

WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)
Act 317 of 1969
Chapter 8
PROCEDURE

418.801 Payment of compensation; time; manner; record; reports; daily charges as elements of loss; failure to notify carrier of disability or death; interest; detection and prevention of fraud, waste, and abuse; recommendations.

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.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1977, Act 302, Eff. Mar. 30, 1978 ;-- Am. 1981, Act 194, Eff. Jan. 1, 1982 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date."

Popular Name: Act 317

418.805 Record of injuries; contents; reports to bureau.

Sec. 805.

Every employer who is subject to this act shall keep a record of all injuries causing death or disability of any employee arising out of and in the course of the employment, which record shall give the name, address, age, wages of the deceased or disabled employee, the time and cause of the accident, the nature and extent of the injury and disability and such other information as the director may reasonably require. Reports based upon such record shall be furnished to the bureau at such times and in such manner as the director may reasonably require.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.811 Compensation; effect of savings, insurance, or other benefits.

Sec. 811.

Any savings or insurance of the injured employee, or any contribution made by the injured employee to any benefit fund or protective association independent of this act, shall not be taken into consideration in determining the compensation to be paid under this act, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as provided in this act, be considered in fixing the compensation under this act, except as provided in sections 161, 354, 358, 821, and 846.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1981, Act 201, Eff. Jan. 1, 1982

Popular Name: Act 317

418.815 Compensation; waiver of right, validity.

Sec. 815.

No agreement by an employee to waive his rights to compensation under this act shall be valid except that employees or their dependents as defined in section 161, after injury only, may elect as provided in section 161.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.821 Assignment, attachment, or garnishment; liability as first lien on property of employer; enforcement of assignment to group disability or hospitalization insurance company, health maintenance organization, or medical care and hospital service corporation; attorney fees; self-insurer as "insurance company"; adjustment; rights of assignment of labor management health and welfare fund.

Sec. 821.

(1) A payment under this act shall not be assignable or subject to attachment or garnishment or be held liable in any way for a debt. In the case of the insolvency of an employer, liability for compensation under this act shall constitute a first lien upon all the property of the employer liable for the compensation, paramount to all other claims or liens, except for wages and taxes, which lien shall be enforced by order of the court.

(2) This section shall not apply to or affect the validity of an assignment made to an insurance company; health maintenance organization licensed under former Act No. 264 of the Public Acts of 1974, or part 210 of Act No. 368 of the Public Acts of 1978, as amended, being sections 333.21001 to 333.21099 of the Michigan Compiled Laws; or a medical care and hospital service corporation organized or consolidated under former Act No. 108 or 109 of the Public Acts of 1939, or any successor organization making an advance or payment to an employee under a group disability or group hospitalization insurance policy which provides that benefits shall not be payable under the policy for a period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of or in the course of employment. When a group disability or hospitalization insurance company; health maintenance organization licensed under former Act No. 264 of the Public Acts of 1974, or part 210 of Act No. 368 of the Public Acts of 1978, as amended; or a medical care and hospital service corporation organized or consolidated under former Act No. 108 or 109 of the Public Acts of 1939, or any successor organization enforces an assignment given to it as provided in this section, it shall pay, pursuant to rules established by the director, a portion of the attorney fees of the attorney who secured the worker's compensation recovery.

(3) As used in this section, "insurance company" includes a self-insurer. If an insurance company insures both worker's compensation and group disability or group hospitalization, it shall be permitted the adjustment provided in this section.

(4) A labor management health and welfare fund shall be entitled to the same rights of assignment as an insurance company is entitled to under this section.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1978, Act 523, Imd. Eff. Dec. 20, 1978 ;-- Am. 1982, Act 282, Imd. Eff. Oct. 7, 1982

Compiler's Notes: Acts 108 and 109 of 1939, referred to in this section, were repealed by Act 350 of 1980.

Popular Name: Act 317

418.823 Mental incompetents or minors.

Sec. 823.

If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may claim and exercise in his behalf such right or privilege.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.827 Third party liability.

Sec. 827.

(1) Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his or her dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with this section. If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of action by any party under this section, the parties shall notify, by certified mail at their last known address, the bureau, the injured employee, or in the event of the employee's death, his or her known dependents or personal representative or known next of kin, his or her employer, and the carrier. Any party in interest shall have a right to join in the action.

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

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

(4) If the injured employee or his or her dependents or personal representative settle their claim for injury or death or commence proceedings thereon against the third party before the payment of worker's compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as herein provided.

(5) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

(6) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. Expenses of recovery shall be apportioned by the court between the parties as their interests appear at the time of the recovery.

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1972, Act 285, Imd. Eff. Oct. 30, 1972 ;-- Am. 1993, Act 198, Eff. Dec. 28, 1994

Compiler's Notes: Section 3 of Act 198 of 1993 provides as follows: "Section 3. (1) Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act." (2) Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act."

Popular Name: Act 317

418.831 Compensation; acceptance, effect.

Sec. 831.

Neither the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.833 Application for further compensation; overpayment, recoupment.

Sec. 833.

(1) If payment of compensation is made, other than medical expenses, and an application for further compensation is later filed with the bureau, no compensation shall be ordered for any period which is more than 1 year prior to the date of filing of such application.

(2) When an employer or carrier takes action to recover overpayment of benefits, no recoupment of money shall be allowed for a period which is more than 1 year prior to the date of taking such action.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.835 Redemption of liability from personal injury; payment of lump sum; proposed redemption agreement as lump sum application; liability of employer; hearing; notice to employer; waiver; use of fees; applicability to proposed redemption agreements of subsections (2) to (5).

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.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1981, Act 193, Eff. Jan. 1, 1982 ;-- Am. 1983, Act 151, Imd. Eff. July 18, 1983 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 1996, Act 357, Imd. Eff. July 1, 1996 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: Section 2 of Act 151 of 1983 provides: "This amendatory act shall apply to proposed redemption agreements filed after December 31, 1983." For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date." For the abolishment of the Michigan compensation appellate commission and establishment of the new workers' disability compensation appeals commission within the workers' disability compensation agency in the department of labor and economic opportunity and the transfer of certain powers and duties of the Michigan compensation appellate commission to the workers' disability compensation appeals commission, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular Name: Act 317

418.835a Worker's compensation administrative revolving fund; creation; administration and use of fund; carry over.

Sec. 835a.

(1) The worker's compensation administrative revolving fund is created in the state treasury. The fund shall be administered by the department of labor and shall be used only as prescribed in section 835(5).

(2) Any money, including interest earned by the fund, remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall not be credited to or revert to the general fund.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.836 Approval of redemption agreement; findings; factors considered in making determination; employer as party.

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.

History: Add. 1981, Act 198, Eff. Jan. 1, 1984 ;-- Am. 1983, Act 151, Imd. Eff. July 18, 1983 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: Section 2 of Act 151 of 1983 provides: "This amendatory act shall apply to proposed redemption agreements filed after December 31, 1983." For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date."

Popular Name: Act 317

418.837 Approval or rejection of redemption agreements and lump sum applications; review; order; appeal; finality.

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.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date."

Popular Name: Act 317

418.841 Disputes or controversies concerning compensation or other benefits; submission to bureau; determination of questions arising under act; director as interested party; referral of claims to small claims division; notice; filing request for removal; hearing; representation; rules of evidence; record; claim exceeding \$2,000.00; finality of decision; request for hearing under MCL 418.847.

Sec. 841.

(1) Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. The director may be an interested party in all worker's compensation cases in questions of law.

(2) Any claim for which an application under section 847 is filed after March 31, 1986 shall be referred to a small claims division of the bureau if the claimant requests in writing that it be referred and the claim is any of the following:

- (a) For \$2,000.00 or less, concerns a definite period of time, and the employee has returned to work.
- (b) For \$2,000.00 or less and is for medical benefits only.
- (c) For \$2,000.00 or less, as determined by the bureau, with regard to any dispute or controversy.

(3) Upon a claim being referred to the small claims division, the bureau shall notify the carrier and any other opposing parties of that referral. A party opposing the claim, within 30 days of the notification being sent, may file with the bureau a request in writing that the claim be removed from the small claims division and be set for hearing under section 847. Upon receipt of the written request, the claim shall be removed from the small claims division and shall be set for hearing.

(4) A worker's compensation magistrate shall hear a matter referred to the small claims division.

(5) The parties to a matter heard in the small claims division may represent themselves or be represented by an authorized agent but shall not be represented by an attorney. If a party is represented by an attorney, the matter shall be removed from the small claims division and shall be set for a hearing under section 847.

(6) The rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but a magistrate may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Depositions shall not be allowed to be used as evidence. Medical reports may be used as evidence.

(7) A record of a hearing shall not be made in the small claims division.

(8) If it is determined by the magistrate, or the parties before a decision is rendered, that the claim exceeds \$2,000.00, the matter shall be removed from the small claims division and shall be set for a hearing under section 847 unless the parties agree in writing that the matter shall be heard in the small claims division.

(9) A worker's compensation magistrate's decision as to any dispute or controversy in a matter heard in the small claims division shall be final and nonappealable in the absence of fraud as provided in section 28 of article VI of the state constitution of 1963.

(10) The parties to a matter decided under subsections (2) to (9) may request a hearing under section 847 with respect to any other dispute or controversy for which there has not been a worker's compensation magistrate's decision in the small claims division.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.845 Out-of-state injuries; jurisdiction; benefits.

Sec. 845.

The worker's compensation agency shall have jurisdiction over all controversies arising out of injuries suffered outside this state if the injured employee is employed by an employer subject to this act and if either the employee is a resident of this state at the time of injury or the contract of hire was made in this state. The employee or his or her dependents shall be entitled to the compensation and other benefits provided by this act.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 2008, Act 499, Imd. Eff. Jan. 13, 2009

Popular Name: Act 317

418.846 Worker's compensation benefits received under law of another state for same personal injury; credit.

Sec. 846.

If an employee or the employee's dependents receive worker's compensation benefits from an employer, a carrier, a principal, or a subcontractor under the law of another state for the same personal injury for which benefits are payable under this act, the amount recovered under the law of the other state, whether paid or to be paid in future installments, shall be credited against the benefits payable under this act.

History: Add. 1981, Act 202, Eff. Jan. 1, 1982

Popular Name: Act 317

418.847 Setting case for mediation or hearing; hearing; order; opinion; resolution of case by mediation.

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.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date." For the transfer of powers and duties of the executive director of the Michigan administrative hearing system to the director of the workers' disability compensation agency, and the transfer of the workers' disability compensation agency and the workers' compensation board of magistrates from the department of licensing and regulatory affairs to the department of labor and economic opportunity, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular Name: Act 317

418.851 Inquiries and investigations; evidence; place of hearing; filing order with bureau; stipulations; modification or correction of errors; order of bureau.

Sec. 851.

The worker's compensation magistrate at the hearing of the claim shall make such inquiries and investigations as

he or she considers necessary. A claimant shall prove his or her entitlement to compensation and benefits under this act by a preponderance of the evidence. The hearing shall be held at the locality where the injury occurred and the order of the worker's compensation magistrate shall be filed with the bureau. If the parties stipulate within 30 days to modify or correct errors in the decision issued, the magistrate shall modify or correct errors in the decision in accordance with such stipulations. All such stipulations shall comply with the provisions of this act. Unless a claim for review is filed by a party within 30 days, the order shall stand as the order of the bureau.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.851a Repealed. 1989, Act 117, Eff. Mar. 30, 1992.

Compiler's Notes: The repealed section granted further time to claim review under MCL 418.851.

Popular Name: Act 317

418.852 Liability of carrier or fund; determination; reimbursement of carrier or fund.

Sec. 852.

(1) The liability of a carrier or fund regarding a claim under this act shall be determined by the hearing referee or worker's compensation magistrate, as applicable, at the time of the award of benefits.

(2) If a carrier or fund originally determined to be liable pursuant to subsection (1) is subsequently determined to not be liable or not to the same extent as originally determined, that carrier or fund shall be reimbursed by the liable party or parties with interest at 12% per annum.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.853 Process and procedure; oaths; subpoenas; examination of books and records; contempt; application to circuit court.

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.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date." For the abolishment of the

Michigan compensation appellate commission and establishment of the new workers' disability compensation appeals commission within the workers' disability compensation agency in the department of labor and economic opportunity and the transfer of certain powers and duties of the Michigan compensation appellate commission to the workers' disability compensation appeals commission, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular Name: Act 317

418.855 Statement of injured employee; copy; admissibility as evidence.

Sec. 855.

If the employer, carrier or any agent of either takes a statement from an injured employee, the statement cannot be used as evidence against the employee unless a copy thereof is given to him at the time it is taken.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.858 Cost of hearing; fees of attorneys and physicians; disagreement as to fees; application for hearing; order; review; maximum attorney fees; rules; special order awarding fees; computation of attorney fees; limitation on fees; reduction in fees.

Sec. 858.

(1) The cost of a hearing, including the cost of taking stenographic notes of the testimony presented at the hearing, not exceeding the taxable costs allowed in actions at law in the circuit courts of this state, shall be fixed by the board of magistrates and paid by the state as other expenses of the state are paid. The payment of fees for all attorneys and physicians for services under this act shall be subject to the approval of a worker's compensation magistrate. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the worker's compensation magistrate, review may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appellate commission on request of an interested party, if a request is filed within 15 days.

(2) The director, by rule, may prescribe maximum attorney fees and the manner in which the amount may be determined or paid by the employee; but the maximum attorney fees prescribed by the director shall not be based upon a weekly benefit amount after coordination which is higher than $\frac{2}{3}$ of the state average weekly wage at the time of the injury. For claims in which an application under section 847 is filed after March 31, 1986, the maximum attorney fee shall be based upon the coordinated worker's compensation benefit amount according to a contingency fee schedule, as provided for under rules promulgated pursuant to this act, but if this would result in a fee of less than \$500.00, the claimant may agree to pay a sum, as specified in a written agreement between the claimant and the attorney prior to the filing of an application for hearing, so that the total fee received by the attorney would be not more than \$500.00. When fees are requested in excess of that provided by rule, the director may award the fees by special order. In the computation of attorney fees for a case in which an application under section 847 is filed after March 31, 1986 and decided by the worker's compensation appellate commission, the fees shall be assessed on not more than 104 weeks of the period the matter was pending before the commission. This limitation on fees applies only to weekly compensation and does not apply to the period of time the matter was pending review before the court of appeals or supreme court.

(3) The director is authorized to promulgate rules calling for reductions in attorney fees in cases where applications for hearing have been dismissed, or where, in the discretion of the worker's compensation magistrate, such action is appropriate.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1980, Act 357, Eff. Jan. 1, 1981 ;-- Am. 1981, Act 196, Eff. Jan. 1, 1982 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.859 Repealed. 1989, Act 117, Eff. Mar. 30, 1992.

Compiler's Notes: The repealed section pertained to review by repeal board.

Popular Name: Act 317

418.859a Filing claim for review; time; copy of testimony, depositions, and other documents.

Sec. 859a.

(1) Except as otherwise provided for in this act, a claim for review of a case for which an application under section 847 is filed after March 31, 1986 shall be filed with the appellate commission. A claim for review shall be filed with the commission not more than 30 days after the date the order of the worker's compensation magistrate or director is sent to the parties. For sufficient cause shown, the commission may grant further time in which to claim a review.

(2) If the employer or carrier files a claim for review to the appellate commission, or appeals to the court of appeals, or the supreme court, a copy of the testimony, depositions, and other documents necessary for the appeal shall be furnished by the employer or carrier to the employee or the employee's attorney.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.860 Repealed. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's Notes: The repealed section pertained to filing claim for review of case pending review by appeal board for 3 or more years.

Popular Name: Act 317

418.861 Findings of fact conclusive; questions of law.

Sec. 861.

The findings of fact made by the board acting within its powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have power to review questions of law involved in any final order of the board, if application is made by the aggrieved party within 30 days after such order by any method permissible under the rules of the courts of the laws of this state.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.861a Hearing and decision; findings of fact; definitions; transcript and brief; copies; reply brief; cross appeal and brief; specifications; review and decision; adoption of order and opinion; scope of review; remand; analyses of evidence; findings of fact conclusive; review of questions of law; modification or correction of errors in decision.

Sec. 861a.

(1) Any matter for which a claim for review under section 859a has been filed shall be heard and decided by the appellate commission.

(2) Until October 1, 1986 findings of fact made by a worker's compensation magistrate shall be considered conclusive by the commission if supported by competent, material, and a preponderance of the evidence on the whole record.

(3) Beginning October 1, 1986 findings of fact made by a worker's compensation magistrate shall be considered conclusive by the commission if supported by competent, material, and substantial evidence on the whole record. As used in this subsection, "substantial evidence" means such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion.

(4) As used in subsections (2) and (3), "whole record" means the entire record of the hearing including all of the evidence in favor and all the evidence against a certain determination.

(5) A party filing a claim for review under section 859a shall file a copy of the transcript of the hearing within 60 days of filing the claim for review and shall file its brief with the commission and provide any opposing party with a copy of the transcript and its brief not more than 30 days after filing the transcript. For sufficient cause shown, the commission may grant further time in which to file a transcript.

(6) Not more than 30 days after receiving a copy of the transcript and brief of the appealing party, an opposing party shall file its reply brief with the commission and provide a copy of the brief to the appealing party. In addition to filing its reply brief within the 30 days, the opposing party may file a cross appeal and brief in support thereof specifying the findings of fact and conclusions of law contained in the record that support the position of the party.

(7) A party responding to a cross appeal shall have 30 days after receiving a copy of the brief in support of the cross appeal to file its reply brief with the commission. The reply brief shall specify the findings of facts and conclusions of law in the record that support that party's position.

(8) A party filing a claim for review under section 859a shall specify to the commission those portions of the record that support that party's claim and any party opposing such claim shall specify those portions of the record that support that party's position.

(9) Not more than 15 days after all briefs have been filed with the commission, the matter shall be referred for review and decision to either a panel of the commission or the entire commission as provided for under section 274.

(10) The commission or a panel of the commission, may adopt, in whole or in part, the order and opinion of the worker's compensation magistrate as the order and opinion of the commission.

(11) The commission or a panel of the commission shall review only those specific findings of fact or conclusions of law that the parties have requested be reviewed.

(12) The commission or a panel of the commission may remand a matter to a worker's compensation magistrate for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review.

(13) A review of the evidence pursuant to this section shall include both a qualitative and quantitative analysis of that evidence in order to ensure a full, thorough, and fair review.

(14) The findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have the power to review questions of law involved with any final order of the commission, if application is made by the aggrieved party within 30 days after the order by any method permissible under the Michigan court rules.

(15) If the parties stipulate within 30 days after the decision is rendered to modify or correct errors in the decision, the commission shall modify or correct errors in the decision in accordance with the stipulations. Stipulations shall otherwise comply with the provisions of this act.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 97, Imd. Eff. Apr. 13, 1994

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.861b Vexatious claim or proceedings; disciplinary action.

Sec. 861b.

The commission, upon its own motion, or the motion of any party, may dismiss a claim for review, assess costs, or take other disciplinary action when it has been determined that the claim or any of the proceedings with regard to the claim was vexatious by reason of either of the following:

(a) That the claim was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was meritorious issue to be determined on appeal.

(b) That any pleading, motion, argument, petition, brief, document, or appendix filed in the cause or any testimony presented in the cause was grossly lacking in the requirements of propriety or grossly disregarded the requirements of a fair presentation of the issues.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.862 Claim for review as stay of payment; commencement and duration of payment; withholding benefits accruing prior to award; reimbursement of carrier; payment by carrier; interest; payments as accrued compensation in determining attorneys' fees; medical benefits.

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.

History: Add. 1975, Act 34, Imd. Eff. May 6, 1975 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Constitutionality: This section, the "70% statute", is constitutional. *McAvoy v H B Sherman Company*, 401 Mich 419; 258 NW2d 414 (1977).

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date."

Popular Name: Act 317

418.863 Presentation of certified copy of order to circuit court; judgment.

Sec. 863.

Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1994, Act 271, Imd. Eff. July 11, 1994
Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.
Popular Name: Act 317

418.864 Hearing by arbitrator; qualifications of arbitrator; adherence to civil rules of evidence; testimony; record; transcript; costs; place of hearing; briefs; order; opinion; findings of fact; review of questions of law; voluntary arbitration; fee of arbitrator.

Sec. 864.

(1) Any case for which an application for a hearing under section 847 has been filed may be heard by 1 arbitrator mutually agreed upon in writing by the parties.

(2) If a dispute or controversy is to be reviewed by the appeal board or the appellate commission, 1 arbitrator mutually agreed upon in writing by all parties may hear the matter and render a decision based upon that record.

(3) An arbitrator provided for under this section shall be a member in good standing of the state bar of Michigan or an arbitrator of the American arbitration association.

(4) An arbitrator shall adhere to the civil rules of evidence at an arbitration hearing if the failure to do so will result in substantial prejudice to the rights of a party.

(5) Testimony shall be taken under oath and a record of the hearing shall be made. Any party, at that party's expense, may provide for a written transcript of the proceedings. The cost of any transcription ordered by the arbitrator for his or her own use shall be paid for by the general fund of the state.

(6) The arbitrator shall conduct the hearing in the county in which the injury occurred or anywhere mutually agreed upon by all of the parties.

(7) The arbitrator may require submission of written briefs within 30 days after the close of the hearing. In the written briefs, each party may summarize the evidence and shall specify those portions of the record that support that party's claim.

(8) The arbitrator shall render his or her order within 30 days after the close of the hearing or the receipt of briefs, if required. The order shall be in writing and shall be signed by the arbitrator.

(9) In addition to the order, the arbitrator shall issue a written opinion which states his or her reasoning for the order, including any findings of fact and conclusions of law.

(10) The order and opinion shall be part of the record of the arbitration proceeding under this chapter.

(11) The findings of fact made by the arbitrator acting within his or her powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have power to review questions of law involved in any final order of the arbitrator, if application is made by the aggrieved party within 30 days after the order by any method permissible under the Michigan court rules.

(12) Arbitration under this section shall be voluntary.

(13) The fee of an arbitrator under this section shall be paid from the general fund of the state in amounts as prescribed by rules promulgated by the director.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.865 Examination by physicians; fee.

Sec. 865.

The bureau may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be \$5.00 and traveling expenses, but the bureau may allow additional reasonable amounts in extraordinary cases.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.867 Investigation commission; report, expenses.

Sec. 867.

Whenever in the opinion of the governor the provisions of this act shall be unfair to either employees or employers, he may appoint a commission to investigate thoroughly the workings of the act and report thereon to the governor. The report shall be submitted by him to the legislature at its first regular or special session held after the receipt of the report. The report, in addition to the recommendations thereof, shall contain the text of needed changes or amendments to place this act upon a perfectly fair basis. The members of the commission shall have power to summon witnesses, administer oaths and compel the production of books and papers. They shall each receive compensation at the rate of \$10.00 per day, together with actual and necessary expenses incurred in the performance of official duties, such compensation and expenses to be audited and allowed by the department of administration and paid out of the general fund. Such compensation and expenses shall not exceed the sum of \$3,000.00.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.891 Application of prior law; new benefit rates; saving clause; applicability of amendments to personal injuries and work-related diseases incurred on or after December 19, 2011.

Sec. 891.

(1) To the extent that they are reenacted herein, all the provisions of former 1965 PA 44 apply only to personal injuries occurring on or after September 1, 1965, except as otherwise provided in that act and except for the amendment to part 2, section 4 of that act, concerning selection of physicians as provided in that act.

(2) In all cases where the date of injury is on or after September 1, 1965, and the employee or his dependents would be entitled to the new maximum weekly benefit rates, the employee or his dependents shall receive, without application to the workers' compensation agency, an adjustment to the increased maximum rate as it becomes effective September 1, 1966, or September 1, 1967, for any compensable weeks subsequent to the above dates.

(3) This act does not affect or impair any right accruing, accrued or acquired or any liability developing or imposed prior to the time this act takes effect, and all such rights and liabilities shall be governed by the provisions of former 1912 (1st Ex Sess) PA 10. The first adjustment to the maximum rates of weekly compensation provided previously in section 9(f) of part 2 of former 1912 (1st Ex Sess) PA 10, shall remain in effect to the extent provided in such section and the amount of change in the average weekly wage not incorporated in the first adjustment made January 1, 1969 shall be carried forward as provided in such section.

(4) Notwithstanding sections 301(14) and 401(10), the amendments to this act made by 2011 PA 266 apply to personal injuries and work-related diseases incurred on or after December 19, 2011.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 2012, Act 83, Imd. Eff. Apr. 11, 2012

Compiler's Notes: Act 10 of 1912, 1st Ex. Sess., referred to in this section, was repealed by Act 317 of 1969.

Popular Name: Act 317

418.898 Repeal.

Sec. 898.

Act No. 357 of the Public Acts of 1947, as amended, being sections 408.1 to 408.33 of the Compiled Laws of 1948 and Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, being sections 411.1 to 417.61 of the Compiled Laws of 1948, are repealed.

History: 1969, Act 317, Eff. Dec. 31, 1969
Popular Name: Act 317

418.899 Effective date.

Sec. 899.

This act shall take effect December 31, 1969.

History: 1969, Act 317, Eff. Dec. 31, 1969
Popular Name: Act 317