE INJURY DOES NOT CONSTITUTE FAVORED WORK
22 FOR PURPOSES OF THIS SECTION IF THE ALTERNATE OR OTHER WORK IS
23 REGULAR WORK GENERALLY AVAILABLE WITHIN THE RELEVANT LABOR
24 MARKET.

25 (B) "QUALIFICATIONS AND TRAINING" MEANS THE INTELLECTUAL AND
26 PHYSICAL SKILLS POSSESSED BY AN EMPLOYEE BASED UPON THAT
27 EMPLOYEE'S EDUCATION, TRAINING, OR PRIOR WORK EXPERIENCE IN ALL

1 EMPLOYMENTS AND INCLUDES TRAINING AND EXPERIENCE OBTAINED THROUGH
2 APPROVED VOCATIONAL PROGRAMS.

3 (C) "REASONABLE employment" means work that is within the
4 employee's capacity to perform that poses no clear and proximate
5 threat to that employee's health and safety, and that is within a
6 reasonable distance from ~~that employee's~~ THE PLACE OF EMPLOY-
7 MENT OR EMPLOYEE RESIDENCE AT THE TIME THE PERSONAL INJURY OR
8 WORK-RELATED DISEASE OCCURRED OR FROM ANY SUBSEQUENT residence OF
9 THE EMPLOYEE AT THE TIME THE OFFER IS MADE. The employee's
10 capacity to perform shall not be limited to work suitable to his
11 or her qualifications and training.

12 (D) "WAGE EARNING CAPACITY" MEANS THE REMUNERATION GENERALLY
13 PAYABLE TO AN EMPLOYEE PERFORMING WORK THAT IS SUITABLE TO HIS OR
14 HER QUALIFICATIONS AND TRAINING.

15 (8) This section shall apply to personal injuries or work
16 related diseases occurring on or after June 30, 1985.

17 Sec. 441. (1) The requirements of claim for occupational
18 disease and death resulting from an occupational disease and the
19 requirements as to the bringing of proceedings for compensation
20 for disability or death resulting from the occupational disease
21 are the same as required in chapter 3, except that the claim of
22 occupational disease or death resulting from an occupational dis-
23 ease shall commence from the date the ~~employee or a deceased~~
24 ~~employee's dependents had knowledge, or a reasonable belief, or~~
25 ~~through ordinary diligence could have discovered, that the occu-~~
26 ~~pational disease or death was work related~~ DISEASE MANIFESTED
27 ITSELF.

1 (2) A claim shall not be valid or effectual for any purpose
2 under this chapter unless made within 2 years after the date the
3 ~~employee or dependents of a deceased employee had knowledge, or~~
4 ~~a reasonable belief, or through ordinary diligence could have~~
5 ~~discovered that the occupational disease or death was work~~
6 ~~related~~ DISEASE MANIFESTED ITSELF.

7 Sec. 827. (1) Where the injury for which compensation is
8 payable under this act was caused under circumstances creating a
9 legal liability in some person other than a natural person in the
10 same employ or the employer to pay damages in respect thereof,
11 the acceptance of compensation benefits or the taking of proceed-
12 ings to enforce compensation payments shall not act as an elec-
13 tion of remedies but the injured employee or his or her depen-
14 dents or personal representative may also proceed to enforce the
15 liability of the third party for damages in accordance with this
16 section. If the injured employee or his or her dependents or
17 personal representative does not commence the action within 1
18 year after the occurrence of the personal injury, then the
19 employer or carrier, within the period of time for the commence-
20 ment of actions prescribed by statute, may enforce the liability
21 of such other person in the name of that person. Not less than
22 30 days before the commencement of action by any party under this
23 section, the parties shall notify, by certified mail at their
24 last known address, the bureau, the injured employee, or in the
25 event of the employee's death, his or her known dependents or
26 personal representative or known next of kin, his or her

1 employer, and the carrier. Any party in interest shall have a
2 right to join in the action.

3 (2) Prior to the entry of judgment, either the employer or
4 carrier or the employee or the employee's personal representative
5 may settle their claims as their interest shall appear and may
6 execute releases therefor.

7 (3) Settlement and release by the employee is not a bar to
8 action by the employer or carrier to proceed against the third
9 party for any interest or claim it might have.

10 (4) If the injured employee or his or her dependents or per-
11 sonal representative settle their claim for injury or death or
12 commence proceedings thereon against the third party before the
13 payment of worker's compensation, such recovery or commencement
14 of proceedings shall not act as an election of remedies and any
15 moneys so recovered shall be applied as ~~herein~~ provided IN THIS
16 SECTION.

17 (5) In an action to enforce the liability of a third party,
18 the plaintiff may recover any amount which the employee or his or
19 her dependents or personal representative would be entitled to
20 recover in an action in tort. Any recovery against the third
21 party for damages resulting from personal injuries or death,
22 ~~only,~~ after deducting expenses of recovery, shall first reim-
23 burse the employer or carrier for any amounts paid or payable
24 under this act to date of recovery and the balance shall immedi-
25 ately be paid to the employee or his or her dependents or per-
26 sonal representative and shall be treated as an advance payment
27 by the employer on account of any future payments of compensation

1 benefits. ANY RECOVERY INCLUDES ALL LUMP JUDGMENTS, SETTLEMENTS,
2 AND THE PAID OUT VALUE OF ANY LUMP SUM OR PERIODIC PAYMENTS PAID
3 PURSUANT TO A STRUCTURED SETTLEMENT UNDIMINISHED BY ALLOCATIONS
4 FOR LOSS OF SERVICES, COMPANIONSHIP, CONSORTIUM, OR ANY OTHER
5 REMEDY AT LAW.

6 (6) Expenses of recovery shall be the reasonable expendi-
7 tures, including attorney fees, incurred in effecting recovery.
8 ~~Attorney fees, unless otherwise agreed upon, shall be divided~~
9 ~~among the attorneys for the plaintiff as directed by the court.~~
10 ~~Expenses of recovery shall be apportioned by the court between~~
11 ~~the parties as their interests appear at the time of the~~
12 ~~recovery.~~

13 (7) Compensation benefits referred to in this section shall
14 in each instance include but not be limited to all expenses
15 incurred under sections 315 and 345.

16 (8) The furnishing of, or failure to furnish, safety inspec-
17 tions or safety advisory services incident to providing worker's
18 compensation insurance, or pursuant to a contract providing for
19 safety inspections or safety advisory services between the
20 employer and a self-insurance service organization or a union
21 shall not subject the insurer or self-insured service organiza-
22 tion, or their agents or employees, or the union, its members or
23 the members of its safety committee, to third party liability for
24 damages for injury, death or loss resulting therefrom.

25 Sec. 835. (1) After 6 months' time has elapsed from the
26 date of a personal injury, any liability resulting from the
27 personal injury may be redeemed by the payment of a lump sum by

1 agreement of the parties, subject to the approval of a worker's
2 compensation magistrate. A REDEMPTION OF LIABILITY APPROVED BY A
3 WORKER'S COMPENSATION MAGISTRATE EXTINGUISHES ALL CLAIMS FOR BEN-
4 EFITS RELATED TO THE PERSONAL INJURY BY THE EMPLOYEE AND ANY
5 PERSON DEPENDENT UPON THE EMPLOYEE FOR SUPPORT. DEATH OF AN
6 EMPLOYEE FOLLOWING REDEMPTION OF LIABILITY FOR THE INJURY DOES
7 NOT ESTABLISH A NEW INJURY OR COMPENSABLE EVENT. If special cir-
8 cumstances are found which in the judgment of the worker's com-
9 pensation magistrate require the payment of a lump sum, the
10 worker's compensation magistrate may direct at any time in any
11 case that the deferred payments due under this act be commuted on
12 the present worth at ~~+10%~~ A per annum INTEREST RATE EQUAL TO THE
13 APPLICABLE FEDERAL RATE ON SHORT TERM DEBT INSTRUMENTS AS OF
14 DECEMBER 31 OF THE YEAR PRECEDING THE DATE ON WHICH THE LUMP SUM
15 PAYMENT IS TO BE PAID to 1 or more lump sum payments and that the
16 lump sum payments shall be made by the employer or carrier. When
17 a proposed redemption agreement is filed, it may be treated as a
18 lump sum application, within the discretion of a worker's compen-
19 sation magistrate. The filing of a proposed redemption agreement
20 or lump sum application shall not be considered an admission of
21 liability and if the worker's compensation magistrate treats a
22 proposed redemption agreement as a lump sum application under
23 this section, the employer shall be entitled to a hearing on the
24 question of liability.

25 (2) The carrier shall notify the employer in writing of the
26 proposed redemption agreement not less than 10 business days

1 before a hearing on the proposed redemption agreement is held.

2 The notice shall include all of the following:

3 (a) The amount and conditions of the proposed redemption
4 agreement.

5 (b) The procedure available for requesting a private infor-
6 mal managerial level conference.

7 (c) The name and business phone number of a representative
8 of the carrier familiar with the case.

9 (d) The time and place of the hearing on the proposed
10 redemption agreement and the right of the employer to object to
11 it.

12 (3) The worker's compensation magistrate may waive the
13 requirements of subsection (2) if the carrier provides evidence
14 that a good faith effort has been made to provide the required
15 notice or if the employer has consented in writing to the pro-
16 posed redemption.

17 (4) For all proposed redemption agreements filed after
18 December 31, 1983, each party to the agreement shall be liable
19 for a fee of \$100.00 to be used to defray costs incurred by the
20 bureau, the worker's compensation board of magistrates, and the
21 worker's compensation appellate commission administering this
22 act, except that in the case of multiple defendants the fee for
23 the party defendant shall be \$100.00 to be paid by the carrier
24 covering the most recent date of injury. The bureau shall
25 develop a system to provide for the collection of the fee pro-
26 vided for by this subsection.

1 (5) The fees collected pursuant to subsection (4) shall be
2 placed in the worker's compensation administrative revolving fund
3 under section 835a and shall only be used to supplement and not
4 replace appropriations for financing the bureau, the worker's
5 compensation board of magistrates, and the worker's compensation
6 appellate commission. Money in the worker's compensation admin-
7 istrative revolving fund shall only be used to pay for costs in
8 regard to the following specific purposes of the bureau, the
9 worker's compensation board of magistrates, and the worker's com-
10 pensation appellate commission as applicable:

11 (a) Education and training.

12 (b) Case management.

13 (c) Hearings and claims for review.

14 (6) Subsections (2) to (5) only apply to proposed redemption
15 agreements filed after December 31, 1983.

16 Sec. 845. (1) The bureau shall have jurisdiction over all
17 controversies arising out of injuries suffered outside this state
18 where the injured employee is a resident of this state at the
19 time of injury and the contract of hire was made in this state.
20 Such employee or his OR HER dependents shall be entitled to the
21 compensation and other benefits provided by this act.

22 (2) THE LEGISLATURE DECLARES THAT THE DECISION OF THE
23 MICHIGAN SUPREME COURT IN BOYD V W.G. WADE SHOWS, 443 MICH 476
24 (1993), WRONGLY INTERPRETED THIS SECTION AND, TO THE EXTENT THAT
25 ROBERTS V IXL GLASS CORPORATION, 259 MICH 644 (1932), APPLIES TO
26 THIS SECTION, IT IS THE INTENT OF THE LEGISLATURE THAT IT IS NO
27 LONGER APPLICABLE TO THIS SECTION. THE LEGISLATURE DECLARES THAT

1 THE REQUIREMENTS OF RESIDENCY IN THIS STATE AND CONTRACT OF HIRE
2 AGREED TO IN THIS STATE DESCRIBED IN SUBSECTION (1) CONSTITUTE
3 SPECIFIC AND UNAMBIGUOUS REQUIREMENTS THAT MUST BE ADHERED TO FOR
4 THE BUREAU TO HAVE JURISDICTION IN A CASE INVOLVING AN INJURY
5 OUTSIDE OF THIS STATE.

6 Sec. 853. (1) Process and procedure under this act shall be
7 as summary as reasonably may be. The director, worker's compen-
8 sation magistrates, arbitrators, and the board shall have the
9 power to administer oaths, subpoena witnesses, and to examine
10 such parts of the books and records of the parties to a proceed-
11 ing as relate to questions in dispute. ANY INTERESTED PARTY TO A
12 DISPUTE CONCERNING COMPENSATION UNDER THIS ACT MAY OBTAIN INFOR-
13 MATION FROM THE MICHIGAN EMPLOYMENT SECURITY COMMISSION OR ITS
14 SUCCESSOR THAT MAY AFFECT A CLAIM FOR COMPENSATION UNDER THIS ACT
15 AS PROVIDED UNDER SECTION 11(B)(1) OF THE MICHIGAN EMPLOYMENT
16 SECURITY ACT, ACT NO. 1 OF THE PUBLIC ACTS OF THE EXTRA SESSION
17 OF 1936, BEING SECTION 421.11 OF THE MICHIGAN COMPILED LAWS.

18 (2) Any witness who refuses to obey a subpoena, who refuses
19 to be sworn or testify, or who fails to produce any papers,
20 books, or documents touching any matter under investigation or
21 any witness, party, or attorney who is guilty of any contempt
22 while in attendance at any hearing held under this act may be
23 punished as for contempt of court. An application for this pur-
24 pose may be made to any circuit court within whose jurisdiction
25 the offense is committed and for which purpose the court is given
26 jurisdiction.