

SUBSTITUTE FOR
HOUSE BILL NO. 5002

[A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending sections 210, 212, 213, 230, 274, 301, 315, 319, 331, 353,
354, 360, 361, 381, 401, 625, 801, 835, 836, 837, 847, and 853 (MCL
418.210, 418.212, 418.213, 418.230, 418.274, 418.301, 418.315, 418.319,
418.331, 418.353, 418.354, 418.360, 418.361, 418.381, 418.401,
418.625, 418.801, 418.835, 418.836, 418.837, 418.847, and 418.853),
sections 210, 213, 274, 331, 801, 836, 837, 847, and 853 as amended
by 1994 PA 271, section 212 as added and sections 319, 361, and 381
as amended by 1985 PA 103, section 230 as amended by 2002 PA 566,
sections 301, 354, and 401 as amended by 1987 PA 28, section 315 as
amended by 2009 PA 226, section 625 as amended by 2002 PA 626, and
section 835 as amended by 1996 PA 357; and to repeal acts and parts of
acts.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 210. ~~(1) The qualifications advisory committee, in~~
2 ~~consultation with the board of magistrates, shall develop a written~~
3 ~~examination. The examination shall be administered to applicants~~
4 ~~for the position of worker's compensation magistrate in order to~~
5 ~~determine the applicant's ability and knowledge with regard to~~
6 ~~worker's compensation in the following areas:~~

7 ~~—— (a) Knowledge of this act.~~

8 ~~—— (b) Skills with regard to fact finding.~~

9 ~~—— (c) The Michigan rules of evidence.~~

10 ~~—— (d) A basic understanding of human anatomy and physiology.~~

11 ~~(2) An applicant for the position of worker's compensation~~
12 ~~magistrate, including those persons who were employed as hearing~~
13 ~~referees under this act on or before March 31, 1987, who~~
14 ~~successfully completes the examination provided for under~~
15 ~~subsection (1) or who has not less than 5 years experience as an~~
16 ~~attorney in the field of worker's compensation shall be interviewed~~
17 ~~by the qualifications advisory committee for the position of~~
18 ~~worker's compensation magistrate. To meet the requirement of 5~~
19 ~~years' legal experience as an attorney in the field of worker's~~
20 ~~compensation, an applicant must document to the qualifications~~
21 ~~advisory committee a period of time totaling 5 years during which~~
22 ~~the applicant met 1 of the following criteria:~~

23 ~~—— (a) A significant portion of the applicant's personal practice~~
24 ~~has been in active worker's compensation trial practice~~
25 ~~representing claimants or employers.~~

26 ~~—— (b) A significant portion of the applicant's personal practice~~

1 ~~has been in active worker's compensation appellate practice~~
2 ~~representing claimants or employers.~~

3 ~~—— (c) Service as a member of the former worker's compensation~~
4 ~~appeal board or the worker's compensation appellate commission.~~

5 ~~—— (3) The qualifications advisory committee, after completing~~
6 ~~personal interviews of the eligible applicants, shall determine~~

7 ~~which of the applicants are considered qualified for the position~~
8 ~~of worker's compensation magistrate. A person determined to be~~

9 ~~qualified before this 1994 amendatory act shall continue to be~~

10 ~~considered qualified after the effective date of this 1994~~

11 ~~amendatory act. The personal interviews shall be used to determine~~

12 ~~the applicant's suitability for the position, especially with~~

13 ~~regard to his or her objectivity.~~

14 ~~—— (4) The governor shall appoint only an applicant determined to~~
15 ~~be qualified by the qualifications advisory committee as a worker's~~

16 ~~compensation magistrate for each available position pursuant to~~

17 ~~section 213. ONLY AN INDIVIDUAL WHO IS A MEMBER IN GOOD STANDING OF~~

18 ~~THE STATE BAR OF MICHIGAN AND HAS BEEN AN ATTORNEY LICENSED TO~~

19 ~~PRACTICE IN THE COURTS OF THIS STATE FOR 5 YEARS OR MORE.~~

20 ~~—— (5) The department of labor may develop pamphlets to assist~~

21 ~~those persons who desire to take the examination for worker's~~

22 ~~compensation magistrate.~~

23 Sec. 212. (1) The ~~qualifications advisory committee~~ **DEPARTMENT**

24 **OF LICENSING AND REGULATORY AFFAIRS** shall evaluate the performance

25 of each worker's compensation magistrate at least once every 2

26 years. The evaluation shall be based upon at least the following

27 criteria:

1 (a) The rate of affirmance by the appeal board and the
2 appellate commission of the worker's compensation magistrate's
3 opinions and orders.

4 (b) Productivity including reasonable time deadlines for
5 disposing of cases.

6 (c) Manner in conducting hearings.

7 (d) Knowledge of rules of evidence as demonstrated by
8 transcripts of the hearings conducted by the worker's compensation
9 magistrate.

10 (e) Knowledge of the law.

11 (f) Evidence of any demonstrable bias against particular
12 defendants, claimants, or attorneys.

13 (g) Written surveys or comments of all interested parties.
14 Information obtained under this subdivision shall be exempt from
15 disclosure under the freedom of information act, ~~Act No. 442 of the~~
16 ~~Public Acts of 1976, being sections 15.231 to 15.246 of the~~
17 ~~Michigan Compiled Laws. 1976 PA 442, MCL 15.231 TO 15.246.~~

18 (2) Upon completing an evaluation under this section, the
19 ~~qualifications advisory committee~~ **DEPARTMENT OF LICENSING AND**
20 **REGULATORY AFFAIRS** shall submit a written report including any
21 supporting documentation to the governor regarding that evaluation
22 which may include recommendations with regard to 1 or more of the
23 following:

24 (a) Promotion.

25 (b) Suspension.

26 (c) Removal.

27 (d) Additional training or education.

1 ~~_____ (3) The governor shall respond in writing to the committee~~
2 ~~regarding the action taken in response to the report of the~~
3 ~~committee.~~

4 Sec. 213. (1) The worker's compensation board of magistrates
5 is established as an autonomous entity in the department of ~~labor.~~
6 **LICENSING AND REGULATORY AFFAIRS.** The board shall consist of ~~30-17~~
7 members appointed by the governor with the advice and consent of
8 the senate. The governor shall designate 1 of the appointees as ~~the~~
9 ~~member that will be chairperson. A person shall not be appointed to~~
10 ~~the board who has not been recommended by the qualifications~~
11 ~~advisory committee.~~ All members of the board shall be members in
12 good standing of the state bar of Michigan.

13 (2) The members of the board shall be appointed for terms of 4
14 years. ~~A member who has served for 12 years shall not be~~
15 ~~reappointed to a new term.~~ A vacancy caused by the expiration of a
16 term shall be filled in the same manner as the original
17 appointment. A member shall not serve beyond the expiration of his
18 or her term. ~~unless the qualifications advisory committee fails to~~
19 ~~submit a recommendation to the governor before the expiration of~~
20 ~~the term.~~ A member may be reappointed. A member appointed to fill a
21 vacancy created other than by expiration of a term shall be
22 appointed for the balance of the unexpired term. A member of the
23 board may be removed by the governor for good cause, which shall be
24 explained in writing to the worker's compensation magistrate. Good
25 cause for removal shall include, but not be limited to, lack of
26 productivity or other neglect of duties.

27 (3) The governor may designate a member of the board as the

1 chairperson upon a vacancy occurring in that position. The
2 chairperson of the board shall have general supervisory control of
3 and be in charge of the employees of the board and the assignment
4 and scheduling of the work of the board. In the case of an extended
5 leave of absence or disability, the chairperson may select
6 temporary magistrates to serve for not more than 6 months in any 2-
7 year period. ~~from a list maintained by the qualifications advisory~~
8 ~~committee. The list shall be composed of persons who are attorneys~~
9 ~~licensed to practice in this state and who are former or retired~~
10 ~~worker's disability compensation magistrates, or former or retired~~
11 ~~worker's disability compensation hearing referees or administrative~~
12 ~~law judges.~~ A temporary magistrate selected by the chairperson
13 shall have the same powers and duties as an appointed magistrate
14 under this act. The chairperson may also establish productivity
15 standards that are to be adhered to by employees of the board, the
16 board, and individual magistrates. Each member of the board shall
17 devote full time to the functions of the board. Each member of the
18 board shall personally perform the duties of the office during the
19 hours generally worked by officers and employees of the executive
20 departments of the state.

21 (4) The chairperson of the board shall serve as chairperson at
22 the pleasure of the governor.

23 (5) Each member of the board shall receive an annual salary
24 and shall ~~be entitled to~~ **RECEIVE** necessary traveling expenses
25 incurred in the performance of official duties subject to the
26 standardized travel regulations of the state.

27 (6) The board may employ the staff it considers necessary to

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1 be able to perform its duties under this act which may include
2 legal assistants for the purpose of legal research and otherwise
3 assisting the board and individual members of the board.

4 (7) The board is an independent body with the powers and
5 duties as provided for under this act. The board may promulgate
6 rules on administrative hearing procedures for purposes under this
7 act.

8 (8) The chairperson of the board may assign and reassign
9 worker's compensation magistrates to hear cases at locations in
10 this state.

11 (9) The department of ~~labor~~ **LICENSING AND REGULATORY AFFAIRS**
12 shall provide suitable office space for the board of worker's
13 compensation magistrates and the employees of the board.

[Sec. 230. (1) Except as otherwise provided in this section, the following records are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246:

(a) Records submitted by an individual employer or a group of employers to the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** in support of an application for self-insured status in the manner provided in section 611.

(b) Information concerning the injury of and benefits paid to an individual worker. This includes, but is not limited to, all forms, records, and reports filed with or maintained by the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** concerning the injury of or benefits paid to a worker.

(c) Worker's disability compensation insurance policy information submitted to the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** by an individual employer or group of employers in accordance with section 615 or a notice of issuance of a policy submitted to the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** by an insurer in accordance with section 625.

(2) The ~~bureau~~ **WORKER'S COMPENSATION AGENCY** may release, disclose, or publish information described in subsection (1) under the following circumstances:

(a) In the case of subsection (1)(a), (b), or (c), the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** may disclose or publish aggregate information for statistical or research purposes so long as it is disclosed or published in such a way that the confidentiality of information concerning individual workers and the financial records of individual employers or self-insured employers or insurers is protected. The ~~bureau~~ **WORKER'S COMPENSATION AGENCY** may also release individual records to a recognized academic or scholarly institution for research

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purposes if it is provided with sufficient assurance that the outside individual or agency will preserve the confidentiality of information concerning individual workers and the financial records of individual self-insured employers.

(b) In the case of subsection (1)(b), the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** may release information to another governmental agency if the governmental agency provides the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** with sufficient assurance that it will preserve the confidentiality of the information. The other agency may use this information to determine the eligibility of an individual for benefits provided or regulated by that agency. The ~~bureau~~-**WORKER'S COMPENSATION AGENCY** or another agency may disclose the information if it determines that the individual is receiving benefits to which he or she is not entitled as the result of receiving more than 1 benefit at the same time.

(c) Except as otherwise provided, information disclosed in accordance with subdivision (a) or (b) shall continue to be exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(d) In the case of subsection (1)(b), the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** may release individual records to a nonprofit health care corporation, as defined in section 105 of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1105, for the sole purpose of determining financial liability for the payment of benefits provided by the corporation. Any information provided to the nonprofit health care corporation shall be confidential, as provided in section 406 of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1406. In a dispute over who assumes liability for the payment of benefits for a particular claim, the nonprofit health care corporation shall initiate payment of benefits pending resolution of the dispute.

(e) In the case of subsection (1)(c), in response to a request that pertains to a specific employer and includes the employer's address and the date of injury of the claim for which the information is requested, the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** may disclose the name and address of the insurer that, according to the records of the ~~bureau~~-**WORKER'S COMPENSATION AGENCY**, provided coverage on the date of injury, but shall not disclose the effective date or expiration date of the policy.

(3) The confidentiality provided for in subsection (1) does not apply to records maintained by the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** that are part of or directly related to a contested case. For the purposes of this subsection, a matter shall be considered a contested case when it is the subject of a request for a formal hearing before the director or an application filed in accordance with section 847.

(4) Any employee is entitled to inspect and obtain a copy of any record maintained by the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** concerning himself or herself. Any employer is entitled to inspect and obtain a copy of any record maintained by the ~~bureau~~-**WORKER'S COMPENSATION AGENCY** concerning itself.

(5) The confidentiality provided for in subsection (1)(a) does not apply to the records of a self-insured employer that becomes unable to

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pay benefits under this act due to insolvency or declaration of bankruptcy.

(6) This section does not limit the power of a court of law to subpoena records relevant to a matter pending before it.

(7) Notwithstanding this section, the ~~bureau~~ **WORKER'S COMPENSATION AGENCY** shall release information to the IV-D agency in accordance with section 4 of the office of child support act, 1971 PA 174, MCL ~~400.231 to 400.239.~~ **400.234**. As used in this subsection, "IV-D agency" means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(8) A CARRIER THAT RECEIVES INFORMATION INDICATING OR GIVING REASON TO BELIEVE THAT A CLAIM FOR BENEFITS UNDER THIS ACT HAS BEEN FILED BY AN UNDOCUMENTED ALIEN MAY REPORT THAT INFORMATION TO THE FEDERAL BUREAU OF INVESTIGATION OR THE FEDERAL IMMIGRATION AND CUSTOMS ENFORCEMENT. IF EITHER THE FEDERAL BUREAU OF INVESTIGATION OR THE FEDERAL IMMIGRATION AND CUSTOMS ENFORCEMENT VERIFIES THAT THE CLAIMANT IS AN UNDOCUMENTED ALIEN, THE WORKER'S COMPENSATION AGENCY SHALL BE NOTIFIED AND THE CARRIER MAY DISCONTINUE PAYMENT OF ALL COMPENSATION AND MEDICAL BENEFITS TO THAT ALIEN.]

14 Sec. 274. (1) The ~~worker's~~ **MICHIGAN** compensation appellate
15 commission is established as an autonomous entity in the department
16 of ~~labor.~~ **LICENSING AND REGULATORY AFFAIRS**. The commission shall
17 consist of 7 members appointed by the governor with the advice and
18 consent of the senate. The governor shall appoint the initial
19 members of the commission not later than January 1, 1986 and shall
20 designate 1 of the appointees as ~~the member that will be~~
21 ~~chairperson. The governor shall appoint only a person determined to~~
22 ~~be qualified by the qualifications advisory committee under section~~
23 ~~209.~~ All members of the commission shall be members in good
24 standing of the state bar of Michigan.

25 (2) The members of the commission shall be appointed for terms
26 of 4 years. A member who has served for 12 years shall not be
27 reappointed to a new term. A vacancy caused by the expiration of a

1 term shall be filled in the same manner as the original
2 appointment. A member shall not serve beyond the expiration of his
3 or her term. ~~unless the qualification advisory committee fails to~~
4 ~~submit a recommendation to the governor before the expiration of~~
5 ~~the term.~~ A member may be reappointed. A member appointed to fill a
6 vacancy created other than by expiration of a term shall be
7 appointed for the balance of the unexpired term. A member of the
8 commission may be removed by the governor for good cause which
9 shall be explained in writing. Good cause for removal shall
10 include, but not be limited to, lack of productivity or other
11 neglect of duties.

12 (3) The governor may designate a member of the commission as
13 the chairperson upon a vacancy occurring in that position. The
14 chairperson of the commission shall have general supervisory
15 control of and be in charge of the employees of the commission and
16 the assignment and scheduling of the work of the commission. The
17 chairperson may also establish productivity standards that are to
18 be adhered to by employees of the commission, the commission,
19 individual members of the commission, and panels of the commission.
20 Each member of the commission shall devote full time to the
21 functions of the commission. Each member shall personally perform
22 the duties of the office during the hours generally worked by
23 officers and employees of the executive departments of the state.

24 (4) The chairperson of the commission shall serve as
25 chairperson at the pleasure of the governor.

26 (5) Each member of the commission shall receive an annual
27 salary which shall be not less than the salary paid to worker's

1 compensation magistrates or hearing referees of the most senior
2 classification and shall be entitled to necessary traveling
3 expenses incurred in the performance of official duties subject to
4 the standardized travel regulations of the state.

5 (6) The commission may employ the staff it considers necessary
6 to be able to perform its duties under this act which may include
7 legal assistants for the purpose of legal research and otherwise
8 assisting the commission.

9 (7) The commission is an independent body with the power and
10 authority to review the orders of the director and hearing referees
11 and the orders and opinions of the worker's compensation
12 magistrates as provided for under this act. The commission may
13 promulgate rules on administrative appellate procedure for purposes
14 under this act.

15 (8) Except as otherwise provided in subsection (9), matters
16 that are to be reviewed by the commission shall be randomly
17 assigned to a panel of 3 members of the commission for disposition.
18 The chairperson of the commission may reassign a matter in order to
19 ensure timely review and decision of that matter. The decision
20 reached by a majority of the assigned 3 members of a panel shall be
21 the final decision of the commission.

22 (9) Any matter that is to be reviewed by the commission that
23 may establish a precedent with regard to worker's compensation in
24 this state as determined by the chairperson, or any matter which 2
25 or more members of the commission request be reviewed by the entire
26 commission, shall be reviewed and decided by the entire commission.

27 (10) Opinions of the commission shall be in writing. The

1 commission shall provide for the publication of those opinions.

2 (11) The department of ~~labor~~**LICENSING AND REGULATORY AFFAIRS**
3 shall provide suitable office space for the commission and
4 employees of the commission.

5 Sec. 301. (1) An employee, who receives a personal injury
6 arising out of and in the course of employment by an employer who
7 is subject to this act at the time of the injury, shall be paid
8 compensation as provided in this act. **A PERSONAL INJURY COVERED**
9 **UNDER THIS ACT IS COMPENSABLE IF IT CAUSES, CONTRIBUTES TO, OR**
10 **AGGRAVATES PATHOLOGY IN A MANNER THAT IS MEDICALLY DISTINGUISHABLE**
11 **FROM THE EMPLOYEE'S PRIOR CONDITION.** In the case of death resulting
12 from the personal injury to the employee, compensation shall be
13 paid to the employee's dependents as provided in this act. Time of
14 injury or date of injury as used in this act in the case of a
15 disease or in the case of an injury not attributable to a single
16 event ~~shall be~~**IS** the last day of work in the employment in which
17 the employee was last subjected to the conditions that resulted in
18 the employee's disability or death.

19 (2) Mental disabilities and conditions of the aging process,
20 including but not limited to heart and cardiovascular conditions ~~7~~
21 ~~shall be~~**AND DEGENERATIVE ARTHRITIS, ARE** compensable if contributed
22 to or aggravated or accelerated by the employment in a significant
23 manner. Mental disabilities ~~shall be~~**ARE** compensable ~~when~~**IF**
24 arising out of actual events of employment, not unfounded
25 perceptions thereof, **AND IF THE EMPLOYEE'S PERCEPTION OF THE ACTUAL**
26 **EVENTS IS REASONABLY GROUNDED IN FACT OR REALITY.**

27 (3) An employee going to or from his or her work, while on the

1 premises where the employee's work is to be performed, and within a
2 reasonable time before and after his or her working hours, is
3 presumed to be in the course of his or her employment.

4 Notwithstanding this presumption, an injury incurred in the pursuit
5 of an activity the major purpose of which is social or recreational
6 is not covered under this act. Any cause of action brought for such
7 an injury is not subject to section 131.

8 (4) As used in this chapter: ~~"disability"~~

9 (A) **"DISABILITY"** means a limitation of an employee's wage
10 earning capacity in work suitable to his or her qualifications and
11 training resulting from a personal injury or work-related disease.
12 **A LIMITATION OF WAGE EARNING CAPACITY OCCURS ONLY IF A PERSONAL**
13 **INJURY COVERED UNDER THIS ACT RESULTS IN THE EMPLOYEE'S BEING**
14 **UNABLE TO PERFORM ALL JOBS PAYING THE MAXIMUM WAGES IN WORK**
15 **SUITABLE TO THAT EMPLOYEE'S QUALIFICATIONS AND TRAINING, INCLUDING**
16 **WORK THAT MAY BE PERFORMED USING THE EMPLOYEE'S TRANSFERABLE WORK**
17 **SKILLS. A DISABILITY IS TOTAL IF THE EMPLOYEE IS UNABLE TO EARN IN**
18 **ANY JOB PAYING MAXIMUM WAGES IN WORK SUITABLE TO THE EMPLOYEE'S**
19 **QUALIFICATIONS AND TRAINING. A DISABILITY IS PARTIAL IF THE**
20 **EMPLOYEE RETAINS A WAGE EARNING CAPACITY AT A PAY LEVEL LESS THAN**
21 **HIS OR HER MAXIMUM WAGES IN WORK SUITABLE TO HIS OR HER**
22 **QUALIFICATIONS AND TRAINING. The establishment of disability does**
23 **not create a presumption of wage loss.**

24 (B) **"WAGE EARNING CAPACITY" MEANS THE WAGES THE EMPLOYEE EARNS**
25 **OR IS CAPABLE OF EARNING AT A JOB REASONABLY AVAILABLE TO THAT**
26 **EMPLOYEE, WHETHER OR NOT ACTUALLY EARNED. FOR THE PURPOSES OF**
27 **ESTABLISHING WAGE EARNING CAPACITY, AN EMPLOYEE HAS AN AFFIRMATIVE**

1 DUTY TO SEEK WORK REASONABLY AVAILABLE TO THAT EMPLOYEE. A
2 MAGISTRATE MAY CONSIDER GOOD-FAITH JOB SEARCH EFFORTS TO DETERMINE
3 WHETHER JOBS ARE REASONABLY AVAILABLE.

4 (C) "WAGE LOSS" MEANS THE AMOUNT OF WAGES LOST DUE TO A
5 DISABILITY. WAGE LOSS MAY BE ESTABLISHED, AMONG OTHER METHODS, BY
6 DEMONSTRATING THE EMPLOYEE'S REASONABLE, GOOD-FAITH EFFORT TO
7 PROCURE WORK SUITABLE TO HIS OR HER WAGE EARNING CAPACITY. THE
8 EMPLOYEE SHALL ESTABLISH A CONNECTION BETWEEN A WORK INJURY AND
9 REDUCED WAGES IN ESTABLISHING THE WAGE LOSS.

10 (5) TO ESTABLISH AN INITIAL SHOWING OF DISABILITY AND WAGE
11 LOSS, AN EMPLOYEE SHALL DO ALL OF THE FOLLOWING:

12 (A) DISCLOSE HIS OR HER QUALIFICATIONS AND TRAINING, INCLUDING
13 EDUCATION, SKILLS, AND EXPERIENCE, WHETHER OR NOT THEY ARE RELEVANT
14 TO THE JOB THE EMPLOYEE WAS PERFORMING AT THE TIME OF THE INJURY.

15 (B) PROVIDE EVIDENCE AS TO THE JOBS, IF ANY, HE OR SHE IS
16 QUALIFIED AND TRAINED TO PERFORM WITHIN THE SAME SALARY RANGE AS
17 HIS OR HER MAXIMUM WAGE EARNING CAPACITY AT THE TIME OF THE INJURY.

18 (C) DEMONSTRATE THAT THE WORK-RELATED INJURY PREVENTS THE
19 EMPLOYEE FROM PERFORMING JOBS IDENTIFIED AS WITHIN HIS OR HER
20 QUALIFICATIONS AND TRAINING THAT PAY MAXIMUM WAGES.

21 (D) IF THE EMPLOYEE IS CAPABLE OF PERFORMING ANY OF THE JOBS
22 IDENTIFIED IN SUBDIVISION (C), SHOW THAT HE OR SHE CANNOT OBTAIN
23 ANY OF THOSE JOBS. THE EVIDENCE SHALL INCLUDE A SHOWING OF A GOOD-
24 FAITH ATTEMPT TO PROCURE POST-INJURY EMPLOYMENT IF THERE ARE JOBS
25 AT THE EMPLOYEE'S MAXIMUM WAGE EARNING CAPACITY AT THE TIME OF THE
26 INJURY.

27 (6) ONCE AN EMPLOYEE ESTABLISHES AN INITIAL SHOWING OF A

1 DISABILITY AND WAGE LOSS UNDER SUBSECTION (5), THE EMPLOYER BEARS
2 THE BURDEN OF PRODUCTION OF EVIDENCE TO REFUTE THE EMPLOYEE'S
3 SHOWING. IN SATISFYING ITS BURDEN OF PRODUCTION OF EVIDENCE, THE
4 EMPLOYER HAS A RIGHT TO DISCOVERY IF NECESSARY FOR THE EMPLOYER TO
5 SUSTAIN ITS BURDEN AND PRESENT A MEANINGFUL DEFENSE. THE EMPLOYEE
6 MAY PRESENT ADDITIONAL EVIDENCE TO CHALLENGE THE EVIDENCE SUBMITTED
7 BY THE EMPLOYER.

8 (7) IF A PERSONAL INJURY ARISING OUT OF THE COURSE OF
9 EMPLOYMENT CAUSES TOTAL DISABILITY AND WAGE LOSS AND THE EMPLOYEE
10 IS ENTITLED TO WAGE LOSS BENEFITS, THE EMPLOYER SHALL PAY OR CAUSE
11 TO BE PAID TO THE INJURED EMPLOYEE AS PROVIDED IN THIS SECTION
12 WEEKLY COMPENSATION EQUAL TO 80% OF THE EMPLOYEE'S AFTER-TAX
13 AVERAGE WEEKLY WAGE, BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE
14 DETERMINED UNDER SECTION 355. COMPENSATION SHALL BE PAID FOR THE
15 DURATION OF THE DISABILITY.

16 (8) IF A PERSONAL INJURY ARISING OUT OF THE COURSE OF
17 EMPLOYMENT CAUSES PARTIAL DISABILITY AND WAGE LOSS AND THE EMPLOYEE
18 IS ENTITLED TO WAGE LOSS BENEFITS, THE EMPLOYER SHALL PAY OR CAUSE
19 TO BE PAID TO THE INJURED EMPLOYEE AS PROVIDED IN THIS SECTION
20 WEEKLY COMPENSATION EQUAL TO 80% OF THE DIFFERENCE BETWEEN THE
21 INJURED EMPLOYEE'S AFTER-TAX AVERAGE WEEKLY WAGE BEFORE THE
22 PERSONAL INJURY AND THE EMPLOYEE'S WAGE EARNING CAPACITY AFTER THE
23 PERSONAL INJURY, BUT NOT MORE THAN THE MAXIMUM WEEKLY RATE
24 DETERMINED UNDER SECTION 355. COMPENSATION SHALL BE PAID FOR THE
25 DURATION OF THE DISABILITY.

26 (9) ~~(5)~~ If disability ~~is~~ AND WAGE LOSS ARE established,
27 ~~pursuant to subsection (4),~~ entitlement to weekly wage loss

1 benefits shall be determined pursuant to this section and as
2 follows:

3 (a) If an employee receives a bona fide offer of reasonable
4 employment from the previous employer, another employer, or through
5 the Michigan ~~employment security commission~~ **UNEMPLOYMENT INSURANCE**
6 **AGENCY** and the employee refuses that employment without good and
7 reasonable cause, **OR IF THE EMPLOYEE IS TERMINATED FROM REASONABLE**
8 **EMPLOYMENT FOR FAULT OF THE EMPLOYEE**, the employee shall be
9 considered to have voluntarily removed himself or herself from the
10 work force and is no longer entitled to any wage loss benefits
11 under this act during the period of ~~such~~-refusal.

12 (b) If an employee is employed and the average weekly wage of
13 the employee is less than that which the employee received before
14 the date of injury, the employee shall receive weekly benefits
15 under this act equal to 80% of the difference between the injured
16 employee's after-tax **AVERAGE** weekly wage before the date of injury
17 and the after-tax **AVERAGE** weekly wage ~~which~~-**THAT** the injured
18 employee ~~is able to earn~~ **EARNs** after the date of injury, but not
19 more than the maximum weekly rate of compensation, as determined
20 under section 355.

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

26 (d) If the employee, after having been employed pursuant to
27 this subsection ~~for 100 weeks or more~~-loses his or her job through

1 no fault of the employee **AND THE EMPLOYEE IS STILL DISABLED**, the
2 employee shall receive compensation under this act ~~pursuant to the~~
3 ~~following~~ **AS FOLLOWS:**

4 ~~(i) If after exhaustion of unemployment benefit eligibility of~~
5 ~~an employee, a worker's compensation magistrate or hearing referee,~~
6 ~~as applicable, determines for any employee covered under this~~
7 ~~subdivision, that the employments since the time of injury have not~~
8 ~~established a new wage earning capacity, the employee shall receive~~
9 ~~compensation based upon his or her wage at the original date of~~
10 ~~injury. There is a presumption of wage earning capacity established~~
11 ~~for employments totalling 250 weeks or more.~~ **IF THE EMPLOYEE WAS**
12 **EMPLOYED FOR LESS THAN 100 WEEKS, THE EMPLOYEE SHALL RECEIVE**
13 **COMPENSATION BASED UPON HIS OR HER AVERAGE WEEKLY WAGE AT THE TIME**
14 **OF THE ORIGINAL INJURY.**

15 ~~(ii) The employee must still be disabled as determined pursuant~~
16 ~~to subsection (4). If the employee is still disabled, he or she~~
17 ~~shall be entitled to wage loss benefits based on the difference~~
18 ~~between the normal and customary wages paid to those persons~~
19 ~~performing the same or similar employment, as determined at the~~
20 ~~time of termination of the employment of the employee, and the~~
21 ~~wages paid at the time of the injury.~~ **IF THE EMPLOYEE WAS EMPLOYED**
22 **FOR 100 WEEKS OR MORE BUT LESS THAN 250 WEEKS, THEN AFTER**
23 **EXHAUSTING UNEMPLOYMENT BENEFIT ELIGIBILITY, A WORKER'S**
24 **COMPENSATION MAGISTRATE MAY DETERMINE THAT THE EMPLOYMENT SINCE THE**
25 **TIME OF THE INJURY HAS NOT ESTABLISHED A NEW WAGE EARNING CAPACITY**
26 **AND, IF THE MAGISTRATE MAKES THAT DETERMINATION, BENEFITS SHALL BE**
27 **BASED ON HIS OR HER AVERAGE WEEKLY WAGE AT THE ORIGINAL DATE OF**

1 INJURY. IF THE MAGISTRATE DOES NOT MAKE THAT DETERMINATION, THE
 2 EMPLOYEE IS PRESUMED TO HAVE ESTABLISHED A POST-INJURY WAGE EARNING
 3 CAPACITY AND BENEFITS SHALL NOT BE PAID BASED ON THE WAGE AT THE
 4 ORIGINAL DATE OF INJURY.

5 ~~(iii) If the employee becomes reemployed and the employee is~~
 6 ~~still disabled, he or she shall then receive wage loss benefits as~~
 7 ~~provided in subdivision (b).~~ IF THE EMPLOYEE WAS EMPLOYED FOR 250
 8 WEEKS OR MORE, THE EMPLOYEE IS CONCLUSIVELY PRESUMED TO HAVE
 9 ESTABLISHED A POST-INJURY WAGE EARNING CAPACITY.

10 ~~—— (c) If the employee, after having been employed pursuant to~~
 11 ~~this subsection for less than 100 weeks loses his or her job for~~
 12 ~~whatever reason, the employee shall receive compensation based upon~~
 13 ~~his or her wage at the original date of injury.~~

14 ~~—— (6) A carrier shall notify the Michigan employment security~~
 15 ~~commission of the name of any injured employee who is unemployed~~
 16 ~~and to which the carrier is paying benefits under this act.~~

17 ~~—— (7) The Michigan employment security commission shall give~~
 18 ~~priority to finding employment for those persons whose names are~~
 19 ~~supplied to the commission under subsection (6).~~

20 (10) ~~(8) The Michigan employment security commission~~
 21 UNEMPLOYMENT INSURANCE AGENCY shall notify the bureau-AGENCY in
 22 writing of the name of any employee who refuses any bona fide offer
 23 of reasonable employment. Upon notification to the bureau-AGENCY,
 24 the bureau-AGENCY shall notify the carrier who shall terminate the
 25 benefits of the employee pursuant to subsection ~~(5)(a)~~ (9) (A) .

26 (11) ~~(9)~~ "Reasonable employment", as used in this section,
 27 means work that is within the employee's capacity to perform that

1 poses no clear and proximate threat to that employee's health and
2 safety, and that is within a reasonable distance from that
3 employee's residence. The employee's capacity to perform shall not
4 be limited to jobs in work suitable to his or her qualifications
5 and training.

6 (12) ~~(10) Weekly benefits shall not be~~ **ARE NOT** payable during
7 the period of confinement to a person who is incarcerated in a
8 penal institution for violation of the criminal laws of this state
9 or who is confined in a mental institution pending trial for a
10 violation of the criminal laws of this state, if the violation or
11 reason for the confinement occurred while at work and is directly
12 related to the claim.

13 (13) ~~(11)~~ A person shall not discharge an employee or in any
14 manner discriminate against an employee because the employee filed
15 a complaint or instituted or caused to be instituted a proceeding
16 under this act or because of the exercise by the employee on behalf
17 of himself or herself or others of a right afforded by this act.

18 ~~—— (12) This section shall apply to personal injuries and work~~
19 ~~related diseases occurring on or after June 30, 1985.~~

20 Sec. 315. (1) The employer shall furnish, or cause to be
21 furnished, to an employee who receives a personal injury arising
22 out of and in the course of employment, reasonable medical,
23 surgical, and hospital services and medicines, or other attendance
24 or treatment recognized by the laws of this state as legal, when
25 they are needed. However, an employer is not required to reimburse
26 or cause to be reimbursed charges for an optometric service unless
27 that service was included in the definition of practice of

1 optometry under section 17401 of the public health code, 1978 PA
2 368, MCL 333.17401, as of May 20, 1992 or for a chiropractic
3 service unless that service was included in the definition of
4 practice of chiropractic under section 16401 of the public health
5 code, 1978 PA 368, MCL 333.16401, as of January 1, 2009. An
6 employer is not required to reimburse or cause to be reimbursed
7 charges for services performed by a profession that was not
8 licensed or registered by the laws of this state on or before
9 January 1, 1998, but that becomes licensed, registered, or
10 otherwise recognized by the laws of this state after January 1,
11 1998. Attendant or nursing care shall not be ordered in excess of
12 56 hours per week if the care is to be provided by the employee's
13 spouse, brother, sister, child, parent, or any combination of these
14 persons. After ~~10~~45 days from the inception of medical care as
15 provided in this section, the employee may treat with a physician
16 of his or her own choice by giving to the employer the name of the
17 physician and his or her intention to treat with the physician. The
18 employer or the employer's carrier may file a petition objecting to
19 the named physician selected by the employee and setting forth
20 reasons for the objection. If the employer or carrier can show
21 cause why the employee should not continue treatment with the named
22 physician of the employee's choice, after notice to all parties and
23 a prompt hearing by a worker's compensation magistrate, the
24 worker's compensation magistrate may order that the employee
25 discontinue treatment with the named physician or pay for the
26 treatment received from the physician from the date the order is
27 mailed. The employer shall also supply to the injured employee

1 dental service, crutches, artificial limbs, eyes, teeth,
2 eyeglasses, hearing apparatus, and other appliances necessary to
3 cure, so far as reasonably possible, and relieve from the effects
4 of the injury. If the employer fails, neglects, or refuses so to
5 do, the employee shall be reimbursed for the reasonable expense
6 paid by the employee, or payment may be made in behalf of the
7 employee to persons to whom the unpaid expenses may be owing, by
8 order of the worker's compensation magistrate. The worker's
9 compensation magistrate may prorate attorney fees at the contingent
10 fee rate paid by the employee. **ATTORNEY FEES RELATED TO MEDICAL**
11 **EXPENSES ARE CHARGEABLE TO EITHER THE EMPLOYEE OR THE MEDICAL**
12 **PROVIDER, OR BOTH, BUT ARE NOT CHARGEABLE TO THE EMPLOYER OR**
13 **CARRIER.**

14 (2) Except as otherwise provided in subsection (1), all fees
15 and other charges for any treatment or attendance, service,
16 devices, apparatus, or medicine under subsection (1), are subject
17 to rules promulgated by the workers' compensation agency pursuant
18 to the administrative procedures act of 1969, 1969 PA 306, MCL
19 24.201 to 24.328. The rules promulgated shall establish schedules
20 of maximum charges for the treatment or attendance, service,
21 devices, apparatus, or medicine, which schedule shall be annually
22 revised. A health facility or health care provider shall be paid
23 either its usual and customary charge for the treatment or
24 attendance, service, devices, apparatus, or medicine, or the
25 maximum charge established under the rules, whichever is less.

26 (3) The director of the workers' compensation agency shall
27 provide for an advisory committee to aid and assist in establishing

1 the schedules of maximum charges under subsection (2) for charges
2 or fees that are payable under this section. The advisory committee
3 shall be appointed by and serve at the pleasure of the director.

4 (4) If a carrier determines that a health facility or health
5 care provider has made any excessive charges or required
6 unjustified treatment, hospitalization, or visits, the health
7 facility or health care provider shall not receive payment under
8 this chapter from the carrier for the excessive fees or unjustified
9 treatment, hospitalization, or visits, and is liable to return to
10 the carrier the fees or charges already collected. The workers'
11 compensation agency may review the records and medical bills of a
12 health facility or health care provider determined by a carrier to
13 not be in compliance with the schedule of charges or to be
14 requiring unjustified treatment, hospitalization, or office visits.

15 (5) As used in this section, "utilization review" means the
16 initial evaluation by a carrier of the appropriateness in terms of
17 both the level and the quality of health care and health services
18 provided an injured employee, based on medically accepted
19 standards. A utilization review shall be accomplished by a carrier
20 pursuant to a system established by the workers' compensation
21 agency that identifies the utilization of health care and health
22 services above the usual range of utilization for the health care
23 and health services based on medically accepted standards and
24 provides for acquiring necessary records, medical bills, and other
25 information concerning the health care or health services.

26 (6) By accepting payment under this chapter, a health facility
27 or health care provider shall be considered to have consented to

1 submitting necessary records and other information concerning
2 health care or health services provided for utilization review
3 pursuant to this section. The health facilities and health care
4 providers shall be considered to have agreed to comply with any
5 decision of the workers' compensation agency pursuant to subsection
6 (7). A health facility or health care provider that submits false
7 or misleading records or other information to a carrier or the
8 workers' compensation agency is guilty of a misdemeanor punishable
9 by a fine of not more than \$1,000.00 or by imprisonment for not
10 more than 1 year, or both.

11 (7) If it is determined by a carrier that a health facility or
12 health care provider improperly overutilized or otherwise rendered
13 or ordered inappropriate health care or health services, or that
14 the cost of the health care or health services was inappropriate,
15 the health facility or health care provider may appeal to the
16 workers' compensation agency regarding that determination pursuant
17 to procedures provided for under the system of utilization review.

18 (8) The criteria or standards established for the utilization
19 review shall be established by rules promulgated by the workers'
20 compensation agency. A carrier that complies with the criteria or
21 standards as determined by the workers' compensation agency shall
22 be certified by the department.

23 (9) If a health facility or health care provider provides
24 health care or a health service that is not usually associated
25 with, is longer in duration in time than, is more frequent than, or
26 extends over a greater number of days than that health care or
27 service usually does with the diagnosis or condition for which the

1 patient is being treated, the health facility or health care
2 provider may be required by the carrier to explain the necessity or
3 indication for the reasons why in writing.

4 Sec. 319. (1) An employee who has suffered an injury covered
5 by this act shall be entitled to prompt medical rehabilitation
6 services. When as a result of the injury he or she is unable to
7 perform work for which he or she has previous training or
8 experience, the employee shall be entitled to such vocational
9 rehabilitation services, including retraining and job placement, as
10 may be reasonably necessary to restore him or her to useful
11 employment. If such services are not voluntarily offered and
12 accepted, the director on his or her own motion or upon application
13 of the employee, carrier, or employer, after affording the parties
14 an opportunity to be heard, may refer the employee to ~~a bureau-~~
15 ~~approved~~ **AN AGENCY-APPROVED** facility for evaluation of the need
16 for, and kind of service, treatment, or training necessary and
17 appropriate to render the employee fit for a remunerative
18 occupation. Upon receipt of such report, the director may order
19 that the training, services, or treatment recommended in the report
20 be provided at the expense of the employer. The director may order
21 that any employee participating in vocational rehabilitation shall
22 receive additional payments for transportation or any extra and
23 necessary expenses during the period and arising out of his or her
24 program of vocational rehabilitation. Vocational rehabilitation
25 training, treatment, or service shall not extend for a period of
26 more than 52 weeks except in cases when, by special order of the
27 director after review, the period may be extended for an additional

1 52 weeks or portion thereof. If there is an unjustifiable refusal
 2 to accept rehabilitation pursuant to a decision of the director,
 3 the director shall order a loss or reduction of compensation in an
 4 amount determined by the director for each week of the period of
 5 refusal, except for specific compensation payable under section
 6 361(1) and (2).

7 ~~(2) If a dispute arises between the parties concerning~~
 8 ~~application of any of the provisions of subsection (1), any of the~~
 9 ~~parties may apply for a hearing before a hearing referee or~~
 10 ~~worker's compensation magistrate, as applicable.~~ **A PARTY MAY APPEAL**
 11 **AN ORDER OF THE DIRECTOR UNDER SUBSECTION (1) TO THE APPELLATE**
 12 **COMMISSION WITHIN 15 DAYS AFTER THE ORDER IS MAILED TO THE PARTIES.**

13 Sec. 331. ~~The following persons shall be conclusively presumed~~
 14 ~~to be wholly dependent for support upon a deceased employee:~~

15 ~~—— (a) A wife upon a husband with whom she lives at the time of~~
 16 ~~his death, or from whom, at the time of his death, a worker's~~
 17 ~~compensation magistrate shall find the wife was living apart for~~
 18 ~~justifiable cause or because he had deserted her.~~

19 ~~—— (b) A~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A** child
 20 under the age of 16 years, or **16 YEARS OR** over ~~16 years of age~~ if
 21 physically or mentally incapacitated from earning, **IS CONCLUSIVELY**
 22 **PRESUMED TO BE WHOLLY DEPENDENT FOR SUPPORT** upon the parent with
 23 whom he or she is living at the time of the death of that parent.
 24 In the event of the death of an employee who has at the time of
 25 death a living child by a former spouse or a child who has been
 26 deserted by ~~such~~ **THE** deceased employee under the age of 16 years,
 27 or over if physically or mentally incapacitated from earning, ~~such~~

1 **THAT** child shall be conclusively presumed to be wholly dependent
2 for support upon the deceased employee, even though not living with
3 the deceased employee at the time of death. ~~and in all cases the~~
4 **THE** death benefit shall be divided ~~between or among the surviving~~
5 ~~spouse and all the children of the deceased employee, and all other~~
6 ~~persons, if any,~~ **AMONG ALL PERSONS** who are wholly dependent upon
7 the deceased employee, in equal shares. ~~the surviving spouse taking~~
8 ~~the same share as a child. In all cases mentioned in this section~~
9 ~~the~~ **THE** total sum due a surviving spouse and his or her own
10 children shall be paid directly to the surviving spouse for his or
11 her own use, and for the use and benefit of his or her own
12 children. If during the time compensation payments ~~shall continue,~~
13 a worker's compensation magistrate ~~shall find~~ **FINDS** that the
14 surviving spouse is not properly caring for ~~such~~ **THOSE** children,
15 the worker's compensation magistrate shall order the shares of ~~such~~
16 **THE** children to be thereafter paid to their guardian or legal
17 representative for their use and benefit, instead of to their
18 father or mother. In all cases the sums due to the children by the
19 former spouse of the deceased employee shall be paid to their
20 guardians or legal representatives for the use and benefit of ~~such~~
21 **THOSE** children. In all other cases questions of dependency, in
22 whole or in part, shall be determined in accordance with the ~~fact,~~
23 ~~as the fact may be~~ **FACTS** at the time of the injury. ~~Where~~ **IF** a
24 deceased employee leaves a person wholly dependent upon him or her
25 for support, ~~such~~ **THAT** person shall be entitled to the whole death
26 benefit and persons partially dependent, if any, shall receive no
27 part thereof, while the person wholly dependent is living. All

1 persons wholly dependent upon a deceased employee, whether by
 2 conclusive presumption or as a matter of fact, shall be entitled to
 3 share equally in the death benefit in accordance with the
 4 provisions of this section. If there is no one wholly dependent or
 5 if the death of all persons wholly dependent ~~shall occur~~ **OCCURS**
 6 before all compensation is paid, and there is ~~but~~ **ONLY** 1 person
 7 partially dependent, ~~such~~ **THAT** person ~~shall be~~ **IS** entitled to
 8 compensation according to the extent of his or her dependency; and
 9 if there is more than 1 person partially dependent, the death
 10 benefit shall be divided among them according to the relative
 11 extent of their dependency. A person shall not be considered a
 12 dependent unless he or she is a member of the family of the
 13 deceased employee, or unless such person bears to the deceased
 14 employee the relation of widower or widow, lineal descendant,
 15 ancestor, or brother or sister.

16 Sec. 353. (1) For the purposes of sections 351 to 361,
 17 dependency shall be determined as follows:

18 ~~—— (a) The following shall be conclusively presumed to be~~
 19 ~~dependent for support upon an injured employee:~~

20 ~~—— (i) The wife of an injured employee living with such employee~~
 21 ~~as such wife at the time of the injury.~~

22 **(A)** ~~(ii)~~ A child under the age of 16 years, or **16 YEARS OR** over
 23 ~~said age~~, if physically or mentally incapacitated from earning,
 24 living with his parent at the time of the injury of ~~such~~ **THAT**
 25 parent.

26 (b) In all other cases questions of dependency shall be
 27 determined in accordance with the ~~fact, as the fact may be~~ **FACTS** at

1 the time of the injury, except as provided in subsection (3). ~~No~~
 2 ~~person shall~~ **A PERSON SHALL NOT** be considered a dependent unless he
 3 **OR SHE** is a member of the family of the injured employee, or unless
 4 ~~such~~ **THE** person bears to ~~such~~ **THE** injured employee the relation of
 5 husband or wife, or lineal descendent, or ancestor or brother or
 6 sister. Except as to ~~those~~ **A PERSON** conclusively presumed to be
 7 ~~dependents, no person shall be deemed a dependent who~~ **A DEPENDENT,**
 8 **A PERSON WHO** receives less than 1/2 of his **OR HER** support from an
 9 injured employee **SHALL NOT BE CONSIDERED TO BE A DEPENDENT.**

10 (2) Weekly payments to an injured employee shall be reduced by
 11 the additional amount provided for any dependent child or spouse or
 12 other dependent when ~~such~~ **THE** child either reaches the age of 18
 13 years or after becoming 16 ceases for a period of 6 months to
 14 receive more than 1/2 of his **OR HER** support from ~~such~~ **THE** injured
 15 employee, if at ~~such~~ **THAT** time he ~~he~~ **THE CHILD** is neither physically
 16 nor mentally incapacitated from earning; ~~or when such~~ **WHEN THE**
 17 spouse ~~shall be~~ **IS** divorced by final decree from his **OR HER** injured
 18 spouse; ~~or when such~~ **THE** child, spouse, or other dependent ~~shall~~
 19 ~~be~~ **IS** deceased.

20 (3) An increase in payments shall be made for increased
 21 numbers of conclusive dependents as defined in this act **WHO WERE**
 22 not ~~so~~ dependent at the time of the injury of an employee.

23 Sec. 354. (1) This section ~~is applicable when~~ **APPLIES IF**
 24 either weekly or lump sum payments are made to an employee as a
 25 result of liability ~~pursuant to~~ **UNDER** section 351, 361, or 835 with
 26 respect to the same time period for which **THE EMPLOYEE ALSO**
 27 **RECEIVED OR IS RECEIVING** old-age insurance benefit payments under

1 the social security act, 42 U.S.C.—**USC** 301 to 1397f; payments under
2 a self-insurance plan, a wage continuation plan, or a disability
3 insurance policy provided by the employer; or pension or retirement
4 payments ~~pursuant to~~ **UNDER** a plan or program established or
5 maintained by the employer. ~~, are also received or being received~~
6 ~~by the employee.~~ Except as otherwise provided in this section, the
7 employer's obligation to pay or cause to be paid weekly benefits
8 other than specific loss benefits under section 361(2) and (3)
9 shall be reduced by these amounts:

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

12 (b) The after-tax amount of the payments received or being
13 received under a self-insurance plan, a wage continuation plan, or
14 under a disability insurance policy provided by the same employer
15 from whom benefits under section 351, 361, or 835 are received if
16 the employee did not contribute directly to the plan or to the
17 payment of premiums regarding the disability insurance policy. If
18 ~~such~~ **THE** self-insurance plans, wage continuation plans, or
19 disability insurance policies are entitled to repayment in the
20 event of a worker's compensation benefit recovery, the carrier
21 shall satisfy ~~such~~ **THAT** repayment out of funds the carrier has
22 received through the coordination of benefits provided for under
23 this section. Notwithstanding the provisions of this subsection,
24 attorney fees shall be paid pursuant to section 821 to the attorney
25 who secured the worker's compensation recovery.

26 (c) The proportional amount, based on the ratio of the
27 employer's contributions to the total insurance premiums for the

1 policy period involved, of the after-tax amount of the payments
2 received or being received by the employee pursuant to a disability
3 insurance policy provided by the same employer from whom benefits
4 under section 351, 361, or 835 are received, if the employee did
5 contribute directly to the payment of premiums regarding the
6 disability insurance policy.

7 (d) ~~The~~ **SUBJECT TO SUBSECTION (12), THE** after-tax amount of
8 the pension or retirement payments received or being received **BY**
9 **THE EMPLOYEE, OR WHICH THE EMPLOYEE IS ELIGIBLE TO RECEIVE AT**
10 **NORMAL RETIREMENT AGE,** pursuant to a plan or program established or
11 maintained by the same employer from whom benefits under section
12 351, 361, or 835 are received, if the employee did not contribute
13 directly to the pension or retirement plan or program. Subsequent
14 increases in a pension or retirement program shall not affect the
15 coordination of these benefits.

16 (e) The proportional amount, based on the ratio of the
17 employer's contributions to the total contributions to the plan or
18 program, of the after-tax amount of the pension or retirement
19 payments received or being received by the employee pursuant to a
20 plan or program established or maintained by the same employer from
21 whom benefits under section 351, 361, or 835 are received, if the
22 employee did contribute directly to the pension or retirement plan
23 or program. Subsequent increases in a pension or retirement program
24 shall not affect the coordination of these benefits.

25 (f) For those employers who do not provide a pension plan, the
26 proportional amount, based on the ratio of the employer's
27 contributions to the total contributions made to a qualified profit

1 sharing plan under section 401(a) of the internal revenue code or
2 any successor to section 401(a) of the internal revenue code
3 covering a profit sharing plan which provides for the payment of
4 benefits only upon retirement, disability, death, or other
5 separation of employment to the extent that benefits are vested
6 under the plan.

7 (2) To satisfy any remaining obligations under section 351,
8 361, or 835, the employer shall pay or cause to be paid to the
9 employee the balance due in either weekly or lump sum payments
10 after the application of subsection (1).

11 (3) In the application of subsection (1) any credit or
12 reduction shall occur pursuant to this section and all of the
13 following:

14 (a) The ~~bureau~~-**AGENCY** shall promulgate rules to provide for
15 notification by an employer or carrier to an employee of possible
16 eligibility for social security benefits and the requirements for
17 establishing proof of application for those benefits. Notification
18 shall be promptly mailed to the employee after the date on which by
19 reason of age the employee may be entitled to social security
20 benefits. A copy of the notification of possible eligibility shall
21 be filed with the ~~bureau~~-**AGENCY** by the employer or carrier.

22 (b) Within 30 days after receipt of the notification of
23 possible employee eligibility the employee shall:

24 (i) Make application for social security benefits.

25 (ii) Provide the employer or carrier with proof of that
26 application.

27 (iii) Provide the employer or carrier with an authority for

1 release of information which shall be utilized by the employer or
2 carrier to obtain necessary benefit entitlement and amount
3 information from the social security administration. The authority
4 for release of information shall be effective for 1 year.

5 (4) ~~Failure of~~ **IF** the employee **FAILS** to provide the proof of
6 application or the authority for release of information as
7 prescribed in subsection (3), ~~shall allow~~ the employer or carrier,
8 with the approval of the ~~bureau to~~ **AGENCY, MAY** discontinue the
9 compensation benefits payable to the employee under section 351,
10 361, or 835 until the proof of application and the authority for
11 release of information is provided. Compensation benefits withheld
12 shall be reimbursed to the employee upon the providing of the
13 required proof of application, or the authority for release of
14 information, or both.

15 (5) If the employer or carrier is required to submit a new
16 authority for release of information to the social security
17 administration in order to receive information necessary to comply
18 with this section, the employee shall provide the new authority for
19 release of information within 30 days of a request by the employer
20 or carrier. ~~Failure~~ **IF THE EMPLOYEE FAILS** to provide the new
21 authority for release of information, ~~shall allow~~ the employer or
22 carrier, with the approval of the ~~bureau to~~ **AGENCY, MAY** discontinue
23 benefits until the authority for release of information is provided
24 as prescribed in this subsection. Compensation benefits withheld
25 shall be reimbursed to the employee upon the providing of the new
26 authority for release of information.

27 (6) Within 30 days after either the date of first payment of

1 compensation benefits under section 351, 361, or 835, or 30 days
2 after the date of application for any benefit under subsection
3 (1)(b), (c), (d), or (e), whichever is later, the employee shall
4 provide the employer or carrier with a properly executed authority
5 for release of information, which shall be utilized by the employer
6 or carrier to obtain necessary benefit entitlement and amount
7 information from the appropriate source. The authority for release
8 of information is effective for 1 year. Failure of the employee to
9 provide a properly executed authority for release of information
10 shall allow the employer or carrier with the approval of the ~~bureau~~
11 **AGENCY** to discontinue the compensation benefits payable under
12 section 351, 361, or 835 to the employee until the authority for
13 release of information is provided. Compensation benefits withheld
14 shall be reimbursed to the employee upon providing the required
15 authority for release of information. If the employer or carrier is
16 required to submit a new authority for release of information to
17 the appropriate source in order to receive information necessary to
18 comply with this section, the employee shall provide a properly
19 executed new authority for release of information within 30 days
20 after a request by the employer or carrier. Failure of the employee
21 to provide a properly executed new authority for release of
22 information shall allow the employer or carrier with the approval
23 of the ~~bureau~~**AGENCY** to discontinue benefits under section 351,
24 361, or 835 until the authority for release of information is
25 provided as prescribed in this subsection. Compensation benefits
26 withheld shall be reimbursed to the employee upon the providing of
27 the new authority for release of information.

1 (7) A credit or reduction under this section shall not occur
2 because of an increase granted by the social security
3 administration as a cost of living adjustment.

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

10 (9) Except as otherwise provided in this section, any benefit
11 payments under the social security act, or any fund, policy, or
12 program as specified in subsection (1) ~~which~~**THAT** the employee has
13 received or is receiving after March 31, 1982 and during a period
14 in which the employee was receiving unreduced compensation benefits
15 under section 351, 361, or 835 shall be considered to have created
16 an overpayment of compensation benefits for that period. The
17 employer or carrier shall calculate the amount of the overpayment
18 and send a notice of overpayment and a request for reimbursement to
19 the employee. Failure by the employee to reimburse the employer or
20 carrier within 30 days after the mailing date of the notice of
21 request for reimbursement shall allow the employer or carrier with
22 the approval of the ~~bureau~~**AGENCY** to discontinue 50% of future
23 weekly compensation payments under section 351, 361 or 835. The
24 compensation payments withheld shall be credited against the amount
25 of the overpayment. Payment of the appropriate compensation benefit
26 shall resume when the total amount of the overpayment has been
27 withheld.

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

(11) Disability insurance benefit payments under the social security act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 351, 361, or 835 as old-age benefit payments under the social security act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. However, social security disability insurance benefits shall only be so considered if section 224 of the social security act, 42 ~~U.S.C.~~-**USC** 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of worker's compensation benefits by the employee.

(12) ~~Nothing in this section shall be considered to compel~~
THIS SECTION DOES NOT REQUIRE an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement benefits **TO AVOID A REDUCTION IN WAGE LOSS BENEFITS.**

(13) As used in this section, "after-tax amount" means the gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) reduced by the prorated weekly amount which would

1 have been paid, if any, under the federal insurance contributions
2 act, 26 U.S.C.—**USC** 3101 to ~~3126~~, **3128**, **AND** state income tax and
3 federal income tax, calculated on an annual basis using as the
4 number of exemptions the disabled employee's dependents plus the
5 employee, and without excess itemized deductions. In determining
6 the "after-tax amount" the tables provided for in section 313(2)
7 shall be used. The gross amount of any benefit under subsection
8 (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same
9 as the average weekly wage for purposes of the table. The
10 applicable 80% of after-tax amount as provided in the table will be
11 multiplied by 1.25 which will be conclusive for determining the
12 "after-tax amount" of benefits under subsection (1)(b), (1)(c),
13 (1)(d), or (1)(e).

14 (14) This section does not apply to any payments received or
15 to be received under a disability pension plan provided by the same
16 employer, which plan is in existence on March 31, 1982. Any
17 disability pension plan entered into or renewed after March 31,
18 1982 may provide that the payments under that disability pension
19 plan provided by the employer shall not be coordinated pursuant to
20 this section.

21 (15) With respect to volunteer fire fighters, volunteer safety
22 patrol officers, volunteer civil defense workers, and volunteer
23 ambulance drivers and attendants who are considered employees for
24 purposes of this act pursuant to section 161(1)(a), the reduction
25 of weekly benefits provided for disability insurance payments under
26 subsection (1)(b) and (c) and subsection (11) may be waived by the
27 employer. An employer that is not a self-insurer may make the

1 waiver provided for under this subsection only at the time a
2 worker's compensation insurance policy is entered into or renewed.

3 (16) This section ~~shall~~**DOES** not apply to payments made to an
4 employee as a result of liability pursuant to section 361(2) and
5 (3) for the specific loss period set forth therein. It is the
6 intent of the legislature that, because benefits under section
7 361(2) and (3) are benefits which recognize human factors
8 substantially in addition to the wage loss concept, coordination of
9 benefits should not apply to such benefits.

10 (17) The decision of the Michigan Supreme Court in Franks v
11 White Pine Copper Division, 422 Mich 636 (1985) is declared to have
12 been erroneously rendered insofar as it interprets this section, it
13 having been and being the legislative intention not to coordinate
14 payments under this section resulting from liability pursuant to
15 section 351, 361, or 835 for personal injuries occurring before
16 March 31, 1982. It is the purpose of ~~this~~**THE** amendatory act **THAT**
17 **ADDED THIS SUBSECTION** to so affirm. This remedial and curative
18 amendment shall be liberally construed to effectuate this purpose.

19 (18) This section applies only to payments resulting from
20 liability pursuant to section 351, 361, or 835 for personal
21 injuries occurring on or after March 31, 1982. Any payments made to
22 an employee resulting from liability pursuant to section 351, 361,
23 or 835 for a personal injury occurring before March 31, 1982 that
24 have not been coordinated under this section as of the effective
25 date of this subsection shall not be coordinated, shall not be
26 considered to have created an overpayment of compensation benefits,
27 and shall not be subject to reimbursement to the employer or

1 carrier.

2 (19) Notwithstanding any other section of this act, any
3 payments made to an employee resulting from liability pursuant to
4 section 351, 361, or 835 for a personal injury occurring before
5 March 31, 1982 that have been coordinated before ~~the effective date~~
6 ~~of this subsection~~ **MAY 14, 1987** shall be considered to be an
7 underpayment of compensation benefits, and the amounts withheld
8 pursuant to coordination shall be reimbursed with interest, ~~within~~
9 ~~60 days of the effective date of this subsection,~~ **BY JULY 13, 1987,**
10 to the employee by the employer or carrier.

11 (20) Notwithstanding any other section of this act, any
12 employee who has paid an employer or carrier money alleged by the
13 employer or carrier to be owed the employer or carrier because that
14 employee's benefits had not been coordinated under this section and
15 whose date of personal injury was before March 31, 1982 shall be
16 reimbursed with interest, ~~within 60 days of the effective date of~~
17 ~~this subsection,~~ **BY JULY 13, 1987,** that money by the employer or
18 carrier.

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

22 Sec. 360. (1) A person who suffers an injury arising out of
23 and in the course of employment as a professional athlete ~~shall be~~
24 **IS** entitled to weekly benefits only when the person's average
25 weekly wages in all employments at the time of application for
26 benefits, and thereafter, as computed in accordance with section
27 371, are less than 200% of the state average weekly wage.

1 ~~—— (2) This section~~ THIS SUBSECTION shall not be construed to
2 prohibit an otherwise eligible person from receiving benefits under
3 section 315, 319, or 361.

4 (2) A PROFESSIONAL ATHLETE WHO IS HIRED UNDER A CONTRACT WITH
5 AN EMPLOYER OUTSIDE OF THIS STATE IS EXEMPT FROM THIS ACT IF ALL OF
6 THE FOLLOWING CONDITIONS APPLY:

7 (A) THE ATHLETE SUSTAINS A PERSONAL INJURY ARISING OUT OF THE
8 COURSE OF EMPLOYMENT WHILE THE PROFESSIONAL ATHLETE IS TEMPORARILY
9 WITHIN THIS STATE.

10 (B) THE EMPLOYER HAS OBTAINED WORKER'S COMPENSATION INSURANCE
11 COVERAGE UNDER THE WORKER'S COMPENSATION LAW OF ANOTHER STATE THAT
12 COVERS THE INJURY IN THIS STATE.

13 (C) THE OTHER STATE RECOGNIZES THE EXTRATERRITORIAL PROVISIONS
14 OF THIS ACT AND PROVIDES A RECIPROCAL EXEMPTION FOR PROFESSIONAL
15 ATHLETES WHOSE INJURIES ARISE OUT OF EMPLOYMENT WHILE TEMPORARILY
16 IN THAT STATE AND ARE COVERED BY THE WORKER'S COMPENSATION LAW OF
17 THIS STATE.

18 (3) THE BENEFITS AND OTHER REMEDIES UNDER THE WORKER'S
19 COMPENSATION LAWS OF ANOTHER STATE ARE THE EXCLUSIVE REMEDY AGAINST
20 THE EMPLOYER UNDER THE CONDITIONS IN SUBSECTION (2). A CERTIFICATE
21 FROM THE DULY AUTHORIZED OFFICER OF ANOTHER STATE CERTIFYING THAT
22 THE EMPLOYER IS INSURED IN THAT STATE AND HAS OBTAINED
23 EXTRATERRITORIAL COVERAGE INSURING THE EMPLOYER'S PROFESSIONAL
24 ATHLETES IN THIS STATE IS PRIMA FACIE EVIDENCE THAT THE EMPLOYER
25 HAS OBTAINED INSURANCE MEETING THE REQUIREMENTS FOR THE EXCEPTION
26 TO COVERAGE UNDER THIS ACT UNDER SUBSECTION (2).

27 Sec. 361. (1) ~~While the incapacity for work resulting from a~~

~~personal injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after tax average weekly wage before the personal injury and the after tax average weekly wage which the injured employee is able to earn after the personal injury, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. However, an employer shall not be~~ **IS NOT** liable for compensation under section 351, 371(1), or this subsection for ~~such~~ periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

(2) In cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be 80% of the after-tax average weekly wage subject to the maximum and minimum rates of compensation under this act. ~~for the loss of the following:~~ **THE EFFECT OF ANY JOINT REPLACEMENT SURGERY, IMPLANT, OR OTHER MEDICAL PROCEDURE SHALL BE CONSIDERED IN DETERMINING WHETHER A SPECIFIC LOSS HAS OCCURRED. THE SPECIFIC LOSS PERIOD FOR THE LOSS SHALL BE CONSIDERED AS FOLLOWS:**

- (a) Thumb, 65 weeks.
- (b) First finger, 38 weeks.
- (c) Second finger, 33 weeks.
- (d) Third finger, 22 weeks.
- (e) Fourth finger, 16 weeks.

The loss of the first phalange of the thumb, or of any finger,

1 shall be considered to be equal to the loss of 1/2 of that thumb or
2 finger, and compensation shall be 1/2 of the amount above
3 specified.

4 The loss of more than 1 phalange shall be considered as the
5 loss of the entire finger or thumb. The amount received for more
6 than 1 finger shall not exceed the amount provided in this schedule
7 for the loss of a hand.

8 (f) Great toe, 33 weeks.

9 (g) A toe other than the great toe, 11 weeks.

10 The loss of the first phalange of any toe shall be considered
11 to be equal to the loss of 1/2 of that toe, and compensation shall
12 be 1/2 of the amount above specified.

13 The loss of more than 1 phalange shall be considered as the
14 loss of the entire toe.

15 (h) Hand, 215 weeks.

16 (i) Arm, 269 weeks.

17 An amputation between the elbow and wrist that is 6 or more
18 inches below the elbow shall be considered a hand, and an
19 amputation above that point shall be considered an arm.

20 (j) Foot, 162 weeks.

21 (k) Leg, 215 weeks.

22 An amputation between the knee and foot 7 or more inches below
23 the tibial table (plateau) shall be considered a foot, and an
24 amputation above that point shall be considered a leg.

25 (l) Eye, 162 weeks.

26 Eighty percent loss of vision of 1 eye shall constitute the
27 total loss of that eye.

1 (3) Total and permanent disability, compensation for which is
2 provided in section 351 means:

3 (a) Total and permanent loss of sight of both eyes.

4 (b) Loss of both legs or both feet at or above the ankle.

5 (c) Loss of both arms or both hands at or above the wrist.

6 (d) Loss of any 2 of the members or faculties in ~~subdivisions~~
7 **SUBDIVISION** (a), (b), or (c).

8 (e) Permanent and complete paralysis of both legs or both arms
9 or of 1 leg and 1 arm.

10 (f) Incurable insanity or imbecility.

11 (g) Permanent and total loss of industrial use of both legs or
12 both hands or both arms or 1 leg and 1 arm; for the purpose of this
13 subdivision such permanency shall be determined not less than 30
14 days before the expiration of 500 weeks from the date of injury.

15 (4) The amounts specified in this clause are all subject to
16 the same limitations as to maximum and minimum as above stated. In
17 case of the loss of 1 member while compensation is being paid for
18 the loss of another member, compensation shall be paid for the loss
19 of the second member for the period provided in this section.
20 Payments for the loss of a second member shall begin at the
21 conclusion of the payments for the first member.

22 Sec. 381. (1) A proceeding for compensation for an injury
23 under this act shall not be maintained unless a claim for
24 compensation for the injury, which claim may be either oral or in
25 writing, has been made to the employer or a written claim has been
26 made to the ~~bureau~~ **AGENCY EITHER ELECTRONICALLY, AS PRESCRIBED BY**
27 **THE DIRECTOR, OR** on forms prescribed by the director, within 2

1 years after the occurrence of the injury. In case of the death of
2 the employee, the claim shall be made within 2 years after death.
3 The employee shall provide a notice of injury to the employer
4 within 90 days after the happening of the injury, or within 90 days
5 after the employee knew, or should have known, of the injury.
6 Failure to give such notice to the employer shall be excused unless
7 the employer can prove that he or she was prejudiced by the failure
8 to provide such notice. In the event of physical or mental
9 incapacity of the employee, the notice and claim shall be made
10 within 2 years from the time the injured employee is not physically
11 or mentally incapacitated from making the claim. A claim shall not
12 be valid or effectual for any purpose under this chapter unless
13 made within 2 years after the later of the date of injury, the date
14 disability manifests itself, or the last day of employment with the
15 employer against whom claim is being made. If an employee claims
16 benefits for a work injury and is thereafter compensated for the
17 disability by worker's compensation or benefits other than worker's
18 compensation, or is provided favored work by the employer because
19 of the disability, the period of time within which a claim shall be
20 made for benefits under this act shall be extended by the time
21 during which the benefits are paid or the favored work is provided.

22 (2) Except as provided in subsection (3), if any compensation
23 is sought under this act, payment shall not be made for any period
24 of time earlier than 2 years immediately preceding the date on
25 which the employee filed an application for a hearing with the
26 ~~bureau~~-**AGENCY**.

27 (3) Payment for nursing or attendant care shall not be made

1 for any period which is more than 1 year before the date an
2 application for a hearing is filed with the ~~bureau~~-**AGENCY**.

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

7 Sec. 401. (1) As used in this chapter, "disability" means a
8 limitation of an employee's wage earning capacity in work suitable
9 to his or her qualifications and training resulting from a personal
10 injury or work related disease. The establishment of disability
11 does not create a presumption of wage loss.

12 (2) As used in this act:

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

14 (b) "Personal injury" shall include a disease or disability
15 which is due to causes and conditions which are characteristic of
16 and peculiar to the business of the employer and which arises out
17 of and in the course of the employment. An ordinary disease of life
18 to which the public is generally exposed outside of the employment
19 is not compensable. Mental disabilities and conditions of the aging
20 process, including but not limited to heart and cardiovascular
21 conditions, shall be compensable if contributed to or aggravated or
22 accelerated by the employment in a significant manner. Mental
23 disabilities shall be compensable when arising out of actual events
24 of employment, not unfounded perceptions thereof, **AND IF THE**
25 **EMPLOYEE'S PERCEPTION OF THE ACTUAL EVENTS IS REASONABLY GROUNDED**
26 **IN FACT OR REALITY**. A hernia to be compensable must be clearly
27 recent in origin and result from a strain arising out of and in the

1 course of the employment and be promptly reported to the employer.

2 (3) If disability ~~is~~ **AND WAGE LOSS ARE** established, pursuant
3 ~~to subsection (1),~~ entitlement to weekly wage loss benefits shall
4 be determined pursuant to this section and as follows:

5 (a) If an employee receives a bona fide offer of reasonable
6 employment from the previous employer, another employer, or through
7 the Michigan ~~employment security commission~~ **UNEMPLOYMENT INSURANCE**
8 **AGENCY** and the employee refuses that employment without good and
9 reasonable cause **OR THE EMPLOYEE IS TERMINATED FROM REASONABLE**
10 **EMPLOYMENT FOR FAULT OF THE EMPLOYEE**, the employee shall be
11 considered to have voluntarily removed himself or herself from the
12 work force and is no longer entitled to any wage loss benefits
13 under this act during the period of ~~such~~ refusal.

14 (b) If an employee is employed and the average weekly wage of
15 the employee is less than that which the employee received before
16 the date of injury, the employee shall receive weekly benefits
17 under this act equal to 80% of the difference between the injured
18 employee's after-tax weekly wage before the date of injury and the
19 after-tax weekly wage ~~which~~ **THAT** the injured employee ~~is able to~~
20 ~~earn~~ **EARN**s after the date of injury, but not more than the maximum
21 weekly rate of compensation, as determined under section 355.

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

27 (d) If the employee, after having been employed pursuant to

1 this subsection, ~~for 100 weeks or more~~ loses his or her job through
2 no fault of the employee **AND THE EMPLOYEE IS STILL DISABLED**, the
3 employee shall receive compensation under this act pursuant to the
4 ~~following~~. **AS FOLLOWS:**

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

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

20 ~~—— (iii) If the employee becomes reemployed and the employee is~~
21 ~~still disabled, the employee shall then receive wage loss benefits~~
22 ~~as provided in subdivision (b).~~

23 ~~—— (e) If the employee, after having been employed pursuant to~~
24 ~~this subsection for less than 100 weeks, loses his or her job~~
25 ~~through no fault of the employee, the employee shall receive~~
26 ~~compensation based upon his or her wage at the original date of~~
27 ~~injury.~~

~~1 (4) A carrier shall notify the Michigan employment security~~
~~2 commission of the name of any injured employee who is unemployed~~
~~3 and to which the carrier is paying benefits under this act.~~

~~4 (5) The Michigan employment security commission shall give~~
~~5 priority to finding employment for those persons whose names are~~
~~6 supplied to the commission under subsection (4).~~

7 (i) IF THE EMPLOYEE WAS EMPLOYED FOR LESS THAN 100 WEEKS, THE
 8 EMPLOYEE SHALL RECEIVE COMPENSATION BASED UPON HIS OR HER WAGE AT
 9 THE TIME OF THE ORIGINAL INJURY.

10 (ii) IF THE EMPLOYEE WAS EMPLOYED FOR 100 WEEKS OR MORE BUT
 11 LESS THAN 250 WEEKS, THEN AFTER THE EMPLOYEE EXHAUSTS UNEMPLOYMENT
 12 BENEFIT ELIGIBILITY, A WORKER'S COMPENSATION MAGISTRATE MAY
 13 DETERMINE THAT THE EMPLOYMENT SINCE THE TIME OF THE INJURY HAS NOT
 14 ESTABLISHED A NEW WAGE EARNING CAPACITY AND, IF THE MAGISTRATE
 15 MAKES THAT DETERMINATION, BENEFITS SHALL BE BASED ON THE EMPLOYEE'S
 16 WAGE AT THE ORIGINAL DATE OF INJURY. IF THE MAGISTRATE DOES NOT
 17 MAKE THAT DETERMINATION, THE EMPLOYEE IS PRESUMED TO HAVE
 18 ESTABLISHED A POST-INJURY WAGE EARNING CAPACITY AND BENEFITS SHALL
 19 NOT BE PAID BASED ON THE WAGE AT THE ORIGINAL DATE OF INJURY.

20 (iii) IF THE EMPLOYEE WAS EMPLOYED FOR 250 WEEKS OR MORE, THE
 21 EMPLOYEE IS CONCLUSIVELY PRESUMED TO HAVE ESTABLISHED A POST-INJURY
 22 WAGE EARNING CAPACITY.

23 (4) ~~(6) The Michigan employment security commission~~
 24 UNEMPLOYMENT INSURANCE AGENCY shall notify the bureau-AGENCY in
 25 writing of the name of any employee who refuses any bona fide offer
 26 of reasonable employment. Upon notification to the bureau-AGENCY,
 27 the bureau-AGENCY shall notify the carrier who shall terminate the

1 benefits of the employee pursuant to subsection (3)(a).

2 (5) ~~(7)~~ As used in this section, "reasonable employment" means
3 work that is within the employee's capacity to perform that poses
4 no clear and proximate threat to that employee's health and safety,
5 and that is within a reasonable distance from that employee's
6 residence. ~~The employee's capacity to perform shall not be limited~~
7 ~~to work suitable to his or her qualifications and training.~~

8 (6) ~~(8)~~ This section shall apply to personal injuries or work
9 related diseases occurring on or after June 30, 1985.

10 Sec. 625. Each insurer mentioned in section 611 issuing an
11 insurance policy covering worker's compensation in this state shall
12 file with the director, within 30 days after the effective date of
13 the policy, a notice of the issuance of the policy and its
14 effective date. A notice of issuance of insurance, a notice of
15 termination of insurance, or a notice of employer name change may
16 be submitted in writing or by using ~~bureau~~ **AGENCY**-approved
17 electronic ~~record layout~~ **FILING** and transaction standards and may
18 be submitted by the insurer directly or by the compensation
19 advisory organization of Michigan on behalf of the insurer. Payment
20 shall not be required by the ~~bureau~~ **AGENCY** or any third party for
21 the use of ~~bureau~~ **AGENCY**-approved electronic record layout and
22 transaction standards under this act. Time requirements for notices
23 under this act apply whether filed by the insurer or the
24 compensation advisory organization of Michigan. If the policy
25 covers persons who would otherwise be exempted from this act by
26 section 115, the notice shall contain a specific statement to that
27 effect. A notice ~~shall not be~~ **IS** required of any insurer where the

1 policy issued is a renewal of the preceding policy. The insurer, if
2 it refuses to accept any coverage under this act, shall do so in
3 writing.

4 Sec. 801. (1) Compensation shall be paid promptly and directly
5 to the person entitled thereto and shall become due and payable on
6 the fourteenth day after the employer has notice or knowledge of
7 the disability or death, on which date all compensation then
8 accrued shall be paid. Thereafter compensation shall be paid in
9 weekly installments. Every carrier shall keep a record of all
10 payments made under this act and of the time and manner of making
11 the payments and shall furnish reports, based upon these records,
12 to the ~~bureau~~**AGENCY** as the director may reasonably require.

13 (2) If weekly compensation benefits or accrued weekly benefits
14 are not paid within 30 days after becoming due and payable ~~, in~~
15 ~~eases where~~**AND** there is not an ongoing dispute, \$50.00 per day
16 shall be added and paid to the worker for each day over 30 days in
17 which the benefits are not paid. Not more than \$1,500.00 in total
18 may be added pursuant to this subsection.

19 (3) If medical bills or **A** travel allowance ~~are~~**IS** not paid
20 within 30 days after the carrier has received notice of nonpayment
21 by certified mail ~~, in cases where~~**AND** there is no ongoing dispute,
22 \$50.00 or the amount of the bill due, whichever is less, shall be
23 added and paid to the worker for each day over 30 days in which the
24 medical bills or travel allowance ~~are~~**IS** not paid. Not more than
25 \$1,500.00 in total may be added pursuant to this subsection.

26 (4) For purposes of rate-making, daily charges paid under
27 subsection (2) shall not constitute elements of loss.

House Bill No. 5002 (H-2) as amended November 1, 2011

1 (5) An employer who has notice or knowledge of the disability
2 or death and fails to give notice to the carrier shall pay the
3 penalty provided for in subsection (2) for the period during which
4 the employer failed to notify the carrier.

5 (6) When weekly compensation is paid pursuant to an award of a
6 worker's compensation magistrate, an arbitrator, the board, the
7 appellate commission, or a court, interest on the compensation
8 shall be paid at ~~the A rate of 10% per annum from the date each~~
9 ~~payment was due, until paid.~~ **CALCULATED IN THE SAME MANNER AS**
10 **INTEREST ON A MONEY JUDGMENT IN A CIVIL ACTION UNDER SECTION**
11 **6013(8) OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL**
12 **600.6013.**

13 (7) **[BY APRIL 1, 2012, THE DIRECTOR OF THE WORKER'S COMPENSATION**
14 **AGENCY SHALL FILE WITH THE SECRETARY OF THE SENATE AND THE CLERK OF THE**
15 **HOUSE OF REPRESENTATIVES A REPORT MAKING RECOMMENDATIONS TO THE**
16 **LEGISLATURE ON THE DETECTION AND PREVENTION OF FRAUD, WASTE, AND ABUSE**
17 **IN THE WORKER'S COMPENSATION SYSTEM.]**

18 Sec. 835. (1) After 6 months' time has elapsed from the date
19 of a personal injury, any liability resulting from the personal
20 injury may be redeemed by the payment of a lump sum by agreement of
21 the parties, subject to the approval of a worker's compensation
22 magistrate. If special circumstances are found which in the
23 judgment of the worker's compensation magistrate require the
24 payment of a lump sum, the worker's compensation magistrate may
25 direct at any time in any case that the deferred payments due under
26 this act be commuted on the present worth at 10% per annum to 1 or
27 more lump sum payments and that the lump sum payments shall be made

1 by the employer or carrier. When a proposed redemption agreement is
2 filed, it may be treated as a lump sum application, within the
3 discretion of a worker's compensation magistrate. The filing of a
4 proposed redemption agreement or lump sum application shall not be
5 considered an admission of liability and if the worker's
6 compensation magistrate treats a proposed redemption agreement as a
7 lump sum application under this section, the employer shall be
8 entitled to a hearing on the question of liability.

9 (2) The carrier shall notify the employer in writing, **WHICH**
10 **MAY BE ELECTRONICALLY TRANSMITTED**, of the proposed redemption
11 agreement not less than 10 business days before a hearing on the
12 proposed redemption agreement is held. The notice shall include all
13 of the following:

14 (a) The amount and conditions of the proposed redemption
15 agreement.

16 (b) The procedure available for requesting a private informal
17 managerial level conference.

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

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

22 (3) The worker's compensation magistrate may waive the
23 requirements of subsection (2) if the carrier provides evidence
24 that a good faith effort has been made to provide the required
25 notice or if the employer has consented in writing to the proposed
26 redemption.

27 (4) Except as otherwise provided in this subsection, for all

1 proposed redemption agreements filed after December 31, 1983, each
2 party to the agreement shall be liable for a fee of \$100.00 to be
3 used to defray costs incurred by the ~~bureau~~, **AGENCY**, the worker's
4 compensation board of magistrates, and the worker's compensation
5 appellate commission administering this act, except that in the
6 case of multiple defendants the fee for the party defendant shall
7 be \$100.00 to be paid by the carrier covering the most recent date
8 of injury. The ~~bureau~~ **AGENCY** shall develop a system to provide for
9 the collection of the fee provided for by this subsection. ~~The fee~~
10 ~~provided by this subsection does not apply to proposed redemption~~
11 ~~agreements in which the uninsured employer's security fund is a~~
12 ~~party under section 532.~~

13 (5) The fees collected pursuant to subsection (4) shall be
14 placed in the worker's compensation administrative revolving fund
15 under section 835a. Money in the worker's compensation
16 administrative revolving fund shall only be used to pay for costs
17 in regard to the following specific purposes of the ~~bureau~~, **AGENCY**,
18 the worker's compensation board of magistrates, and the worker's
19 compensation appellate commission as applicable:

20 (a) Education and training.

21 (b) Case management.

22 (c) Hearings and claims for review.

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

25 Sec. 836. (1) **A-EXCEPT AS PROVIDED IN SECTION 837(1), A**
26 redemption agreement shall only be approved by a worker's
27 compensation magistrate if the worker's compensation magistrate

1 finds all of the following:

2 (a) That the redemption agreement serves the purpose of this
3 act, is just and proper under the circumstances, and is in the best
4 interests of the injured employee.

5 (b) That the redemption agreement is voluntarily agreed to by
6 all parties. If an employer does not object in writing or in person
7 to the proposed redemption agreement, the employer shall be
8 considered to have agreed to the proposed agreement.

9 (c) That if an application has been filed pursuant to section
10 847 it alleges a compensable cause of action under this act.

11 (d) That the injured employee is fully aware of his or her
12 rights under this act and the consequences of a redemption
13 agreement.

14 **(2) PARTIES MAY STIPULATE IN WRITING TO THE DETERMINATIONS IN**
15 **SUBSECTION (1). IF BOTH PARTIES STIPULATE IN WRITING TO THOSE**
16 **DETERMINATIONS, THE STIPULATION SHALL SERVE AS A WAIVER OF HEARING,**
17 **AND THE MAGISTRATE MAY APPROVE THE REDEMPTION AGREEMENT.**

18 **(3) ~~(2)~~**—In making a determination under subsection (1),
19 factors to be considered by the worker's compensation magistrate
20 shall include, but not be limited to, all of the following:

21 (a) Any other benefits the injured employee is receiving or is
22 entitled to receive and the effect a redemption agreement might
23 have on those benefits.

24 (b) The nature and extent of the injuries and disabilities of
25 the employee.

26 (c) The age and life expectancy of the injured employee.

27 (d) Whether the injured employee has any health, disability,

1 or related insurance.

2 (e) The number of dependents of the injured employee.

3 (f) The marital status of the injured employee.

4 (g) Whether any other person may have any claim on the
5 redemption proceeds.

6 (h) The amount of the injured employee's average monthly
7 expenses.

8 (i) The intended use of the redemption proceeds by the injured
9 employee.

10 (4) ~~(3)~~—The factors considered by the worker's compensation
11 magistrate in making a determination under this section and the
12 responses of the injured employee thereto shall be placed on the
13 record.

14 (5) ~~(4)~~—An employer shall be considered a party for purposes
15 under this section.

16 Sec. 837. (1) All redemption agreements and lump sum
17 applications filed under the provisions of section 835 **OR A**
18 **STIPULATION FILED UNDER SECTION 836** shall be approved or rejected
19 by a worker's compensation magistrate.

20 (2) The director may, or upon the request of any of the
21 parties to the action shall, review the order of the worker's
22 compensation magistrate entered under subsection (1). In the event
23 of review by the director and in accordance with such rules as the
24 director may prescribe and after hearing, the director shall enter
25 an order as the director considers just and proper. Any order of
26 the director under this subsection may be appealed to the appellate
27 commission within 15 days after the order is mailed to the parties.

1 (3) Unless review is ordered or requested within 15 days after
2 the date the order of the worker's compensation magistrate is
3 mailed, **OR DISTRIBUTED ELECTRONICALLY**, to the parties, the order
4 shall be final.

5 Sec. 847. (1) Except as otherwise provided for under this act,
6 upon the filing with the ~~bureau~~**-AGENCY** by any party in interest of
7 an application in writing stating the general nature of any claim
8 as to which any dispute or controversy may have arisen, the case
9 shall be set for mediation or hearing, as applicable. **AN**

10 **APPLICATION MAY BE SUBMITTED ELECTRONICALLY.** A worker's
11 compensation magistrate shall hear a case that is set for hearing.

12 (2) For cases in which an application for a hearing under this
13 section is filed after March 31, 1986, the worker's compensation
14 magistrate, in addition to a written order, shall file a concise
15 written opinion stating his or her reasoning for the order
16 including any findings of fact and conclusions of law. The order
17 and opinion shall be part of the record of the hearing. **THE ORDER**
18 **AND OPINION MAY BE FILED AND DISTRIBUTED ELECTRONICALLY.**

19 Sec. 853. Process and procedure under this act shall be as
20 summary as reasonably may be. The director, worker's compensation
21 magistrates, arbitrators, and the board shall have the power to
22 administer oaths, subpoena witnesses, and to examine such parts of
23 the books and records of the parties to a proceeding as relate to
24 questions in dispute. **A SUBPOENA SIGNED BY AN ATTORNEY OF RECORD IN**
25 **THE ACTION HAS THE FORCE AND EFFECT OF AN ORDER SIGNED BY THE**
26 **WORKER'S COMPENSATION MAGISTRATE OR ARBITRATOR ASSOCIATED WITH THE**
27 **HEARING.** Any witness who refuses to obey a subpoena, who refuses to

1 be sworn or testify, or who fails to produce any papers, books, or
2 documents touching any matter under investigation or any witness,
3 party, or attorney who is guilty of any contempt while in
4 attendance at any hearing held under this act may be punished as
5 for contempt of court. An application for this purpose may be made
6 to any circuit court within whose jurisdiction the offense is
7 committed and for which purpose the court is given jurisdiction.

8 Enacting section 1. Sections 209 and 211 of the worker's
9 disability compensation act of 1969, 1969 PA 317, MCL 418.209 and
10 418.211, are repealed.