STATE OF MICHIGAN
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REGULAR SESSION OF 2011

Introduced by Reps. Jacobsen, Bumstead, Jenkins, Damrow, Price, Lund, Agema, Pscholka, Lori, Olson, Shaughnessy, LaFontaine, Muxlow, MacGregor, Rendon and Zorn

ENROLLED HOUSE BILL No. 5002

AN ACT to amend 1969 PA 317, entitled "An act to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," by amending sections 161, 205, 210, 212, 213, 274, 301, 315, 319, 331, 353, 354, 358, 360, 361, 381, 401, 625, 801, 835, 836, 837, 847, 853, and 862 (MCL 418.161, 418.205, 418.210, 418.212, 418.213, 418.274, 418.301, 418.315, 418.319, 418.331, 418.353, 418.354, 418.358, 418.360, 418.361, 418.381, 418.401, 418.625, 418.801, 418.835, 418.836, 418.837, 418.847, 418.853, and 418.862), section 161 as amended by 2002 PA 427, sections 205, 319, 361, and 381 as amended and section 212 as added by 1985 PA 103, sections 210, 213, 274, 331, 801, 836, 837, 847, 853, and 862 as amended by 1994 PA 271, sections 301, 354, and 401 as amended by 1987 PA 28, section 315 as amended by 2009 PA 226, section 358 as added by 1980 PA 357, section 625 as amended by 2002 PA 626, and section 835 as amended by 1996 PA 357, and by adding sections 302, 613, and 659; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 161. (1) As used in this act, "employee" means:

(a) A person in the service of the state, a county, city, township, village, or school district, under any appointment, or contract of hire, express or implied, oral or written. A person employed by a contractor who has contracted with a county, city, township, village, school district, or the state, through its representatives, shall not be considered an employee of the state, county, city, township, village, or school district that made the contract, if the contractor is subject to this act.

(b) Nationals of foreign countries employed pursuant to section 102(a)(1) of the mutual educational and cultural exchange act of 1961, Public Law 87-256, 22 USC 2452, shall not be considered employees under this act.

(c) Police officers, fire fighters, or employees of the police or fire departments, or their dependents, in municipalities or villages of this state providing like benefits, may waive the provisions of this act and accept like benefits that are provided by the municipality or village but are not entitled to like benefits from both the municipality or village and this act; however, this waiver does not prohibit those employees or their dependents from being reimbursed under section 315 for the medical expenses or portion of medical expenses that are not otherwise provided for by the municipality or village. This act shall not be construed as limiting, changing, or repealing any of the provisions of a

charter of a municipality or village of this state relating to benefits, compensation, pensions, or retirement independent of this act, provided for employees.

(d) On-call members of a fire department of a county, city, village, or township shall be considered to be employees of the county, city, village, or township, and entitled to all the benefits of this act if personally injured in the performance of duties as on-call members of the fire department whether the on-call member of the fire department is paid or unpaid. On-call members of a fire department of a county, city, village, or township shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the county, village, city, or township for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(e) On-call members of a fire department or an on-call member of a volunteer underwater diving team that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships is entitled to all the benefits of this act if personally injured in the performance of their duties as on-call members of a fire department or as an on-call member of a volunteer underwater diving team whether the on-call member of the fire department or the on-call member of the volunteer underwater diving team is paid or unpaid. On-call members of a fire department shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the fire department for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage. On-call members of a volunteer underwater diving team shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the fire department for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(f) The benefits of this act are available to a safety patrol officer who is engaged in traffic regulation and management for and by authority of a county, city, village, or township, whether the officer is paid or unpaid, in the same manner as benefits are available to on-call members of a fire department under subdivision (d), upon the adoption by the legislative body of the county, city, village, or township of a resolution to that effect. A safety patrol officer or safety patrol force when used in this act includes all persons who volunteer and are registered with a school and assigned to patrol a public thoroughfare used by students of a school.

(g) A volunteer civil defense worker who is a member of the civil defense forces as provided by law and is registered on the permanent roster of the civil defense organization of the state or a political subdivision of the state shall be considered to be an employee of the state or the political subdivision on whose permanent roster the employee is enrolled if engaged in the performance of duty and shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the state or political subdivision for purposes of calculating the weekly rate of compensation provided under this act.

(h) A volunteer licensed under section 20950 or 20952 of the public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who is an on-call member of a life support agency as defined under section 20906 of the public health code, 1978 PA 368, MCL 333.20906, shall be considered to be an employee of the county, city, village, or township and entitled to the benefits of this act if personally injured in the performance of duties as an on-call member of a life support agency whether the on-call member of the life support agency is paid or unpaid. An on-call member of a life support agency shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the county, city, village, or township for purposes of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(i) A volunteer licensed under section 20950 or 20952 of the public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who is an on-call member of a life support agency as defined under section 20906 of the public health code, 1978 PA 368, MCL 333.20906, that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships is entitled to all the benefits of this act if personally injured in the performance of his or her duties as an on-call member of a life support agency whether the on-call member of the life support agency is paid or unpaid. An on-call member of a life support agency shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the life support agency for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(j) If a member of an organization recognized by 1 or more counties, cities, villages, or townships within this state as an emergency rescue team is employed by a state, county, city, village, or township within this state as a police officer, fire fighter, emergency medical technician, or ambulance driver and is injured in the normal scope of duties

including training, but excluding activation, as a member of the emergency rescue team, he or she shall be considered to be engaged in the performance of his or her normal duties for the state, county, city, village, or township. If the member of the emergency rescue team is not employed by a state, county, city, village, or township within this state as a police officer, fire fighter, emergency medical technician, or ambulance driver, and is injured in the normal scope of duties, including training, as a member of the emergency rescue team, he or she shall be considered to be an employee of the team. For the purpose of securing the payment of compensation under this act, on activation, each member of the team shall be considered to be covered by a policy obtained by the team unless the employer of a member of the team agrees in writing to provide coverage for that member under its policy. Members of an emergency rescue team shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the team for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage. As used in this subdivision, "activation" means a request by the emergency management coordinator appointed pursuant to section 8 or 9 of the emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made of and accepted by an emergency rescue team.

(k) A political subdivision of this state is not required to provide compensation insurance for a peace officer of the political subdivision with respect to the protection and compensation provided by 1937 PA 329, MCL 419.101 to 419.104.

(*l*) Every person in the service of another, under any contract of hire, express or implied, including aliens; a person regularly employed on a full-time basis by his or her spouse having specified hours of employment at a specified rate of pay; working members of partnerships receiving wages from the partnership irrespective of profits; a person insured for whom and to the extent premiums are paid based on wages, earnings, or profits; and minors, who shall be considered the same as and have the same power to contract as adult employees. Any minor under 18 years of age whose employment at the time of injury is shown to be illegal, in the absence of fraudulent use of permits or certificates of age in which case only single compensation shall be paid, shall receive compensation double that provided in this act.

(m) Every person engaged in a federally funded training program or work experience program that mandates the provision of appropriate worker's compensation for participants and that is sponsored by the state, a county, city, township, village, or school district, or an incorporated public board or public commission in the state authorized by law to hold property and to sue or be sued generally, or any consortium thereof, shall be considered, for the purposes of this act, to be an employee of the sponsor and entitled to the benefits of this act. The sponsor is responsible for the provision of worker's compensation and shall secure the payment of compensation by a method permitted under section 611. If a sponsor contracts with a public or private organization to operate a program, the sponsor may require the organization to secure the payment of compensation by a method permitted under section 611.

(n) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act. On and after January 1, 2013, services are employment if the services are performed by an individual whom the Michigan administrative hearing system determines to be in an employer-employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1 C.B. 296. An individual for whom an employer is required to withhold federal income tax is prima facie considered to perform service in employment under this act. If a business entity requests the Michigan administrative hearing system to determine whether 1 or more individuals performing service for the entity in this state are in covered employment, the Michigan administrative hearing system shall issue a determination of coverage of service performed by those individuals and any other individuals performing similar services under similar circumstances.

(2) A policy or contract of worker's compensation insurance, by endorsement, may exclude coverage as to any 1 or more named partners or the spouse, child, or parent in the employer's family. A person excluded pursuant to this subsection is not subject to this act and shall not be considered an employee for the purposes of section 115.

(3) An employee who is subject to this act, including an employee covered pursuant to section 121, who is an employee of a limited liability company of not more than 10 members and who is also a manager and member, as defined in section 102 of the Michigan limited liability company act, 1993 PA 23, MCL 450.4102, and who owns at least a 10% interest in that limited liability company, with the consent of the limited liability company as approved by a majority vote of the members, or if the limited liability company has more than 1 manager, all of the managers who are also members, except as otherwise provided in an operating agreement, may elect to be individually excluded from this act by giving a notice of the election in writing to the carrier with the consent of the limited liability company endorsed on the notice. The exclusion remains in effect until revoked by the employee by giving notice in writing to the carrier. While the exclusion is in effect, section 141 does not apply to any action brought by the employee against the limited liability company.

(4) An employee who is subject to this act, including an employee covered pursuant to section 121, who is an employee of a corporation that has not more than 10 stockholders and who is also an officer and stockholder who owns at least 10% of the stock of that corporation, with the consent of the corporation as approved by its board of directors,

may elect to be individually excluded from this act by giving a notice of the election in writing to the carrier with the consent of the corporation endorsed on the notice. The exclusion remains in effect until revoked by the employee by giving a notice in writing to the carrier. While the exclusion is in effect, section 141 does not apply to any action brought by the employee against the corporation.

(5) If the persons to be excluded from coverage under this act pursuant to subsections (2) to (4) comprise all of the employees of the employer, those persons may elect to be excluded from being considered employees under this act by submitting written notice of that election to the director upon a form prescribed by the director. The exclusion shall remain in effect until revoked by giving written notice to the director.

Sec. 205. The director shall devote his or her entire time to and personally perform the duties of his or her office and shall engage in no other business or professional activity. He or she may make rules not inconsistent with this act for carrying out the provisions of the act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. He or she shall appoint assistants and employees as necessary, who are entitled to necessary travel expenses incurred in performing official duties subject to the standardized travel regulations of this state, and compensation in accordance with applicable civil service rules. He or she has general supervisory control of the agency and all its officers and employees. He or she has charge of assigning the work of the agency to the assistants and employees. Cases involving a carrier terminating the voluntary payment of benefits and cases involving a petition to stop or reduce compensation shall be held within 60 days and take precedence over other cases. The director may provide assistance to employers and employees in resolving small disputes. He or she has general charge of all administrative functions of the agency and may delegate the duties, administrative functions, and the authority incident to those duties and functions.

Sec. 210. The governor shall appoint as a worker's compensation magistrate within the Michigan administrative hearing system only an individual who is a member in good standing of the state bar of Michigan and has been an attorney licensed to practice in the courts of this state for 5 years or more.

Sec. 212. (1) The executive director of the Michigan administrative hearing system and the chair of the worker's compensation board of magistrates, in consultation, shall annually evaluate the performance of each worker's compensation magistrate. The evaluation shall be based upon at least the following criteria:

(a) The rate of affirmance by the Michigan compensation appellate commission of the worker's compensation magistrate's opinions and orders.

(b) Productivity including reasonable time deadlines for disposing of cases and adherence to established productivity standards.

(c) Manner in conducting hearings.

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

(e) Knowledge of the law.

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

(g) Written surveys or comments of all interested parties. Information obtained under this subdivision is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) Upon completing an evaluation under this section, the executive director of the Michigan administrative hearing system shall submit a written report including any supporting documentation to the director of the department of licensing and regulatory affairs regarding that evaluation, which may include recommendations with regard to 1 or more of the following:

(a) Retention.

(b) Suspension.

(c) Removal.

(d) Additional training or education.

(3) The governor may remove a magistrate upon recommendation by the director of the department of licensing and regulatory affairs based upon recommendations in a report under subsection (2) or upon other neglect of duties.

Sec. 213. (1) Consistent with Executive Reorganization Order No. 2011-6, MCL 445.2032, the worker's compensation board of magistrates is established as an autonomous entity in the Michigan administrative hearing system. The board shall consist of 17 members appointed by the governor with the advice and consent of the senate. All members of the board shall be members in good standing of the state bar of Michigan.

(2) The members of the board shall be appointed for terms of 4 years. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. A member shall not serve beyond the expiration of his

or her term. A member may be reappointed. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term.

(3) The governor shall designate a member of the board as the chairperson upon a vacancy occurring in that position. The chairperson of the board shall have general supervisory control of and be in charge of the members of the board and the assignment and scheduling of the work of the board members.

(4) In the case of an extended leave of absence or disability or a significant increase in caseload, the executive director of the Michigan administrative hearing system may select temporary magistrates to serve for not more than 6 months in any 2-year period. A temporary magistrate selected by the executive director of the Michigan administrative hearing system has the same powers and duties as an appointed magistrate under this act. The executive director of the Michigan administrative hearing system may also establish productivity standards that are to be adhered to by employees of the board, the board, and individual magistrates. Each member of the board shall devote full time to the functions of the board. Each member of the board shall personally perform the duties of the office during the hours generally worked by officers and employees of the executive departments of the state.

(5) The chairperson of the board shall serve as chairperson at the pleasure of the governor.

(6) Each member of the board shall receive an annual salary and shall receive necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(7) The Michigan administrative hearing system may employ the staff it considers necessary to be able to perform its duties under this act, which may include legal assistants for the purpose of legal research and otherwise assisting the board and individual members of the board.

(8) The Michigan administrative hearing system may promulgate rules on administrative hearing procedures for purposes under this act.

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

(10) The department of licensing and regulatory affairs shall provide suitable office space for the board of worker's compensation magistrates and the employees of the board.

Sec. 274. (1) The Michigan compensation appellate commission created in Executive Reorganization Order No. 2011-6, MCL 445.2032, and housed within the Michigan administrative hearing system, may handle, process, and decide appeals from orders of the director and hearing referees and the orders and opinions of the worker's compensation magistrates as provided for under this act. The commission may promulgate rules on administrative appellate procedure for purposes under this act.

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

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

(4) Opinions of the commission shall be in writing. The commission shall provide for the publication of those opinions.

(5) The department of licensing and regulatory affairs shall provide suitable office space for the commission and employees of the commission.

Sec. 301. (1) An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event is the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.

(2) Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality.

(3) An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major

purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131.

(4) As used in this chapter:

(a) "Disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work-related disease. A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills. A disability is total if the employee is unable to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training. The establishment of disability does not create a presumption of wage loss.

(b) Except as provided in section 302, "wage earning capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available.

(c) "Wage loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits under subsection (7) as if totally disabled.

(5) To establish an initial showing of disability, an employee shall do all of the following:

(a) Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.

(b) Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

(c) Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

(d) If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure post-injury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

(6) Once an employee establishes an initial showing of a disability under subsection (5), the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

(7) If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(8) If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(9) If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

(a) If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this act during the period of refusal.

(b) If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this act.

(c) If an employee is employed and the weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this act equal to 80% of the difference

between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(d) If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this act for the duration of that employment.

(e) If the employee, after having been employed pursuant to this subsection loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this act as follows:

(*i*) If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her average weekly wage at the time of the original injury.

(*ii*) If the employee was employed for 100 weeks or more but less than 250 weeks, then after exhausting unemployment benefit eligibility, a worker's compensation magistrate may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the magistrate makes that determination, benefits shall be based on his or her average weekly wage at the original date of injury. If the magistrate does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.

(*iii*) If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

(10) The Michigan unemployment insurance agency shall notify the agency in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the agency, the agency shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (9)(a).

(11) "Reasonable employment", as used in this section, means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training.

(12) Weekly benefits are not payable during the period of confinement to a person who is incarcerated in a penal institution for violation of the criminal laws of this state or who is confined in a mental institution pending trial for a violation of the criminal laws of this state, if the violation or reason for the confinement occurred while at work and is directly related to the claim.

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

(14) This section applies to personal injuries and work related diseases occurring on or after June 30, 1985.

Sec. 302. As used in chapters 3 and 4, "wage earning capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee if the employee is a member of a full-paid fire department of an airport run by a county road commission in counties of 1,000,000 population or more or by a state university or college or of a full-paid fire or police department of a city, township, or incorporated village employed and compensated upon a full-time basis, a county sheriff or the deputy of the county sheriff, a member of the state police, a conservation officer, a motor carrier inspector of the Michigan public service commission, or any employee of any authority, district, board, or any other entity created in whole or in part by the authorization of 1 or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer, or in firefighting or subject to the hazards thereof. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available.

Sec. 315. (1) The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed. However, an employer is not required to reimburse or cause to be reimbursed charges for an optometric service unless that service was included in the definition of practice of optometry under section 17401 of the public health code, 1978 PA 368, MCL 333.17401, as of May 20, 1992 or for a chiropractic service unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009. An employer is not required to reimburse or cause to be reimbursed charges for services performed by a profession that was not licensed or registered by the laws of this state on or before January 1, 1998, but that becomes licensed, registered, or otherwise recognized by the laws of this state after January 1, 1998. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons. After 28 days from the inception of medical care as provided in this section,

the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the worker's compensation magistrate. The worker's compensation magistrate may prorate attorney fees at the contingent fee rate paid by the employee.

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

(3) The director of the workers' compensation agency shall provide for an advisory committee to aid and assist in establishing the schedules of maximum charges under subsection (2) for charges or fees that are payable under this section. The advisory committee shall be appointed by and serve at the pleasure of the director.

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

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

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

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

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

(9) If a health facility or health care provider provides health care or a health service that is not usually associated with, is longer in duration in time than, is more frequent than, or extends over a greater number of days than that health care or service usually does with the diagnosis or condition for which the patient is being treated, the health facility or health care provider may be required by the carrier to explain the necessity or indication for the reasons why in writing.

Sec. 319. (1) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment. If such

services are not voluntarily offered and accepted, the director on his or her own motion or upon application of the employee, carrier, or employer, after affording the parties an opportunity to be heard, may refer the employee to an agency-approved facility for evaluation of the need for, and kind of service, treatment, or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of such report, the director may order that the training, services, or treatment recommended in the report be provided at the expense of the employer. The director may order that any employee participating in vocational rehabilitation shall receive additional payments for transportation or any extra and necessary expenses during the period and arising out of his or her program of vocational rehabilitation. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than 52 weeks except in cases when, by special order of the director after review, the period may be extended for an additional 52 weeks or portion thereof. If there is an unjustifiable refusal to accept rehabilitation pursuant to a decision of the director, the director shall order a loss or reduction of compensation in an amount determined by the director for each week of the period of refusal, except for specific compensation payable under section 361(1) and (2).

(2) A party may appeal an order of the director under subsection (1) to the Michigan compensation appellate commission within 15 days after the order is mailed to the parties.

Sec. 331. Except as otherwise provided in this section, a child under the age of 16 years, or 16 years or over if physically or mentally incapacitated from earning, is conclusively presumed to be wholly dependent for support upon the parent with whom he or she is living at the time of the death of that parent. In the event of the death of an employee who has at the time of death a living child by a former spouse or a child who has been deserted by the deceased employee under the age of 16 years, or over if physically or mentally incapacitated from earning, that child shall be conclusively presumed to be wholly dependent for support upon the deceased employee, even though not living with the deceased employee at the time of death. The death benefit shall be divided among all persons who are wholly dependent upon the deceased employee, in equal shares. The total sum due a surviving spouse and his or her own children shall be paid directly to the surviving spouse for his or her own use, and for the use and benefit of his or her own children. If during the time compensation payments continue, a worker's compensation magistrate finds that the surviving spouse is not properly caring for those children, the worker's compensation magistrate shall order the shares of the children to be thereafter paid to their guardian or legal representative for their use and benefit, instead of to their father or mother. In all cases the sums due to the children by the former spouse of the deceased employee shall be paid to their guardians or legal representatives for the use and benefit of those children. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the facts at the time of the injury. If a deceased employee leaves a person wholly dependent upon him or her for support, that person shall be entitled to the whole death benefit and persons partially dependent, if any, shall receive no part thereof, while the person wholly dependent is living. All persons wholly dependent upon a deceased employee, whether by conclusive presumption or as a matter of fact, shall be entitled to share equally in the death benefit in accordance with the provisions of this section. If there is no one wholly dependent or if the death of all persons wholly dependent occurs before all compensation is paid, and there is only 1 person partially dependent, that person is entitled to compensation according to the extent of his or her dependency; and if there is more than 1 person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. A person shall not be considered a dependent unless he or she is a member of the family of the deceased employee, or unless such person bears to the deceased employee the relation of widower or widow, lineal descendant, ancestor, or brother or sister.

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

(a) A child under the age of 16 years, or 16 years or over if physically or mentally incapacitated from earning, living with his parent at the time of the injury of that parent.

(b) In all other cases questions of dependency shall be determined in accordance with the facts at the time of the injury, except as provided in subsection (3). A person shall not be considered a dependent unless he or she is a member of the family of the injured employee, or unless the person bears to the injured employee the relation of husband or wife, or lineal descendent, or ancestor or brother or sister. Except as to a person conclusively presumed to be a dependent, a person who receives less than 1/2 of his or her support from an injured employee shall not be considered to be a dependent.

(2) Weekly payments to an injured employee shall be reduced by the additional amount provided for any dependent child or spouse or other dependent when the child either reaches the age of 18 years or after becoming 16 ceases for a period of 6 months to receive more than 1/2 of his or her support from the injured employee, if at that time the child is neither physically nor mentally incapacitated from earning; when the spouse is divorced by final decree from his or her injured spouse; or when the child, spouse, or other dependent is deceased.

(3) An increase in payments shall be made for increased numbers of conclusive dependents as defined in this act who were not dependent at the time of the injury of an employee.

Sec. 354. (1) This section applies if either weekly or lump sum payments are made to an employee as a result of liability under section 301(7) or (8), 351, or 835 with respect to the same time period for which the employee also

received or is receiving old-age insurance benefit payments under the social security act, 42 USC 301 to 1397f; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the employer; or pension or retirement payments under a plan or program established or maintained by the employer. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts:

(a) Fifty percent of the amount of the old-age insurance benefits received or being received under the social security act, chapter 531, 49 Stat. 620. However, if the injured employee has been receiving old-age insurance benefit payments under the social security act, chapter 531, 49 Stat. 620, before the date of the personal injury or work-related disease, then in no event shall the weekly benefits payable after the reduction provided by this subdivision be less than 50% of the weekly benefits otherwise payable without the reduction.

(b) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits under section 301(7) or (8), 351, or 835 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If the self-insurance plans, wage continuation plans, or disability insurance policies are entitled to repayment in the event of a worker's compensation benefit recovery, the carrier shall satisfy that repayment out of funds the carrier has received through the coordination of benefits provided for under this section. Notwithstanding the provisions of this subsection, attorney fees shall be paid pursuant to section 821 to the attorney who secured the worker's compensation recovery.

(c) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by the same employer from whom benefits under section 301(7) or (8), 351, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

(d) Subject to subsection (12), the after-tax amount of the pension or retirement payments received or being received by the employee, or which the employee is currently eligible to receive if the employee has suffered total and permanent disability and has reached full retirement age, pursuant to a plan or program established or maintained by the same employer from whom benefits under section 301(7) or (8), 351, or 835 are received, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

(e) The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 301(7) or (8), 351, or 835 are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

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

(2) To satisfy any remaining obligations under section 301(7) or (8), 351, or 835, the employer shall pay or cause to be paid to the employee the balance due in either weekly or lump sum payments after the application of subsection (1).

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

(a) The agency shall promulgate rules to provide for notification by an employer or carrier to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification shall be promptly mailed to the employee after the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility shall be filed with the agency by the employer or carrier.

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

(*i*) Apply for social security benefits.

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

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

(4) If the employee fails to provide the proof of application or the authority for release of information as prescribed in subsection (3), the employer or carrier, with the approval of the agency, may discontinue the compensation benefits payable to the employee under section 301(7) or (8), 351, or 835 until the proof of application and the authority for

release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required proof of application, or the authority for release of information, or both.

(5) If the employer or carrier is required to submit a new authority for release of information to the social security administration in order to receive information necessary to comply with this section, the employee shall provide the new authority for release of information within 30 days of a request by the employer or carrier. If the employee fails to provide the new authority for release of information, the employer or carrier, with the approval of the agency, may discontinue benefits until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon providing the new authority for release of information.

(6) Within 30 days after either the date of first payment of compensation benefits under section 301(7) or (8), 351, or 835, or 30 days after the date of application for any benefit under subsection (1)(b), (c), (d), or (e), whichever is later, the employee shall provide the employer or carrier with a properly executed authority for release of information, which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the appropriate source. The authority for release of information is effective for 1 year. Failure of the employee to provide a properly executed authority for release of information allows the employer or carrier with the approval of the agency to discontinue the compensation benefits payable under section 301(7) or (8), 351, or 835 to the employee until the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information allows the employer or carrier with the approval of the agency to discontinue benefits under section 301(7) or (8), 351, or 835 until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

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

(8) Except as provided in subsections (4), (5), and (6), a credit or reduction of benefits otherwise payable for any week shall not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under section 301(7) or (8), 351, or 835 and the employee has begun receiving the benefit payments.

(9) Except as otherwise provided in this section, any benefit payments under the social security act, or any fund, policy, or program as specified in subsection (1) that the employee has received or is receiving after March 31, 1982 and during a period in which the employee was receiving unreduced compensation benefits under section 301(7) or (8), 351, or 835 shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing date of the notice of request for reimbursement allows the employer or carrier with the approval of the agency to discontinue 50% of future weekly compensation payments under section 301(7) or (8), 351, or 835. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate compensation benefit shall resume when the total amount of the overpayment has been withheld.

(10) The employer or carrier taking a credit or making a reduction as provided in this section shall immediately report to the agency the amount of any credit or reduction, and as requested by the agency, furnish to the 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 301(7) or (8), 351, 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 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 an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement 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 have been paid, if any, under the federal insurance contributions act, 26 USC 3101 to 3128, and state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the "after-tax amount" the tables provided for in section 313(2) shall be used. The gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same as the average

weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table will be multiplied by 1.25 which will be conclusive for determining the "after-tax amount" of benefits under subsection (1)(b), (1)(c), (1)(d), or (1)(e).

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

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

(16) This section does not apply to payments made to an employee as a result of liability pursuant to section 361(2) and (3) for the specific loss period set forth therein. It is the intent of the legislature that, because benefits under section 361(2) and (3) are benefits that recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to those benefits.

(17) The decision of the Michigan Supreme Court in Franks v White Pine Copper Division, 422 Mich 636 (1985) is declared to have been erroneously rendered insofar as it interprets this section, it having been and being the legislative intention not to coordinate payments under this section resulting from liability pursuant to section 301(7) or (8), 351, or 835 for personal injuries occurring before March 31, 1982. It is the purpose of the amendatory act that added this subsection to so affirm. This remedial and curative amendment shall be liberally construed to effectuate this purpose.

(18) This section applies only to payments resulting from liability pursuant to section 301(7) or (8), 351, or 835 for personal injuries occurring on or after March 31, 1982. Any payments made to an employee resulting from liability pursuant to section 301(7) or (8), 351, or 835 for a personal injury occurring before March 31, 1982 that have not been coordinated under this section as of the effective date of this subsection shall not be coordinated, shall not be considered to have created an overpayment of compensation benefits, and shall not be subject to reimbursement to the employer or carrier.

(19) Notwithstanding any other section of this act, any payments made to an employee resulting from liability pursuant to section 301(7) or (8), 351, or 835 for a personal injury occurring before March 31, 1982 that have been coordinated before May 14, 1987 shall be considered to be an underpayment of compensation benefits, and the amounts withheld pursuant to coordination shall be reimbursed with interest, by July 13, 1987, to the employee by the employer or carrier.

(20) Notwithstanding any other section of this act, any employee who has paid an employer or carrier money alleged by the employer or carrier to be owed the employer or carrier because that employee's benefits had not been coordinated under this section and whose date of personal injury was before March 31, 1982 shall be reimbursed with interest, by July 13, 1987, that money by the employer or carrier.

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

Sec. 358. Net weekly benefits payable under section 351, 361, or lump sum benefits under section 835, shall be reduced by 100% of the amount of benefits paid or payable to the injured employee under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, for identical periods of time.

Sec. 360. (1) A person who suffers an injury arising out of and in the course of employment as a professional athlete is entitled to weekly benefits only when the person's average weekly wages in all employments at the time of application for benefits, and thereafter, as computed in accordance with section 371, are less than 200% of the state average weekly wage. This subsection shall not be construed to prohibit an otherwise eligible person from receiving benefits under section 315, 319, or 361.

(2) A professional athlete who is hired under a contract with an employer outside of this state is exempt from this act if all of the following conditions apply:

(a) The athlete sustains a personal injury arising out of the course of employment while the professional athlete is temporarily within this state.

(b) The employer has obtained worker's compensation insurance coverage under the worker's compensation law of another state that covers the injury in this state.

(c) The other state recognizes the extraterritorial provisions of this act and provides a reciprocal exemption for professional athletes whose injuries arise out of employment while temporarily in that state and are covered by the worker's compensation law of this state.

(3) The benefits and other remedies under the worker's compensation laws of another state are the exclusive remedy against the employer under the conditions in subsection (2). A certificate from the duly authorized officer of another state certifying that the employer is insured in that state and has obtained extraterritorial coverage insuring the employer's professional athletes in this state is prima facie evidence that the employer has obtained insurance meeting the requirements for the exception to coverage under this act under subsection (2).

Sec. 361. (1) An employer is not liable for compensation under section 301(7) or (8), 351, 371(1), or 401(5) or (6) for 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. The effect of any internal joint replacement surgery, internal implant, or other similar 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, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified.

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

(f) Great toe, 33 weeks.

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

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

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

(h) Hand, 215 weeks.

(i) Arm, 269 weeks.

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

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

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

(*l*) Eye, 162 weeks.

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

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

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

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

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

(d) Loss of any 2 of the members or faculties in subdivision (a), (b), or (c).

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

(f) Incurable insanity or imbecility.

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

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

Sec. 381. (1) A proceeding for compensation for an injury under this act shall not be maintained unless a claim for compensation for the injury, which claim may be either oral or in writing, has been made to the employer or a written claim has been made to the agency either electronically, as prescribed by the director, or on forms prescribed by the director, within 2 years after the occurrence of the injury. In case of the death of the employee, the claim shall be made within 2 years after death. The employee shall provide a notice of injury to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give such notice to the employer shall be excused unless the employer can prove that he or she was prejudiced by the failure to provide such notice. In the event of physical or mental incapacity of the employee, the notice and claim shall be made within 2 years from the time the injured employee is not physically or mentally incapacitated from making the claim. A claim shall not be valid or effectual for any purpose under this chapter unless made within 2 years after the later of the date of injury, the date disability manifests itself, or the last day of employment with the employer against whom claim is being made. If an employee claims benefits for a work injury and is thereafter compensated for the disability by worker's compensation or benefits other than worker's compensation, or is provided favored work by the employer because of the disability, the period of time within which a claim shall be made for benefits under this act shall be extended by the time during which the benefits are paid or the favored work is provided.

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

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

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

Sec. 401. (1) As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills. A disability is total if the employee is unable to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training. The establishment of disability does not create a presumption of wage loss.

(2) As used in this chapter:

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

(b) "Personal injury" includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and be promptly reported to the employer.

(c) Except as provided in section 302, "wage earning capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not actually earned. For the purposes of establishing wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available.

(d) "Wage loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits under subsection (5) as if totally disabled.

(3) To establish an initial showing of disability, an employee shall do all of the following:

(a) Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.

(b) Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

(c) Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

(d) If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure postinjury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

(4) Once an employee establishes an initial showing of a disability under subsection (3), the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

(5) If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(6) If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(7) If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

(a) If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of refusal.

(b) If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this act.

(c) If an employee is employed and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this act equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(d) If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this act for the duration of that employment.

(e) If the employee, after having been employed pursuant to this subsection, loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this act as follows:

(*i*) If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her wage at the time of the original injury.

(*ii*) If the employee was employed for 100 weeks or more but less than 250 weeks, then after the employee exhausts unemployment benefit eligibility, a worker's compensation magistrate may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the magistrate makes that determination, benefits shall be based on the employee's wage at the original date of injury. If the magistrate does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.

(*iii*) If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

(8) The Michigan unemployment insurance agency shall notify the agency in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the agency, the agency shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (7)(a).

(9) As used in this section, "reasonable employment" means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance

from that employee's residence. The employee's capacity to perform shall not be limited to work suitable to his or her qualifications and training.

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

Sec. 613. If the agency determines that services are covered employment under section 161(1)(n) and the agency received the request on or after the effective date of the amendatory act that added this subsection and before January 1, 2013, the employer shall not be subject to penalties or interest on underpayments or other violations before the date of the determination arising from the misclassification of those services.

Sec. 625. Each insurer mentioned in section 611 issuing an insurance policy covering worker's compensation in this state shall file with the director, within 30 days after the effective date of the policy, a notice of the issuance of the policy and its effective date. A notice of issuance of insurance, a notice of termination of insurance, or a notice of employer name change may be submitted in writing or by using agency-approved electronic filing and transaction standards and may be submitted by the insurer directly or by the compensation advisory organization of Michigan on behalf of the insurer. Payment shall not be required by the agency or any third party for the use of agency-approved electronic record layout and transaction standards under this act. Time requirements for notices under this act apply whether filed by the insurer or the compensation advisory organization of Michigan. If the policy covers persons who would otherwise be exempted from this act by section 115, the notice shall contain a specific statement to that effect. A notice is required of any insurer if the policy issued is a renewal of the preceding policy. The insurer, if it refuses to accept any coverage under this act, shall do so in writing.

Sec. 659. (1) If the suburban mobility authority regional transportation authority created pursuant to the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426, an authority created by interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, an authority created pursuant to the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479, a metropolitan council established pursuant to the metropolitan councils act, 1989 PA 292, MCL 124.651 to 124.729, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to 1951 PA 35, MCL 124.1 to 124.13, or 1963 PA 55, MCL 124.351 to 124.359, or an authority created pursuant to 1969 PA 55, MCL 124.351 to 124.359, ceases to operate or is dissolved, and a successor agency is not created to assume its assets, liabilities, and perform its functions, and if the authority is authorized to secure the payment of compensation under section 611(1)(a), then the state hereby guarantees the payment of claims for benefits arising under this act against the authority. Payment of claims by the state under this section shall be made from the general fund. The director of the department of technology, management, and budget shall designate a third party administrator to handle claims under this section until the assignment under subsection (3) occurs.

(2) Except as otherwise provided in subsection (3), the third party administrator shall determine in detail as the director of the department of technology, management, and budget may require the amount necessary to pay the claims for benefits for which the state is responsible pursuant to subsection (1). The third party administrator shall be responsible for the processing of these claims and shall be compensated for its services in the same manner as a carrier is compensated for processing the claims of state employees.

(3) The Michigan worker's compensation placement facility shall randomly assign a carrier licensed to write worker's disability compensation insurance to determine in detail as the director of the department of technology, management, and budget may require the amount necessary to pay the claims for benefits for which the state is responsible pursuant to subsection (1). The carrier so assigned is responsible for processing these claims and shall be compensated for its services in the same manner as for processing the claims of state employees.

(4) The state is entitled to a lien that takes precedence over all other liens on its portion of the assets of the authority in satisfaction of the payment of claims for benefits under this section.

(5) This section shall not be construed to permit the use of state funds for the payment of private obligations. Therefore, if an authority created pursuant to 1987 PA 204, MCL 124.401 to 124.426; 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512; 1986 PA 196, MCL 124.451 to 124.479; a metropolitan council established pursuant to 1989 PA 292, MCL 124.651 to 124.685; an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to 1951 PA 35, MCL 124.1 to 124.13; or 1963 PA 55, MCL 124.351 to 124.359, delegates to a private employer or contracts with a private employer for the performance of any of the functions permitted under its enabling statute, the director shall not permit the private employer performing these functions to be included under the authorization granted by the director to the authority or other agency to self-insure pursuant to section 611(1)(a).

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

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

(3) If medical bills or a travel allowance is not paid within 30 days after the carrier has received notice of nonpayment by certified mail and there is no ongoing dispute, $50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance is not paid. Not more than $1,500.00 in total may be added pursuant to this subsection.

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

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

(6) When weekly compensation is paid pursuant to an award of a worker's compensation magistrate, an arbitrator, the board, the appellate commission, or a court, interest on the compensation shall be paid at a rate calculated in the same manner as interest on a money judgment in a civil action under section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(7) By April 1, 2012, the director of the worker's compensation agency shall coordinate with the department of technology, management, and budget on the development of comprehensive data and shall file with the secretary of the senate and the clerk of the house of representatives a report making recommendations to the legislature on a system utilizing advanced analytics for the detection and prevention of fraud, waste, and abuse in the worker's compensation system. Additionally, the director shall include information on the number of cases filed, and the number of employees who had benefits reduced as a result of a determination of their wage earning capacity.

Sec. 835. (1) After 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a worker's compensation magistrate. If special circumstances are found which in the judgment of the worker's compensation magistrate require the payment of a lump sum, the worker's compensation magistrate may direct at any time in any case that the deferred payments due under this act be commuted on the present worth at 10% per annum to 1 or more lump sum payments and that the lump sum payments shall be made by the employer or carrier. When a proposed redemption agreement is filed, it may be treated as a lump sum application, within the discretion of a worker's compensation magistrate. The filing of a proposed redemption agreement or lump sum application shall not be considered an admission of liability and if the worker's compensation magistrate treats a proposed redemption agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability.

(2) The carrier shall notify the employer in writing, which may be electronically transmitted, of the proposed redemption agreement not less than 10 business days before a hearing on the proposed redemption agreement is held. The notice shall include all of the following:

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

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

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

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

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

(4) Except as otherwise provided in this subsection, for all proposed redemption agreements filed after December 31, 1983, each party to the agreement shall be liable for a fee of $100.00 to be used to defray costs incurred by the agency, the worker's compensation board of magistrates, and the worker's compensation appellate commission administering this act, except that in the case of multiple defendants the fee for the party defendant shall be $100.00 to be paid by the carrier covering the most recent date of injury. The agency shall develop a system to provide for the collection of the fee provided for by this subsection.

(5) The fees collected pursuant to subsection (4) shall be placed in the worker's compensation administrative revolving fund under section 835a. Money in the worker's compensation administrative revolving fund shall only be used to pay for costs in regard to the following specific purposes of the agency, the worker's compensation board of magistrates, and the Michigan compensation appellate commission as applicable:

(a) Education and training.

(b) Case management.

(c) Hearings and claims for review.

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

Sec. 836. (1) A redemption agreement shall only be approved by a worker's compensation magistrate if the worker's compensation magistrate finds all of the following:

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

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

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

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

(2) Parties may stipulate in writing to the determinations in subsection (1). If all parties stipulate in writing to those determinations, the stipulation may serve as a waiver of hearing, and the magistrate may approve the redemption agreement. A magistrate may conduct a hearing on a proposed stipulation.

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

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

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

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

(d) Whether the injured employee has any health, disability, or related insurance.

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

(f) The marital status of the injured employee.

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

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

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

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

(5) An employer shall be considered a party for purposes under this section.

Sec. 837. (1) All redemption agreements and lump sum applications filed under the provisions of section 835 shall be approved or rejected by a worker's compensation magistrate.

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

(3) Unless review is ordered or requested within 15 days after the date the order of the worker's compensation magistrate is mailed, or distributed electronically, to the parties, the order shall be final.

Sec. 847. (1) Except as otherwise provided for under this act, upon the filing with the agency by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the case shall be set for mediation or hearing, as applicable. An application may be submitted electronically. A worker's compensation magistrate shall hear a case that is set for hearing.

(2) The worker's compensation magistrate, in addition to a written order, shall file a concise written opinion stating his or her reasoning for the order including any findings of fact and conclusions of law. The order and opinion shall be part of the record of the hearing. The order and opinion may be filed and distributed electronically.

(3) If the agency or the Michigan administrative hearing system determines that a case may be resolved by mediation, the case may be mediated by the parties. If the matter is not resolved by the mediation, the case shall be set for hearing.

Sec. 853. Process and procedure under this act shall be as summary as reasonably may be. The director, worker's compensation magistrates, arbitrators, and the Michigan compensation appellate commission may administer oaths, subpoena witnesses, and examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. A subpoena signed by an attorney of record in the action has the force and effect of an order signed by the worker's compensation magistrate or arbitrator associated with the hearing. Any witness who refuses to obey a subpoena, who refuses to be sworn or testify, or who fails to produce any papers, books, or documents touching any

matter under investigation or any witness, party, or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court. An application for this purpose may be made to any circuit court within whose jurisdiction the offense is committed and for which purpose the court is given jurisdiction.

Sec. 862. (1) A claim for review filed pursuant to section 859a, 861, or 864(11) does not operate as a stay of payment to the claimant of 70% of the weekly benefit required by the terms of the award of the worker's compensation magistrate or arbitrator. Payment shall commence as of the date of the worker's compensation magistrate's or arbitrator's award, and shall continue until final determination of the appeal or for a shorter period if specified in the award. Benefits accruing prior to the award shall be withheld until final determination of the appeal. If the weekly benefit is reduced or rescinded by a final determination, the carrier is entitled to reimbursement in a sum equal to the compensation paid pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the second injury fund established in chapter 5. If the award is affirmed by a final determination, the carrier shall pay all compensation which has become due under the provisions of the award, less any compensation already paid. Interest shall not be paid on amounts paid pending final determination. Payments made to the claimant during the appeal period is considered as accrued compensation for purposes of determining attorneys' fees under the rules of the agency.

(2) A claim for review filed pursuant to section 859a or 864(11) of a case for which an application under section 847 is filed after March 31, 1986 does not operate as a stay of providing reasonable and necessary medical benefits required by the terms of the award. Medical benefits shall be provided as of the date of the award and shall continue until final determination of the appeal or for a shorter period if specified in the award. Benefits accruing prior to the award shall be withheld until final determination of the appeal. If the benefit amount is reduced or rescinded by a final determination, the carrier shall be reimbursed for the amount of the expenses incurred in providing the medical benefits pending the appeal in excess of the amount finally determined. Reimbursement shall be paid upon audit and proper voucher from the general fund of the state. If the award is affirmed by a final determination, the carrier shall provide all medical benefits that have become due under the provisions of the award, less any benefits already provided for. Interest shall not be paid on amounts paid pending final determination.

Enacting section 1. Sections 209, 211, 215, 223, and 364 and chapter 7 of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.209, 418.211, 418.215, 418.223, 418.364, and 418.700 to 418.751, are repealed.

Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved .....

Governor