

HOUSE BILL NO. 6295

December 13, 2024, Introduced by Rep. Haadsma and referred to the Committee on Government Operations.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending sections 301, 311, 313, 351, 354, 355, 356, 358, 361,
371, 401, and 891 (MCL 418.301, 418.311, 418.313, 418.351, 418.354,
418.355, 418.356, 418.358, 418.361, 418.371, 418.401, and 418.891),
sections 301, 354, 358, 361, and 401 as amended by 2011 PA 266,
sections 313, 355, and 371 as amended by 1982 PA 32, section 351 as
amended by 1980 PA 357, section 356 as amended by 2014 PA 231, and
section 891 as amended by 2012 PA 83; and to repeal acts and parts
of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. (1) An employee, who receives a personal injury
 2 arising out of and in the course of employment by an employer who
 3 is subject to this act at the time of the injury, ~~shall~~**must** be
 4 paid compensation as provided in this act. A personal injury under
 5 this act is compensable if work causes, contributes to, ~~or~~
 6 aggravates, ~~pathology in a manner so as to create a pathology that~~
 7 ~~is medically distinguishable from any pathology that existed prior~~
 8 ~~to the injury. In the case of death resulting~~**accelerates, or**
 9 **worsens a symptom or pathology related to a physical or mental**
 10 **condition, regardless of any preexisting or coexisting condition**
 11 **the employee may have. If an employee dies** from the personal injury
 12 to the employee, compensation ~~shall~~**must** be paid to the employee's
 13 dependents **or the employee's estate** as provided in this act. Time
 14 of injury or date of injury as used in this act ~~in the case of~~**for**
 15 a disease or ~~in the case of~~ an injury not attributable to a single
 16 event is the last day of work in the employment in which the
 17 employee was last subjected to the conditions that resulted in the
 18 employee's disability or death.

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

27 **(2) (3)** An employee going to or from ~~his or her~~**the employee's**
 28 work, while on the premises where the employee's work is to be

1 performed, and within a reasonable time before and after ~~his or her~~
 2 **the employee's** working hours, is presumed to be in the course of
 3 ~~his or her~~ **the employee's** employment. Notwithstanding this
 4 presumption, an injury incurred in the pursuit of an activity, the
 5 major purpose of which is social or recreational, is not covered
 6 under this act, ~~Any and any~~ cause of action brought for ~~such an~~
 7 **the** injury is not subject to section 131.

8 (3) ~~(4)~~ As used in this chapter:

9 (a) "Disability" means a limitation of an employee's wage
 10 earning capacity in work suitable to ~~his or her~~ **the employee's**
 11 qualifications and training resulting from a personal injury or
 12 work-related disease. A limitation of wage earning capacity occurs
 13 ~~only if~~ a personal injury covered under this act results in the
 14 ~~employee's~~ **employee** being unable to perform ~~all jobs paying the~~
 15 ~~maximum wages~~ **or obtain 1 or more jobs** in work suitable to ~~that the~~
 16 employee's qualifications and training. ~~, which includes work that~~
 17 ~~may be performed using the employee's transferable work skills. A~~
 18 ~~disability is total if the employee is unable to earn in any job~~
 19 ~~paying maximum wages in work suitable to the employee's~~
 20 ~~qualifications and training. A disability is partial if the~~
 21 ~~employee retains a wage earning capacity at a pay level less than~~
 22 ~~his or her maximum wages in work suitable to his or her~~
 23 ~~qualifications and training. The establishment of disability does~~
 24 not create a presumption of wage loss.

25 ~~(b) Except as provided in section 302, "wage earning capacity"~~
 26 ~~means the wages the employee earns or is capable of earning at a~~
 27 ~~job reasonably available to that employee, whether or not wages are~~
 28 ~~actually earned. For the purposes of establishing a limitation of~~
 29 ~~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.~~

(b) ~~(c)~~ "Wage loss" means ~~the amount of~~ **reduced** wages lost due **connected** 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.~~ **wage loss to receive weekly wage loss benefits. If the employee establishes a connection between disability and wage loss, other factors that contribute to the employee's wage loss do not affect the payment or amount of wage loss benefits due the employee.**

~~(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.~~

(4) ~~(7) If~~ Except as otherwise provided in subsection (6), if a personal injury arising out of the course of employment ~~causes total~~ results in disability and connected to wage loss and the injured employee is entitled to wage loss benefits, the ~~does not receive wages in a week after the injury, the~~ employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to ~~80%~~ **90% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under section 355. Compensation ~~shall~~ **must** be paid for the duration of the disability.**

(5) ~~(8) If~~ Except as otherwise provided in subsection (6), if a personal injury arising out of the course of employment ~~causes partial~~ results in disability and connected to wage loss and the employee is entitled to wage loss benefits, ~~receives wages in a week after the injury, the~~ employer shall pay or cause to be paid

1 to the injured employee as provided in this section weekly
 2 compensation equal to ~~80%~~ **90%** of the difference between the injured
 3 employee's after-tax average weekly wage before the personal injury
 4 and the employee's ~~wage-earning capacity~~ **after-tax actual wages**
 5 **paid** after the personal injury, but not more than the maximum
 6 weekly rate determined under section 355. Compensation ~~shall~~ **must**
 7 be paid for the duration of the disability.

8 **(6)** ~~(9)~~ If disability and wage loss are established,
 9 entitlement to weekly wage loss benefits ~~shall~~ **must** be determined
 10 as applicable ~~pursuant to~~ **under** this section and as follows:

11 (a) If an employee receives a bona fide offer of reasonable
 12 employment from the **employee's** previous employer, another employer,
 13 or through the Michigan unemployment insurance agency and the
 14 employee refuses that employment without good and reasonable cause,
 15 the employee ~~shall be~~ **is** considered to have voluntarily removed
 16 himself or herself from the ~~work force~~ **workforce** and is not
 17 entitled to any wage loss benefits under this act during the period
 18 of refusal. **The employer has the burden of proof of establishing**
 19 **that the employee received a bona fide offer of reasonable**
 20 **employment.**

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

25 ~~(c) If an employee is employed and the weekly wage of the~~
 26 ~~employee is less than that which the employee received before the~~
 27 ~~date of injury, the employee shall receive weekly benefits under~~
 28 ~~this act equal to 80% of the difference between the injured~~
 29 ~~employee's after-tax weekly wage before the date of injury and the~~

1 ~~after tax weekly wage that the injured employee earns after the~~
2 ~~date of injury, but not more than the maximum weekly rate of~~
3 ~~compensation, as determined under section 355.~~

4 (b) ~~(d)~~ If an employee is employed and the average weekly wage
5 ~~of the employee~~ **earns a wage in a week that** is equal to or more
6 than the average weekly wage the employee received before the date
7 of injury, the employee is not entitled to any wage loss benefits
8 under this act for ~~the duration that week~~ of that employment.

9 (c) If an employee, after being employed under this subsection
10 for less than 100 weeks, loses the employee's job, the employee's
11 personal injury is conclusively presumed to result in disability
12 connected to wage loss.

13 (d) If an employee, after being employed under this subsection
14 for more than 100 weeks, loses the employee's job, proof of work-
15 related disability connected to wage loss is a question of fact.

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

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

23 ~~(ii) If the employee was employed for 100 weeks or more but~~
24 ~~less than 250 weeks, then after exhausting unemployment benefit~~
25 ~~eligibility, a worker's compensation magistrate may determine that~~
26 ~~the employment since the time of the injury has not established a~~
27 ~~new wage earning capacity and, if the magistrate makes that~~
28 ~~determination, benefits shall be based on his or her average weekly~~
29 ~~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.~~

(7) ~~(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 that must~~ terminate the benefits of the employee ~~pursuant to~~ **under** subsection ~~(9)(a).~~ **(6)(a)**.

(8) ~~(11)~~ "Reasonable employment", as used in this section, means **suitable** work that is within ~~the~~ **an** employee's **qualifications, training, and** capacity to perform that poses no ~~clear and proximate threat~~ **unreasonable risk** to that employee's health and safety, and that is within a reasonable distance from ~~that~~ **the** 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.~~

(9) ~~(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.

(10) ~~(13)~~ A person **or entity** 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~~ **the employee** or others of a right afforded by this act. **In addition to any other benefits payable under this act, a person aggrieved by a violation of this subsection may bring a tort action to recover damages or pursue sanctions before a worker's compensation magistrate. If a worker's compensation magistrate determines that a person or entity violated this subsection, in addition to any other benefits owing under this act not subject to the maximum rate under section 355, the magistrate shall order the person or entity to pay to the aggrieved person, without regard to disability or wage loss, an amount equal to 100 weeks of the aggrieved person's average weekly wage earned at the time of the discharge, discrimination, or injury, whichever is greater.**

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

Sec. 311. ~~No compensation shall be paid under this act for any injury which does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the eighth day after the injury. If incapacity continues for 2 weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.~~ **Compensation must be paid under this act for any period of time in which a work injury or occupational disease results in disability connected to wage loss.**

Sec. 313. (1) As used in this act, "after-tax average weekly wage" means average weekly wage as defined in section 371 reduced by the prorated weekly amount ~~which~~ **that** would have been paid under

1 the federal insurance contributions act, 26 ~~U.S.C.~~**USC** 3101 to
 2 3126, state income tax and federal income tax, calculated on an
 3 annual basis using as the number of exemptions the disabled
 4 employee's dependents plus the employee, and without excess
 5 itemized deductions. Effective January 1, 1982, and each January 1
 6 thereafter, the applicable federal and state laws in effect on the
 7 preceding July 1 ~~shall~~**must** be used in determining the after-tax
 8 weekly wage.

9 (2) Each December 1, the director shall publish tables of the
 10 average weekly wage and ~~80%~~**90%** of after-tax average weekly wage
 11 that are to be in effect on the following January 1. These tables
 12 ~~shall be~~**are** conclusive for the purpose of converting an average
 13 weekly wage into ~~80%~~**90%** of after-tax average weekly wage.

14 Sec. 351. (1) While the incapacity for work resulting from a
 15 personal injury is total, the employer shall pay, or cause to be
 16 paid as provided in this section, to the injured employee, a weekly
 17 compensation of ~~80%~~**90%** of the employee's after-tax average weekly
 18 wage, but not more than the maximum weekly rate of compensation ~~7~~
 19 ~~as determined under section 355.~~ Compensation ~~shall~~**must** be paid
 20 for the duration of the disability. The conclusive presumption of
 21 total and permanent disability ~~shall~~**does** not extend beyond 800
 22 weeks from the date of injury and ~~thereafter~~**after the 800 weeks,**
 23 the question of permanent and total disability ~~shall be~~**is**
 24 determined in accordance with the fact, as the fact may be at that
 25 time.

26 (2) A totally and permanently disabled employee whose date of
 27 injury preceded July 1, 1968, is entitled to the compensation under
 28 this act that was payable to the employee immediately before the
 29 effective date of this subsection, or compensation equal to 50% of

1 the state average weekly wage as last determined under section 355,
2 whichever is greater.

3 (3) If an employee who is eligible for weekly benefits under
4 this act would have received greater weekly benefits under the
5 prior benefit standard of 2/3 of average weekly wages, subject to
6 the maximum benefits ~~which that~~ were in effect before January 1,
7 1982, ~~then the employee shall be~~ **is** entitled to ~~such the~~ greater
8 weekly benefits, but not at a rate ~~exceeding that~~ **exceeds** the
9 maximum rate in ~~his or her the employee's~~ dependency classification
10 under such law. This subsection does not authorize payment to an
11 employee according to any schedule of minimum benefits, except
12 those provided in section 356.

13 Sec. 354. (1) This section applies if either weekly or lump
14 sum payments are made to an employee ~~as a result because~~ of
15 liability under section ~~301(7)~~ **301(4)** or ~~(8), (5)~~, 351, or 835 ~~with~~
16 ~~respect to during~~ the same time period for which the employee also
17 received or is receiving ~~old age insurance benefit payments under~~
18 ~~the social security act, 42 USC 301 to 1397f;~~ payments under a
19 self-insurance plan, a wage continuation plan, or a disability
20 insurance policy provided by the employer ~~or~~ **under a** pension or
21 retirement ~~payments under a plan or program established or~~
22 maintained by the employer. Except as otherwise provided in this
23 section, the employer's obligation to pay or cause to be paid
24 weekly benefits, other than specific loss benefits under section
25 361(2) and (3), ~~shall must~~ be reduced by ~~these the following~~
26 amounts:

27 ~~(a) Fifty percent of the amount of the old age insurance~~
28 ~~benefits received or being received under the social security act,~~
29 ~~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.~~

(a) ~~(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)~~ **301(4)** or ~~(8)~~, ~~(5)~~, 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~~ **must** 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~~ **must** be paid pursuant to ~~under~~ section 821 to the attorney who secured the worker's compensation recovery.

(b) ~~(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)~~ **301(4)** or ~~(8)~~, ~~(5)~~, 351, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

1 **(c)** ~~(d)~~ Subject to subsection (12), the after-tax amount of
 2 the pension or retirement payments received or being received by
 3 the employee ~~, or which the employee is currently eligible to~~
 4 ~~receive if the employee has suffered total and permanent disability~~
 5 ~~and has reached full retirement age,~~ pursuant to a plan or program
 6 established or maintained by the same employer from whom benefits
 7 under section ~~301(7)~~ **301(4)** or ~~(8)~~, **(5)**, 351, or 835 are received,
 8 if the employee did not contribute directly to the pension or
 9 retirement plan or program. Subsequent increases in a pension or
 10 retirement program ~~shall do~~ not affect the coordination of these
 11 benefits.

12 **(d)** ~~(e)~~ The proportional amount, based on the ratio of the
 13 employer's contributions to the total contributions to the plan or
 14 program, of the after-tax amount of the pension or retirement
 15 payments received or being received by the employee pursuant to a
 16 plan or program established or maintained by the same employer from
 17 whom benefits under section ~~301(7)~~ **301(4)** or ~~(8)~~, **(5)**, 351, or 835
 18 are received, if the employee did contribute directly to the
 19 pension or retirement plan or program. Subsequent increases in a
 20 pension or retirement program ~~shall do~~ not affect the coordination
 21 of these benefits.

22 **(e)** ~~(f)~~ For those employers ~~who~~ **that** do not provide a pension
 23 plan, the proportional amount, based on the ratio of the employer's
 24 contributions to the total contributions made to a qualified profit
 25 sharing plan under section 401(a) of the internal revenue code, **26**
 26 **USC 401**, or any successor to section 401(a) of the internal revenue
 27 code, **26 USC 401**, covering a profit sharing plan ~~which~~ **that**
 28 provides for the payment of benefits only upon retirement,
 29 disability, death, or other separation of employment to the extent

1 that benefits are vested under the plan.

2 (f) A reduction made under subdivisions (c), (d), or (e), or
 3 the combination of reductions under subdivisions (c), (d), or (e),
 4 must not exceed 50% of the employee's weekly benefit rate. This
 5 subdivision applies to all claims regardless of the employee's date
 6 of injury occurring before, on, or after the effective date of the
 7 amendatory act that added this subdivision.

8 (2) To satisfy any remaining obligations under section ~~301(7)~~
 9 ~~301(4)~~ or ~~(8)~~, ~~(5)~~, 351, or 835, the employer shall pay or cause to
 10 be paid to the employee the balance due in either weekly or lump
 11 sum payments after the application of subsection (1).

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

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

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

25 ~~(i) Apply for social security benefits.~~

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

28 ~~(iii) Provide the employer or carrier with an authority for~~
 29 ~~release of information which shall be utilized by the employer or~~

1 ~~carrier to obtain necessary benefit entitlement and amount~~
2 ~~information from the social security administration. The authority~~
3 ~~for release of information shall be effective for 1 year.~~

4 ~~(4) If the employee fails to provide the proof of application~~
5 ~~or the authority for release of information as prescribed in~~
6 ~~subsection (3), the employer or carrier, with the approval of the~~
7 ~~agency, may discontinue the compensation benefits payable to the~~
8 ~~employee under section 301(7) or (8), 351, or 835 until the proof~~
9 ~~of application and the authority for release of information is~~
10 ~~provided. Compensation benefits withheld shall be reimbursed to the~~
11 ~~employee upon providing the required proof of application, or the~~
12 ~~authority for release of information, or both.~~

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

25 ~~(6) Within 30 days after either the date of first payment of~~
26 ~~compensation benefits under section 301(7) or (8), 351, or 835, or~~
27 ~~30 days after the date of application for any benefit under~~
28 ~~subsection (1)(b), (c), (d), or (e), whichever is later, the~~
29 ~~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.~~

~~(3) (8) Except as provided in subsections (4), (5), and (6), a~~
A credit or reduction of benefits otherwise payable for any week

1 ~~shall~~**must** not be taken under this section until there has been a
 2 determination of the benefit amount otherwise payable to the
 3 employee under section ~~301(7)~~**301(4)** or ~~(8)~~**(5)**, 351, or 835 and
 4 the employee has begun receiving the benefit payments.

5 **(4)** ~~(9)~~ Except as otherwise provided in this section, any
 6 benefit payments under ~~the social security act, or any fund,~~
 7 policy, or program as specified in subsection (1) that the employee
 8 has received or is receiving after March 31, 1982 and during a
 9 period in which the employee was receiving unreduced compensation
 10 benefits under section ~~301(7)~~**301(4)** or ~~(8)~~**(5)**, 351, or 835 ~~shall~~
 11 **must** be considered to have created an overpayment of compensation
 12 benefits for that period. The employer or carrier shall calculate
 13 the amount of the overpayment and send a notice of overpayment and
 14 a request for reimbursement to the employee. ~~Failure by~~**If** the
 15 employee ~~to~~**does not** reimburse the employer or carrier ~~within~~**not**
 16 **more than** 30 days after the mailing date of the notice of request
 17 for reimbursement, ~~allows~~ the employer or carrier, with the
 18 approval of the agency, ~~to~~**may** discontinue 50% of future weekly
 19 compensation payments under section ~~301(7)~~**301(4)** or ~~(8)~~**(5)**, 351,
 20 or 835. The compensation payments withheld ~~shall~~**must** be credited
 21 against the amount of the overpayment. Payment of the appropriate
 22 compensation benefit ~~shall~~**must** resume when the total amount of the
 23 overpayment has been withheld.

24 **(5)** ~~(10)~~ The employer or carrier taking a credit or making a
 25 reduction as provided in this section shall immediately report to
 26 the agency the amount of any credit or reduction, and as requested
 27 by the agency, furnish to the agency satisfactory proof of the
 28 basis for a credit or reduction.

29 ~~(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.~~

~~(6) (12) Nothing in this section shall be considered to compel an~~ **An** ~~employee to apply for early federal social security old-age insurance benefits or~~ **is not required** ~~to apply for early or reduced pension or retirement benefits.~~

~~(7) (13) As used in this section, "after-tax amount" means the gross amount of any benefit under subsection (1) (a), (1) (b), (1) (c), or (1) (d) , or (1) (e) reduced by the prorated weekly amount which that 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" after-tax amount, the tables provided for in section 313(2) shall must be used. The gross amount of any benefit under subsection (1) (a), (1) (b), (1) (c), or (1) (d), or (1) (e) shall be is presumed to be the same as the average weekly~~

1 wage for purposes of the table. The applicable ~~80%~~**90%** of after-tax
 2 amount as provided in the table ~~will~~**must** be multiplied by ~~1.25~~
 3 ~~which will be 1.11 and is~~ conclusive for determining the ~~"after-tax~~
 4 ~~amount"~~**after-tax amount** of benefits under subsection **(1) (a)** ,
 5 (1) (b) , (1) (c) , **or** (1) (d) . ~~, or (1) (e) .~~

6 **(8)** ~~(14)~~ This section does not apply to any payments received
 7 or to be received under a disability pension plan provided by the
 8 same employer, which plan is in existence on March 31, 1982. Any
 9 disability pension plan entered into or renewed after March 31,
 10 1982 may provide that the payments under that disability pension
 11 plan provided by the employer ~~shall~~**must** not be coordinated
 12 ~~pursuant to~~**under** this section.

13 **(9)** ~~(15)~~ With respect to volunteer ~~fire fighters,~~
 14 **firefighters**, volunteer safety patrol officers, volunteer civil
 15 defense workers, and volunteer ambulance drivers and attendants who
 16 are considered employees for purposes of this act ~~pursuant to~~**under**
 17 section 161(1) (a), the reduction of weekly benefits provided for
 18 disability insurance payments under subsection ~~(1) (b)~~ **(1) (a)** and
 19 ~~(c) and subsection (11)~~ **(b)** may be waived by the employer. An
 20 employer that is not a self-insurer may make the waiver provided
 21 for under this subsection only at the time a worker's compensation
 22 insurance policy is entered into or renewed.

23 **(10)** ~~(16)~~ This section does not apply to payments made to an
 24 employee as a result of liability ~~pursuant to~~**under** section 361(2)
 25 and (3) for the specific loss period ~~set forth therein.~~ **described**
 26 **in section 361(2) and (3)**. It is the intent of the legislature
 27 that, because benefits under section 361(2) and (3) are benefits
 28 that recognize human factors substantially in addition to the wage
 29 loss concept, coordination of benefits should not apply to those

1 benefits.

2 (11) ~~(17)~~ The decision of the Michigan ~~Supreme Court~~ **supreme**
 3 **court** in ~~Franks v White Pine Copper Division~~, **Franks v White Pine**
 4 **Copper Division**, 422 Mich 636 (1985) is declared to have been
 5 erroneously rendered insofar as it interprets this section, it
 6 having been and being the legislative intention not to coordinate
 7 payments under this section resulting from liability ~~pursuant to~~
 8 **under** section ~~301(7)~~ **301(4)** or ~~(8), (5)~~, 351, or 835 for personal
 9 injuries occurring before March 31, 1982. It is the purpose of the
 10 amendatory act that added this subsection to so affirm. This
 11 remedial and curative amendment ~~shall~~ **must** be liberally construed
 12 to effectuate this purpose.

13 (12) ~~(18)~~ This section applies only to payments ~~resulting that~~
 14 **result** from liability ~~pursuant to~~ **under** section ~~301(7)~~ **301(4)** or
 15 ~~(8), (5)~~, 351, or 835 for personal injuries ~~occurring that occur~~ on
 16 or after March 31, 1982. Any payments made to an employee resulting
 17 from liability ~~pursuant to~~ **under** section ~~301(7)~~ **301(4)** or ~~(8), (5)~~,
 18 351, or 835 for a personal injury occurring before March 31, 1982
 19 that have not been coordinated under this section as of the
 20 effective date of this subsection ~~shall~~ **must** not be coordinated,
 21 ~~shall not be~~ **are not** considered to have created an overpayment of
 22 compensation benefits, and ~~shall not be~~ **are not** subject to
 23 reimbursement to the employer or carrier.

24 (13) ~~(19)~~ Notwithstanding any other section of this act, any
 25 payments made to an employee ~~resulting that result~~ from liability
 26 ~~pursuant to~~ **under** section ~~301(7)~~ **301(4)** or ~~(8), (5)~~, 351, or 835
 27 for a personal injury ~~occurring that occurs~~ before March 31, 1982
 28 that have been coordinated before May 14, 1987 ~~shall be~~ **are**
 29 considered to be an underpayment of compensation benefits, and the

1 amounts withheld pursuant to coordination ~~shall~~**must** be reimbursed
 2 with interest, by July 13, 1987, to the employee by the employer or
 3 carrier.

4 **(14)** ~~(20)~~ Notwithstanding any other section of this act, any
 5 employee who has paid an employer or carrier money alleged by the
 6 employer or carrier to be owed the employer or carrier because that
 7 employee's benefits had not been coordinated under this section and
 8 whose date of personal injury was before March 31, 1982 ~~shall~~**must**
 9 be reimbursed with interest, by July 13, 1987, that money by the
 10 employer or carrier.

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

14 Sec. 355. (1) The maximum weekly rate ~~shall~~**must** be adjusted
 15 ~~once each year~~**annually** in accordance with the increase or decrease
 16 in the average weekly wage in covered employment, as determined by
 17 the Michigan employment security commission.

18 (2) Effective January 1, 1982, and each January 1 thereafter ~~7~~
 19 **until the first January 1 after the effective date of the**
 20 **amendatory act that repealed section 357,** the maximum weekly rate
 21 of compensation **not including any increase in benefits paid under**
 22 **section 356(2)** for injuries occurring within that year ~~shall~~**must**
 23 be established as 90% of the state average weekly wage as of the
 24 prior June 30, adjusted to the next higher multiple of \$1.00.

25 **(3) Effective the January 1 after the effective date of the**
 26 **amendatory act that repealed section 357, and each January 1**
 27 **thereafter, the maximum weekly rate of compensation not including**
 28 **any increase in benefits paid under section 356(2) for injuries**
 29 **occurring within that year must be established as 150% of the state**

1 average weekly wage as of the prior June 30, adjusted to the next
2 higher multiple of \$1.00.

3 (4) ~~(3)~~ For the purpose of computing the supplemental benefit
4 under section 352, the state average weekly wage for any injury
5 year ~~shall~~**must** be the average weekly wage in covered employment
6 determined by the Michigan employment security commission for the
7 12 months ending June 30 of the preceding year.

8 Sec. 356. (1) An injured employee who, at the time of ~~the~~**a**
9 personal injury, is entitled to a rate of compensation less than
10 50% of the then applicable state average weekly wage as determined
11 for the year in which the injury occurred ~~pursuant to~~**under** section
12 355, may be entitled to an increase in benefits after 2 years of
13 continuous disability. After 2 years of continuous disability, the
14 employee may petition for a hearing at which the employee may
15 present evidence that, by virtue of the employee's age, education,
16 training, experience, or other documented evidence ~~which~~**that** would
17 fairly reflect the employee's earning capacity, the employee's
18 earnings would have been expected to increase. Upon presentation of
19 this evidence, a worker's compensation magistrate may order an
20 adjustment of the compensation rate up to 50% of the state average
21 weekly wage for the year in which the employee's injury occurred.
22 The adjustment of compensation, if ordered, ~~shall be~~**is** effective
23 as of the date of the employee's petition for the hearing. The
24 adjustments provided in this subsection ~~shall~~**must** be paid by the
25 carrier on a weekly basis. However, the carrier, the self-insurers'
26 security fund, and the private employer group self-insurers
27 security fund ~~shall be~~**are** entitled to reimbursement for these
28 payments from the second injury fund created in section 501. There
29 ~~shall~~**must** be only 1 adjustment made for an employee under this

1 subsection.

2 (2) An injured employee is entitled to an increase in benefits
3 after 1 year of continuous disability, including an injured
4 employee described in subsection (1). After 1 year of continuous
5 disability, the injured employee's compensation rate must be
6 adjusted annually on the date of the injury to a rate equal to the
7 same percentage of the annually adjusted state average weekly wage
8 under section 355 that the employee's original rate or the adjusted
9 rate under subsection (1) had in relation to the state average
10 weekly wage for the year when the employee's injury occurred. If
11 the state average weekly wage declines in a given year, the
12 employee's rate must not be adjusted.

13 (3) The carrier shall pay the adjustments described in
14 subsection (2) on a weekly basis without reimbursement.

15 (4) ~~(2)~~ The minimum weekly benefit for death under section 321
16 ~~shall be~~ **is** 50% of the state average weekly wage as determined
17 under section 355.

18 (5) ~~(3)~~ The minimum weekly benefit for 1 or more losses stated
19 in section 361(2) and (3) ~~shall be 25%~~ **is 50%** of the state average
20 weekly wage as determined under section 355.

21 ~~(4) There is no minimum weekly benefit for total disability~~
22 ~~under section 351.~~

23 ~~(5) This section does not apply to an employee entitled to~~
24 ~~benefits under section 361(1).~~

25 Sec. 358. Net weekly benefits payable under section 351, 361,
26 or lump sum benefits under section 835, ~~shall~~ **must** be reduced by
27 100% of the **after-tax** amount of benefits paid or payable to the
28 injured employee under the Michigan employment security act, 1936
29 (Ex Sess) PA 1, MCL 421.1 to 421.75, for identical periods of time

1 that are chargeable to the employer responsible for payment of
 2 compensation benefits. Benefits paid under the coronavirus aid,
 3 relief, and economic security act, Public Law 116-136, and similar
 4 benefits under other federal or state relief statutes must not
 5 reduce worker's compensation benefits even if the distribution of
 6 the benefits occurs through the Michigan unemployment insurance
 7 agency.

8 Sec. 361. (1) An employer is not liable for compensation under
 9 section ~~301(7)~~**301(4)** or ~~(8)~~**(5)**, 351, 371(1), or ~~401(5)~~**401(3)** or
 10 ~~(6)~~**(4)** for periods of time that the employee is unable to obtain
 11 or perform work because of imprisonment or ~~commission of a~~
 12 ~~crime.~~**incarceration. An employer is liable for compensation under**
 13 **this act regardless of the employee's immigration status.**

14 (2) In cases included in the following schedule, the
 15 disability in each case ~~shall be~~**is** considered to continue for the
 16 period specified, and the compensation paid for the personal injury
 17 ~~shall be 80%~~**is 90%** of the after-tax average weekly wage subject to
 18 the maximum and minimum rates of compensation under this act. ~~The~~
 19 ~~effect of any internal joint replacement surgery, internal implant,~~
 20 ~~or other similar medical procedure shall be considered in~~
 21 ~~determining whether a specific loss has occurred.~~ The specific loss
 22 period for the loss ~~shall be~~**is** considered as follows:

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

28 The loss of the first phalange of the thumb, or of any finger,
 29 ~~shall be~~**is** considered to be equal to the loss of 1/2 of that thumb

1 or finger, and compensation ~~shall be~~ **is** 1/2 of the amount above
2 specified.

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

7 (f) Great toe, 33 weeks.

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

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

12 The loss of more than 1 phalange ~~shall be~~ **is** considered as the
13 loss of the entire toe.

14 (h) Hand, 215 weeks.

15 (i) Arm, 269 weeks.

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

19 (j) Foot, 162 weeks.

20 (k) Leg, 215 weeks.

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

24 (l) Eye, 162 weeks.

25 Eighty percent loss of vision of 1 eye ~~shall constitute~~
26 **constitutes** the total loss of that eye.

27 (m) **Serious and permanent scarring or disfigurement to the**
28 **face or head, 52 weeks.**

29 (n) **Serious impairment of an important body function of great**

1 value, significance, or consequence to the injured employee, 52
2 weeks.

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

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

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

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

8 (d) Loss of any 2 of the members or faculties in subdivision

9 (a), (b), or (c).

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

12 (f) ~~Incurable insanity or imbecility.~~ **Severe and permanent**
13 **impairment of function not responsive to treatment because of 1 of**
14 **the following:**

15 (i) **A neurocognitive disorder.**

16 (ii) **A traumatic or stress-related disorder.**

17 (g) Permanent and total loss of industrial use of both legs or
18 both hands or both arms or 1 leg and 1 arm. ~~for~~ **For** the purpose
19 of this subdivision, ~~such permanency shall be~~ **is** determined not
20 less than 30 days before the expiration of 500 weeks from the date
21 of injury.

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

29 Sec. 371. (1) ~~The weekly loss in wages referred to in this act~~

1 ~~shall consist of the percentage of the average weekly earnings of~~
 2 ~~the injured employee computed according to this section as fairly~~
 3 ~~represents the proportionate extent of the impairment of the~~
 4 ~~employee's earning capacity in the employments covered by this act~~
 5 ~~in which the employee was working at the time of the personal~~
 6 ~~injury. The weekly loss in wages shall be fixed as of the time of~~
 7 ~~the personal injury, and determined considering the nature and~~
 8 ~~extent of the personal injury. The~~ **Except as otherwise provided in**
 9 **this act, the** compensation payable, when added to the employee's
 10 ~~wage earning capacity~~ **earned wages** after the personal injury in the
 11 same or other employments, ~~shall~~ **must** not exceed the employee's
 12 average weekly earnings at the time of the injury.

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

26 (3) If ~~the~~ **an** employee worked less than 39 weeks in the
 27 employment in which the employee was injured, the average weekly
 28 wage ~~shall be~~ **is** based ~~upon~~ **on** the total wages earned by the
 29 employee divided by the total number of weeks **the employee** actually

1 worked. For purposes of this subsection, only those weeks in which
 2 work is performed ~~shall be~~ **are** considered in computing the total
 3 wages earned and the number of weeks actually worked.

4 (4) If an employee sustains a compensable injury before
 5 completing ~~his or her~~ **the employee's** first work week, the average
 6 weekly wage ~~shall be~~ **is** calculated by determining the number of
 7 hours of work per week contracted for by that employee multiplied
 8 by the employee's hourly rate, or the weekly salary contracted for
 9 by the employee.

10 (5) If the hourly ~~earning~~ **earnings** of ~~the~~ **an** employee cannot
 11 be ascertained, or if the pay has not been designated for the work
 12 required, the wage, for the purpose of calculating compensation,
 13 ~~shall~~ **must** be taken to be the usual wage for similar services if
 14 the services are rendered by paid employees.

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

22 (7) The average weekly wage as determined under this section
 23 ~~shall~~ **must** be rounded to the nearest dollar.

24 Sec. 401. (1) As used in this chapter, "disability" means a
 25 limitation of an employee's wage earning capacity in work suitable
 26 to ~~his or her~~ **the employee's** qualifications and training resulting
 27 from a personal injury or work related disease. A limitation of
 28 wage earning capacity occurs only if a personal injury covered
 29 under this act results in the ~~employee's~~ **employee** being unable to

1 ~~perform all jobs paying the maximum wages or obtain 1 or more jobs~~
 2 ~~in work suitable to that~~ the employee's qualifications and
 3 ~~training. , which includes work that may be performed using the~~
 4 ~~employee's transferable work skills. A disability is total if the~~
 5 ~~employee is unable to earn in any job paying maximum wages in work~~
 6 ~~suitable to the employee's qualifications and training. A~~
 7 ~~disability is partial if the employee retains a wage earning~~
 8 ~~capacity at a pay level less than his or her maximum wages in work~~
 9 ~~suitable to his or her qualifications and training. The~~
 10 establishment of disability does not create a presumption of wage
 11 loss.

12 (2) As used in this chapter:

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

14 (b) "Personal injury" includes a disease or disability that is
 15 due to causes and conditions that are characteristic of and
 16 peculiar to the business of the employer and that arises out of and
 17 in the course of the employment. An ordinary disease of life to
 18 which the public is generally exposed outside of the employment is
 19 not compensable. A personal injury under this act is compensable if
 20 work causes, contributes to, ~~or~~ aggravates, **accelerates, or worsens**
 21 **a symptom or** pathology ~~in a manner so as to create a pathology that~~
 22 ~~is medically distinguishable from any pathology that existed prior~~
 23 ~~to the injury. Mental disabilities and conditions of the aging~~
 24 ~~process, including but not limited to heart and cardiovascular~~
 25 ~~conditions, and degenerative arthritis shall be compensable if~~
 26 ~~contributed to or aggravated or accelerated by the employment in a~~
 27 ~~significant manner. Mental disabilities shall be compensable when~~
 28 ~~arising out of actual events of employment, not unfounded~~
 29 ~~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.~~ **related to a physical or mental condition, regardless of any preexisting or coexisting condition the employee may have.**

~~(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.~~

~~(c) (d)~~ **"Wage loss" means the amount of reduced wages lost due connected 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.** **wage loss to receive weekly wage loss benefits. If the employee establishes a connection between disability and wage loss, other factors that contribute to the employee's wage loss do not affect the payment or amount of wage loss benefits due the employee.**

~~(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.~~

(3) (5) If Except as otherwise provided under subsection (5), if a personal injury arising out of the course of employment causes total results in disability and connected to wage loss and the injured employee is entitled to wage loss benefits, does not

1 **receive wages in a week after the injury**, the employer shall pay or
 2 cause to be paid to the injured employee as provided in this
 3 section weekly compensation equal to ~~80%~~**90%** of the employee's
 4 after-tax average weekly wage, but not more than the maximum weekly
 5 rate determined under section 355. Compensation ~~shall~~**must** be paid
 6 for the duration of the disability.

7 **(4)** ~~(6) If~~**Except as otherwise provided under subsection (5),**
 8 a personal injury arising out of the course of employment ~~causes~~
 9 ~~partial~~**results in** disability and ~~connected to~~ wage loss and the
 10 employee ~~is entitled to wage loss benefits,~~**receives wages in a**
 11 **week after the injury**, the employer shall pay or cause to be paid
 12 to the injured employee as provided in this section weekly
 13 compensation equal to ~~80%~~**90%** of the difference between the injured
 14 employee's after-tax average weekly wage before the personal injury
 15 and the employee's ~~wage earning capacity~~**after-tax actual wages**
 16 **paid** after the personal injury, but not more than the maximum
 17 weekly rate determined under section 355. Compensation ~~shall~~**must**
 18 be paid for the duration of the disability.

19 **(5)** ~~(7) If~~ disability and wage loss are established,
 20 entitlement to weekly wage loss benefits ~~shall~~**must** be determined
 21 as applicable ~~pursuant to~~**under** this section and as follows:

22 (a) If an employee receives a bona fide offer of reasonable
 23 employment from the **employee's** previous employer, another employer,
 24 or through the Michigan unemployment insurance agency and the
 25 employee refuses that employment without good and reasonable cause,
 26 the employee ~~shall be~~**is** considered to have voluntarily removed
 27 himself or herself from the ~~work force~~**workforce** and is no longer
 28 entitled to any wage loss benefits under this act during the period
 29 of refusal. **The employer has the burden of proof of establishing**

1 that the employee received a bona fide offer of reasonable
2 employment.

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

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

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

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

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

27 ~~(ii) If the employee was employed for 100 weeks or more but~~
28 ~~less than 250 weeks, then after the employee exhausts unemployment~~
29 ~~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.~~

(c) If an employee, after being employed under this subsection for less than 100 weeks, loses the employee's job, the employee's personal injury is conclusively presumed to result in disability connected to wage loss.

(d) If an employee, after being employed under this subsection for more than 100 weeks, loses the employee's job, proof of work-related disability connected to wage loss is a question of fact.

(6) ~~(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~~ **under** subsection ~~(7) (a)~~. **(5) (a)**.

(7) ~~(9)~~ As used in this section, "reasonable employment" means **suitable** work that is within ~~the~~ **an** employee's **qualifications, training, and** capacity to perform that poses no ~~clear and proximate threat~~ **unreasonable risk** 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~~

1 ~~to work suitable to his or her qualifications and training.~~

2 (8) ~~(10)~~ This section ~~shall apply~~ **applies** to personal injuries
3 or work related diseases occurring on or after June 30, 1985.

4 Sec. 891. (1) To the extent that they are reenacted herein,
5 all the provisions of former 1965 PA 44 apply only to personal
6 injuries occurring on or after September 1, 1965, except as
7 otherwise provided in that act and except for the amendment to part
8 2, section 4 of that act, concerning selection of physicians as
9 provided in that act.

10 (2) In all cases where the date of injury is on or after
11 September 1, 1965, and the employee or ~~his~~ **employee's** dependents
12 would be entitled to the new maximum weekly benefit rates, the
13 employee or ~~his~~ **employee's** dependents shall receive, without
14 application to the workers' compensation agency, an adjustment to
15 the increased maximum rate as it becomes effective September 1,
16 1966, or September 1, 1967, for any compensable weeks subsequent to
17 the above dates.

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

29 (4) Notwithstanding sections ~~301(14)~~ **301(11)** and ~~401(10)~~,

1 **401(8)**, the amendments to this act made by 2011 PA 266 apply to
2 personal injuries and work-related diseases incurred on or after
3 December 19, 2011.

4 **(5) Notwithstanding sections 301(11) and 401(8), and except as**
5 **provided in section 354(1)(f), the amendments to this act made by**
6 **the amendatory act that added this subsection apply to personal**
7 **injuries and work-related diseases incurred on or after the**
8 **effective date of the amendatory act that added this subsection.**

9 Enacting section 1. Sections 302, 357, and 431 of the worker's
10 disability compensation act of 1969, 1969 PA 317, MCL 418.302,
11 418.357, and 418.431, are repealed.