WORKER'S DISABILITY COMPENSATION ACT OF 1969
Act 317 of 1969

AN ACT to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1975, Act 279, Eff. Mar. 31, 1976;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1989, Act 115, Imd. Eff. June 23, 1989;—Am. 1989, Act 117, Eff. Mar. 29, 1990;—Am. 1990, Act 157, Imd. Eff. June 29, 1990.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the insurance bureau and the commissioner of insurance to the commissioner of the office of financial and insurance services and the office of financial and insurance services, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Act 317

The People of the State of Michigan enact:

CHAPTER 1
COVERAGE AND LIABILITY

418.101 Short title.

Sec. 101. This act shall be known and may be cited as the "worker's disability compensation act of 1969".

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1975, Act 279, Eff. Mar. 31, 1976.

Compiler's note: Former MCL 411.1 to 417.61, deriving from Act 10 of 1912 (1st Ex. Sess.) and pertaining to workmen's compensation, were repealed by Act 317 of 1969.

For transfer of powers and duties relating to the promulgation of rules by the workers' compensation funds board of trustees, the workers compensation appellate commission, and the workers' compensation board of magistrates from the department of labor to the director the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For abolishment of the qualifications advisory committee and establishment of the new qualifications advisory committee within the worker's compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For creation of the new workers' compensation appellate commission as a type I agency within the department of labor and economic growth, see E.R.O. No. 2003-1.

For transfer of powers and duties of the former worker's compensation appellate commission to the new workers' compensation appellate commission, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 317

418.111 Persons subject to act.

Sec. 111. Every employer, public and private, and every employee, unless herein otherwise specifically provided, shall be subject to the provisions of this act and shall be bound thereby.

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

Popular name: Act 317

418.115 Employers covered; private employers; agricultural employers; medical and hospital coverage.

Sec. 115. This act shall apply to:

(a) All private employers, other than agricultural employers, who regularly employ 3 or more employees at 1 time.

(b) All private employers, other than agricultural employers, who regularly employ less than 3 employees if at least 1 of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.

(c) All public employers, irrespective of the number of persons employed.

(d) All agricultural employers of 3 or more regular employees paid hourly wages or salaries, and not paid on a piecework basis, who are employed 35 or more hours per week by that same employer for 13 or more

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consecutive weeks during the preceding 52 weeks. Coverage shall apply only to such regularly employed employees. The average weekly wage for such an employee shall be deemed to be the weeks worked in agricultural employment divided into the total wages which the employee has earned from all agricultural occupations during the 12 calendar months immediately preceding the injury, and no other definition pertaining to average weekly wage shall be applicable.

(e) All agricultural employers of 1 or more employees who are employed 35 or more hours per week by that same employer for 5 or more consecutive weeks shall provide for such employees, in accordance with rules established by the director, medical and hospital coverage as set forth in section 315 for all personal injuries arising out of and in the course of employment suffered by such employees not otherwise covered by this act. The provision of such medical and hospital coverage shall not affect any rights of recovery that an employee would otherwise have against an agricultural employer and such right of recovery shall be subject to any defense the agricultural employer might otherwise have. Section 141 shall not apply to cases, other than medical and hospital coverages provided herein, arising under this subdivision nor shall it apply to actions brought against an agricultural employer who is not voluntarily or otherwise subject to this act. No person shall be considered an employee of an agricultural employer if the person is a spouse, child or other member of the employer's family, as defined in subdivision (b) of section 353 residing in the home or on the premises of the agricultural employer.

All other agricultural employers not included in subdivisions (d) and (e) shall be exempt from the provisions of this act.

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

Constitutionality: Special treatment accorded to agricultural employers under this section, not accorded any other private or public employer, is impermissible as being discriminatory and without rational basis. Gallegos v Glaser Crandell Company, 388 Mich 654; 202 NW2d 786 (1972).

The agricultural exclusion contained in this section, which was declared unconstitutional in Gallegos v Glaser Crandell Company, 388 Mich 654; 202 NW2d 786 (1972), was void from the date of its enactment. Stanton v Lloyd Hammond Produce Farms, 400 Mich 135; 253 NW2d 114 (1977).

Classifications in the workers' compensation act between agricultural employers and other employers are rationally related to the permissible goal of recognizing the economic uniqueness of agricultural employers and do not violate the right of equal protection of the law. Eastway v Eisenga, 420 Mich 410; 362 NW2d 684 (1984).

Popular name: Act 317

418.118 Domestic servants.

Sec. 118. (1) No household domestic servant shall be considered an employee if the person is a wife, child or other member of the employer's family residing in the home, and no householder shall be deemed a statutory principal within the meaning of section 171 for the purposes of this section.

(2) No private employer shall be liable under this act to any person who is employed by him as a household domestic servant for less than 35 hours per week for 13 weeks or longer during the preceding 52 weeks, notwithstanding the provisions of section 611 or any other provision of this act, unless such person assume liability under section 121.

(3) A household domestic servant or domestic as used in this act means a person who engages in work or activity relating to the operation of a household and its surroundings whether or not he resides therein.

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

Popular name: Act 317

418.119 Licensed real estate salesperson or associate real estate broker as employee.

Sec. 119. A person who is licensed as a real estate salesperson or associate real estate broker under article 25 of Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2515 of the Michigan Compiled Laws, shall not be considered an employee for purposes of this act if both of the following conditions have been met:

(a) Not less than 75% of the remuneration of the salesperson or associate real estate broker is directly related to the volume of sales of real estate and not to the number of hours worked.

(b) The salesperson or associate real estate broker has a written agreement with the real estate broker who employs the salesperson or associate real estate broker, which states that the salesperson or associate real estate broker, as applicable, is not considered an employee for tax purposes.

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

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

Popular name: Act 317

418.120 Employee of franchisee as employee of franchisor.

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Sec. 120. An employee of a franchisee is not an employee of the franchisor for purposes of this act unless both of the following apply:

(a) The franchisee and franchisor share in the determination of or codetermine the matters governing the essential terms and conditions of the employee's employment.

(b) The franchisee and franchisor both directly and immediately control matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction.

History: Add. 2015, Act 267, Eff. Mar. 22, 2016.

Popular name: Act 317

418.121 Private employers; voluntary assumption of coverage.

Sec. 121. Any private employer not otherwise included by sections 115 and 118 may assume the liability for compensation and benefits imposed by this act upon employers. The purchase and acceptance by an employer of a valid compensation insurance policy, except in the case of domestics and agricultural employees, constitutes an assumption by him of such liability without any further act on his part, which assumption of liability shall take effect from the effective date of the policy and continue only as long as the policy remains in force, in which case the employer shall be subject to no liability other than workmen's compensation as provided for in this act. Agricultural and domestic employees may be voluntarily included by specific indorsement to a workmen's compensation policy in those cases where such coverage is not required.

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

Popular name: Act 317

418.125 Consistent discharges to evade act; presumption, penalty.

Sec. 125. Any employer otherwise subject to the provisions of this act who consistently discharges employees within the minimum time specified in this chapter and replaces such discharged employees without a work stoppage will be presumed to have discharged them to evade the provisions of this act and is guilty of a misdemeanor.

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

Popular name: Act 317

418.131 Exclusive remedy; exception; "employee" and "employer" defined.

Sec. 131. (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1972, Act 285, Imd. Eff. Oct. 30, 1972;—Am. 1987, Act 28, Imd. Eff. May 14, 1987;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

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.

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

418.141 Employee; action for personal injury or death, defenses abolished.

Sec. 141. In an action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained it shall not be a defense:

(a) That the employee was negligent, unless it shall appear that such negligence was wilful.

(b) That the injury was caused by the negligence of a fellow employee.

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(c) That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

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

Popular name: Act 317

418.151 Employers subject to act.

Sec. 151. The following constitutes employers subject to this act:

(a) The state; each county, city, township, incorporated village, and school district; each incorporated public board or public commission in this state authorized by law to hold property and to sue or be sued generally; and any library in a county with a population less than 600,000 established under Act No. 138 of the Public Acts of 1917, being sections 397.301 to 397.305 of the Michigan Compiled Laws, if the library board by resolution expresses its intention to be considered as a separate employer from the county where it is located for purposes of this act.

(b) Every person, firm, limited liability company, limited liability partnership, and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, unless those employees excluded according to the provisions of section 161(5) comprise all of the employees of the person, firm, limited liability company, limited liability partnership, or corporation.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1982, Act 202, Imd. Eff. July 1, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1995, Act 206, Imd. Eff. Nov. 29, 1995.

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

Popular name: Act 317

418.155 Agricultural employer; definition.

Sec. 155. (1) An agricultural employer means one who hires a person performing services:

(a) On a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity or in connection with the raising or harvesting of mushrooms or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

(d) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations or in the case of fruits and vegetables as an incident to the preparation of such fruits or vegetables for market. The provisions of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(2) As used in this section, farm includes stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

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

Popular name: Act 317

418.161 "Employee" defined; exclusion from coverage of partner or spouse, child, or parent in employer's family; election by employee to be excluded; notice of election; duration of elected exclusion.

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

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

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

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

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

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

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

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

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

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

(j) If a member of an organization recognized by 1 or more counties, cities, villages, or townships within this state as an emergency rescue team is employed by a state, county, city, village, or township within this state as a police officer, fire fighter, emergency medical technician, or ambulance driver and is injured in the normal scope of duties including training, but excluding activation, as a member of the emergency rescue team, he or she shall be considered to be engaged in the performance of his or her normal duties for the state, county, city, village, or township. If the member of the emergency rescue team is not employed by a state, county, city, village, or township within this state as a police officer, fire fighter, emergency medical technician, or ambulance driver, and is injured in the normal scope of duties, including training, as a member of the emergency rescue team, he or she shall be considered to be an employee of the team. For the purpose of securing the payment of compensation under this act, on activation, each member of the team shall be considered to be covered by a policy obtained by the team unless the employer of a member of the team agrees in writing to provide coverage for that member under its policy. Members of an emergency rescue team shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the team for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage. As used in this subdivision, "activation" means a request by the emergency management coordinator appointed pursuant to section 8 or 9 of the emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made of and accepted by an emergency rescue team.

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

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

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

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

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entity requests the Michigan administrative hearing system to determine whether 1 or more individuals performing service for the entity in this state are in covered employment, the Michigan administrative hearing system shall issue a determination of coverage of service performed by those individuals and any other individuals performing similar services under similar circumstances.

(o) An individual registered with the state of Michigan verification system described in 42 USC 247d-7b shall be considered an employee of the state of Michigan when engaged in the performance of duties or services as a registrant, or when training to provide those duties or services, except if another employer provides coverage for that individual specifically for duties and services arising from registration with this state. That individual shall be considered to be receiving the state average weekly wage at the time of injury or death, as last determined under section 355, from the state of Michigan for purposes of calculating the weekly rate of compensation provided under this act, except that if the individual's average weekly wage was greater than the state average weekly wage at the time of injury or death the individual's weekly rate of compensation shall be determined based upon the individual's weekly average wage. The state of Michigan shall exercise all the rights and obligations of an employer and carrier as provided for under this act.

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

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

(4) An employee who is subject to this act, including an employee covered pursuant to section 121, who is an employee of a corporation that has not more than 10 stockholders and who is also an officer and stockholder who owns at least 10% of the stock of that corporation, with the consent of the corporation as approved by its board of directors, may elect to be individually excluded from this act by giving a notice of the election in writing to the carrier with the consent of the corporation endorsed on the notice. The exclusion remains in effect until revoked by the employee by giving a notice in writing to the carrier. While the exclusion is in effect, section 141 does not apply to any action brought by the employee against the corporation.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1975, Act 268, Imd. Eff. Nov. 10, 1975;—Am. 1976, Act 21, Imd. Eff. Feb. 26, 1976;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1982, Act 282, Imd. Eff. Oct. 7, 1982;—Am. 1983, Act 162, Imd. Eff. July 24, 1983;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 97, Imd. Eff. Apr. 13, 1994;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 1995, Act 206, Imd. Eff. Nov. 29, 1995;—Am. 1996, Act 460, Imd. Eff. Dec. 26, 1996;—Am. 2002, Act 427, Imd. Eff. June 5, 2002;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011;—Am. 2012, Act 83, Imd. Eff. Apr. 11, 2012.

Compiler's note: 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

418.171 Employer contracting with person not subject to act; liability; applicability of section to principal and contractor; willful circumvention of provisions; employer as contractor; reimbursement agreement.

Sec. 171. (1) If any employer subject to the provisions of this act, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this act or who has not complied with the provisions of section 611, and who does not become subject to this

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act or comply with the provisions of section 611 prior to the date of the injury or death for which claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any person employed in the execution of the work any compensation under this act which he or she would have been liable to pay if that person had been immediately employed by the principal. If compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the person under the employer by whom he or she is immediately employed. A contractor shall be deemed to include subcontractors in all cases where the principal gives permission that the work or any part thereof be performed under subcontract.

(2) If the principal is liable to pay compensation under this section, he or she shall be entitled to be indemnified by the contractor or subcontractor. The employee shall not be entitled to recover at common law against the contractor for any damages arising from such injury if he or she takes compensation from such principal. The principal, in case he or she pays compensation to the employee of such contractor, may recover the amount so paid in an action against such contractor.

(3) This section shall apply to a principal and contractor only if the contractor engages persons to work other than persons who would not be considered employees under section 161(1)(d).

(4) Principals willfully acting to circumvent the provisions of this section or section 611 by using coercion, intimidation, deceit, or other means to encourage persons who would otherwise be considered employees within the meaning of this act to pose as contractors for the purpose of evading this section or the requirements of section 611 shall be liable subject to the provisions of section 641. Nothing in this section shall be construed to prohibit an employee from becoming a contractor subject to the provisions of section 151. A principal may demand that the contractor enter into a written agreement with the principal agreeing to reimburse the principal for any loss incurred under this section due to a claim filed pursuant to this act for compensation and other benefits.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

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

Popular name: Act 317

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CHAPTER 2
ADMINISTRATION

418.201 Bureau of worker's compensation; creation; director.

Sec. 201. The bureau of worker's compensation, herein referred to as the bureau, is created within the department of labor. The position of director of the bureau is created. The director shall possess the powers and perform the duties granted and imposed by this act. As used in this act, "director" means the director of the bureau or his or her duly authorized representative.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the workers' compensation agency as type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of worker's compensation and of its director, to the bureau of worker's compensation, and its director, under MCL 445.2004, to the workers' compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For the transfer of powers and duties of the workers' compensation agency from the department of licensing and regulatory affairs to the department of labor and economic opportunity and the renaming of workers; compensation agency as the workers' disability compensation agency, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 317

418.203 Director; appointment, term, salary, removal, vacancy, expenses.

Sec. 203. The director shall be appointed by the governor, with the advice and consent of the senate, for a term of 3 years, beginning on February 1, 1967 and each 3 years thereafter. The director shall hold office until his successor is appointed and qualified. The director shall receive an annual salary as appropriated by the legislature. He shall be subject to removal by the governor for cause after due notice and hearing. A vacancy shall be filled for an unexpired term in the same manner as the original appointment. The director shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the

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standardized travel regulations of the state.

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

Popular name: Act 317

418.205 Powers and duties of director.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1981;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

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

For creation of the workers' compensation agency as type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of worker's compensation and of its director, to the bureau of worker's compensation, and its director, under MCL 445.2004, to the workers' compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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 workers' compensation agency from the department of licensing and regulatory affairs to the department of labor and economic opportunity and the renaming of workers; compensation agency as the workers' disability compensation agency, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 317

Administrative rules: R 408.31 et seq.; R 408.43i; R 408.43s; R 418.10101 et seq.; and R 418.10104 et seq. of the Michigan Administrative Code.

418.206 Position of hearing referee abolished; powers and duties of worker's compensation magistrates; hearings.

Sec. 206. (1) The position of hearing referee under this act is abolished as of March 31, 1987.

(2) Only worker's compensation magistrates shall hear cases for which an application for a hearing under section 847 has been filed after March 31, 1986 and shall have the powers and perform the duties prescribed in this act.

(3) Any case for which an application for a hearing under section 847 has been filed before April 1, 1986 and which has not been heard by a hearing referee by March 31, 1987 shall be heard by a worker's compensation magistrate according to the law and procedures applicable to cases heard by hearing referees.

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

Constitutionality: Amendment of the workers' compensation act to abolish the civil service position of hearing referee and establish a Board of Magistrates in its place outside the civil service system to hear and adjudicate workers' compensation claims did not violate the civil service provision of the constitution. Civil Service Commission v Department of Labor, 424 Mich 571; 384 NW2d 728 (1986).

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

Popular name: Act 317

418.207 Introductory and continuing legal education courses in worker's compensation.

Sec. 207. The chairperson of the worker's compensation board of magistrates shall consult with law schools, the state bar of Michigan, and other legal associations for the purpose of establishing introductory and continuing legal education courses in worker's compensation. Worker's compensation magistrates, as a condition of continued employment, may be required to attend these courses. Applicants for the position of worker's compensation magistrate may also be required to attend these courses.

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

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

Popular name: Act 317

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418.209 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to appointment of 6-member qualifications advisory committee

Popular name: Act 317

418.210 Appointment of worker's compensation magistrate.

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

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

For abolishment of the qualifications advisory committee and establishment of the new qualifications advisory committee within the worker's compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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

418.211 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to appointment of hearing referees.

Popular name: Act 317

418.212 Evaluating performance of worker's compensation magistrate; frequency; criteria; report; removal; recommendations.

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

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

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

(c) Manner in conducting hearings.

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

(e) Knowledge of the law.

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

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

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

(a) Retention.

(b) Suspension.

(c) Removal.

(d) Additional training or education.

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

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

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

For abolishment of the qualifications advisory committee and establishment of the new qualifications advisory committee within the worker's compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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.

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

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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

418.213 Worker's compensation board of magistrates; establishment; appointment, qualifications, and terms of members; vacancy; reappointment; powers and duties of chairperson; duties of members; term of chairperson; salary of members; employment of staff; rules; assignment and reassignment of magistrates; office space.

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

(2) The members of the board shall be appointed for terms of 4 years. A vacancy caused by the expiration of a term shall be filled in the same manner as the original appointment. A member shall not serve beyond the expiration of his or her term. A member may be reappointed. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the balance of the unexpired term.

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

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

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

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

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

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

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

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

History: Add. 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: Amendment of the workers' compensation act to abolish the civil service position of hearing referee and establish a Board of Magistrates in its place outside the civil service system to hear and adjudicate workers' compensation claims did not violate the civil service provision of the constitution. Civil Service Commission v Department of Labor, 424 Mich 571; 384 NW2d 728 (1986).

Compiler's note: Section 4 of Act 103 of 1985 provides:

Section 4. (1) It is the manifest intent of the legislature that if section 213 of this amendatory act is found to be invalid by the state supreme court, the amendments made by this amendatory act to the following sections shall also be invalid and are not severable from section 213:

(a) Section 222.
(b) Section 274.
(c) Section 858.
(d) Section 801.
(e) Section 835(1).
(f) Section 161(1)(d) and (4).
(g) Section 171(3) and (4).
(h) Section 119.
(i) Section 354(1)(f).
(j) Section 335.
(k) Sections 921, 925, and 935.
(*l*) Section 315(1).

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(m) Section 361(1).
(n) Section 852.
(o) Section 641.
(p) Section 385.
(q) Section 851.
(r) Section 861a(3).
(s) Section 862(2).
(t) Section 151(1)(b).
(u) Section 206.
(v) Section 266.
(w) Section 251(3).
(x) Section 255(3).
(y) Section 261(5).
(z) Section 265(4).
(aa) Section 851a(2).
(bb) Section 859(2).
(cc) Section 381(3).
(dd) Section 859a.
(ee) Section 860.

(2) It is the manifest intent of the legislature that if section 213 or any other section of this amendatory act is found to be invalid by the state supreme court, the amendments made by this amendatory act to the following sections shall be valid and are severable from the invalid section or sections:

(a) Section 251(1) and (2).
(b) Section 847.
(c) Section 223.
(d) Section 864.
(e) Section 205.
(f) Section 835(5).
(g) Section 835a.
(h) Section 315(2) to (9).
(i) Section 301.
(j) Section 401.
(k) Section 841.
(*l*) Section 54(16).
(m) Section 261(1) to (4)."

For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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 transfer of worker's compensation board of magistrates to Michigan administrative hearing system, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

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

418.215 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to providing space for bureau of workmen's compensation.

Popular name: Act 317

418.221 Blank forms; printing, cost.

Sec. 221. The bureau shall print and furnish free of charge to any employer or employee such blank forms as the director deems requisite to facilitate or promote the efficient administration of this act.

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

Popular name: Act 317

418.222 Application for mediation or hearing; forwarding copy to employer and carrier; carrier to file written response; return of incomplete application or written response; medical records; proof of compliance; contents of application or written response; notice of intention to call witnesses; willful noncompliance.

Sec. 222. (1) After March 31, 1986, the bureau, upon receiving a completed application for mediation or hearing from a claimant, shall forward a copy of the application to the employer and carrier. Within 30 days of receiving a completed application for mediation or hearing from the bureau, the carrier shall file a written

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response to the application with the bureau upon a form provided by the bureau. Any application for mediation or hearing or any written response which is determined by the bureau to be incomplete shall be returned with an explanation of the additional information needed.

(2) At the time of filing an application for hearing or mediation, the claimant shall also provide the carrier with any medical records relevant to the claim that are in the claimant's possession. At the time of filing the written response, the carrier shall also provide the claimant with any medical records of the carrier or employer concerning the employee that are relevant to the claim and in existence at the time of filing. The parties shall submit proof of compliance with this subsection with the bureau.

(3) The application for mediation or hearing shall be as prescribed by the bureau and shall contain factual information regarding the nature of the injury, the date of injury, the names and addresses of any witnesses, except employees currently employed by the employer, the names and addresses of any doctors, hospitals, or other health care providers who treated the employee with regard to the personal injury, the name and address of the employer, the dates on which the employee was unable to work because of the personal injury, whether the employee had any other employment at the time of, or subsequent to, the date of the personal injury and the names and addresses of the employers, and any other information required by the bureau.

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

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

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

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

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

Popular name: Act 317

418.223 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to mediation of claims by parties.

Popular name: Act 317

418.225 Statistics; compiling, annual report.

Sec. 225. The director shall cause such statistics incident to the functions of the bureau to be compiled as may be in his discretion advisable. On or before April 1 of each year the director shall make and file a report covering the year prior to the preceding January 1.

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

Popular name: Act 317

418.230 Confidential records; exceptions; power of court to subpoena records not limited; definition.

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

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

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

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

(2) The bureau may release, disclose, or publish information described in subsection (1) under the following circumstances:

(a) In the case of subsection (1)(a), (b), or (c), the bureau may disclose or publish aggregate information for statistical or research purposes so long as it is disclosed or published in such a way that the confidentiality of information concerning individual workers and the financial records of individual employers or self-insured employers or insurers is protected. The bureau may also release individual records to a recognized academic or scholarly institution for research purposes if it is provided with sufficient assurance that the outside individual or agency will preserve the confidentiality of information concerning individual workers and the financial records of individual self-insured employers.

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

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

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

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

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

(4) Any employee is entitled to inspect and obtain a copy of any record maintained by the bureau concerning himself or herself. Any employer is entitled to inspect and obtain a copy of any record maintained by the bureau concerning itself.

(5) The confidentiality provided for in subsection (1)(a) does not apply to the records of a self-insured employer that becomes unable to pay benefits under this act due to insolvency or declaration of bankruptcy.

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

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

History: Add. 1989, Act 109, Imd. Eff. June 23, 1989;—Am. 1990, Act 57, Imd. Eff. Apr. 17, 1990;—Am. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 2000, Act 396, Imd. Eff. Jan. 8, 2001;—Am. 2002, Act 566, Eff. Dec. 1, 2002.

Compiler's note: 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

418.231 Obsolete records; destruction.

Sec. 231. At the discretion of the director, the bureau may destroy any record, file or paper pertaining to workmen's compensation 20 years after the date of injury to which the record, file or paper refers.

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

Popular name: Act 317

418.235 Conducting business at public meeting; notice of meeting; availability of writings to public.

Sec. 235. (1) The business which the board of trustees under chapter 5 may perform shall be conducted at a public meeting of the board of trustees under chapter 5 held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public

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Acts of 1976, as amended.

(2) A writing prepared, owned, used, in the possession of, or retained by the bureau, the board, or the board of trustees under chapter 5 in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1980, Act 144, Imd. Eff. June 2, 1980.

Popular name: Act 317

418.251 Repealed. 1989, Act 115, Eff. July 1, 1989.

Compiler's note: The repealed section pertained to creation and composition of worker's compensation appeal board.

Popular name: Act 317

418.252 Repealed. 1989, Act 115, Eff. June 30, 1991.

Compiler's note: The repealed section pertained to powers and duties of worker's compensation appeal board.

Popular name: Act 317

418.253, 418.255 Repealed. 1989, Act 117, Eff. Mar. 30, 1992.

Compiler's note: The repealed sections pertained to worker's compensation appeal board, and to powers and duties of worker's compensation appeal board.

Popular name: Act 317

418.261 Repealed. 1989, Act 115, Eff. June 30, 1991.

Compiler's note: The repealed section pertained to employment of chief administrative officer, powers and duties of chairperson, rules, and disposition of matters pending on review.

Popular name: Act 317

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

Compiler's note: The repealed section pertained to salaries, expenses, and office hours of worker's compensation appeal board.

Popular name: Act 317

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

Compiler's note: The repealed section pertained to repeal of MCL 418.251, 418.252, and 418.261, and remand and review of cases.

Popular name: Act 317

418.274 Michigan compensation appellate commission; power and authority of commission; rules on administrative appellate procedures; assignment and reassignment of matters; decisions; review and decision by entire commission; writing and publication of opinions; office space.

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

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

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

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

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

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

For abolishment of the qualifications advisory committee and establishment of the new qualifications advisory committee within the

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worker's compensation agency, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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 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.

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

CHAPTER 3
COMPENSATION

418.301 Compensation for personal injury or death in course of employment; time or date of injury; compensation for mental disabilities and conditions of aging process; presumption; injury incurred in pursuit of social or recreational activity; definitions; burden of production of evidence; determining entitlement to weekly wage loss benefits; notice to agency; "reasonable employment" defined; payment of benefits to persons incarcerated in penal institution or confined in mental institution; discrimination prohibited; personal injuries and work related diseases to which section applicable.

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

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

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

(4) As used in this chapter:

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

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

(c) "Wage loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within

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his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits under subsection (7) as if totally disabled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.

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

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

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

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

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

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

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1986, Act 313, Imd. Eff. Dec. 23, 1986;—Am. 1987, Act 28, Imd. Eff. May 14, 1987;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

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

Former MCL 418.301, which pertained to compensation for personal injury or death resulting from personal injury, was repealed by Act 103 of 1985, Imd. Eff. July 30, 1985.

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

Popular name: Heart and Lung Act

418.302 "Wage earning capacity" defined.

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

History: Add. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: 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

Popular name: Heart and Lung Act

418.305 Wilful misconduct of employee.

Sec. 305. If the employee is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.311 Compensation payments; computations.

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

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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.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.313 "After-tax average weekly wage" defined; tables.

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 would have been paid under the federal insurance contributions act, 26 U.S.C. 3101 to 3126, 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. Effective January 1, 1982, and each January 1 thereafter, the applicable federal and state laws in effect on the preceding July 1 shall be used in determining the after-tax weekly wage.

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

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.315 Furnishing medical care for injury arising out of and in course of employment; optometric service; chiropractic service; physical therapy service; attendant or nursing care; selection of physician by employee; objection; order; other services and appliances; proration of attorney fees; fees and other charges subject to rules; advisory committee; excessive fees or unjustified treatment, hospitalization, or visits; review of records and medical bills; "utilization review" defined; effect of accepting payment; submitting false or misleading information as misdemeanor; penalty; improper overutilization or inappropriate health care or health services; appeal; criteria or standards; certification; unusual health care or service.

Sec. 315. (1) The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed. However, an employer is not required to reimburse or cause to be reimbursed charges for an optometric service unless that service was included in the definition of practice of optometry under section 17401 of the public health code, 1978 PA 368, MCL 333.17401, as of May 20, 1992 or for a chiropractic service unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009. An employer is not required to reimburse or cause to be reimbursed charges for services performed by a profession that was not licensed or registered by the laws of this state on or before January 1, 1998, but that becomes licensed, registered, or otherwise recognized by the laws of this state after January 1, 1998. An employer is not required to reimburse or cause to be reimbursed charges for a physical therapy service unless that service was provided by a licensed physical therapist or physical therapist assistant under the supervision of a licensed physical therapist pursuant to a prescription from a health care professional who holds a license issued under part 166, 170, 175, or 180 of the public health code, 1978 PA 368, MCL 333.16601 to 333.16648, 333.17001 to 333.17084, 333.17501 to 333.17556, and 333.18001 to 333.18058, or the equivalent license issued by another state. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons. After 28 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If

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the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the worker's compensation magistrate. The worker's compensation magistrate may prorate attorney fees at the contingent fee rate paid by the employee.

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

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

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

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

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

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

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1975, Act 93, Imd. Eff. May 27, 1975;—Am. 1981, Act 195, Eff. Mar. 31, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 1995, Act 21, Imd. Eff. Apr. 12, 1995;—Am. 1998, Act 447, Imd. Eff. Dec. 30, 1998;—Am. 2009, Act 226, Imd. Eff. Jan. 5, 2010;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011;—Am. 2014, Act 264, Imd. Eff. July 1, 2014.

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

For transfer of health care-related cost containment functions from the Bureau of Worker's Disability Compensation, Department of Labor, to the Office of Health and Medical Affairs, Department of Management and Budget, see E.R.O. No. 1982-2, compiled at MCL 18.24 of the Michigan Compiled Laws.

For transfer of duty to conduct hearings pursuant to MCL 418.315(7) to the Bureau of Workers' Disability Compensation, Department

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of Labor, see E.R.O. No. 1986-3, compiled at MCL 418.1 of the Michigan Compiled Laws.

For transfer of workers' compensation administrative rules functions to the Bureau of Workers' Disability Compensation, Department of Labor, see E.R.O. No. 1990-1, compiled at MCL 418.2 of the Michigan Compiled Laws.

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."

Transfer of powers: See MCL 418.315 and 418.991.

Popular name: Act 317

Popular name: Heart and Lung Act

Administrative rules: R 418.10101 et seq. and R 418.10104 et seq. of the Michigan Administrative Code.

418.315a Medical marihuana treatment; reimbursement by employer not required.

Sec. 315a. Notwithstanding the requirements in section 315, an employer is not required to reimburse or cause to be reimbursed charges for medical marihuana treatment.

History: Add. 2012, Act 481, Imd. Eff. Dec. 28, 2012.

418.319 Medical or vocational rehabilitation services.

Sec. 319. (1) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment. If such services are not voluntarily offered and accepted, the director on his or her own motion or upon application of the employee, carrier, or employer, after affording the parties an opportunity to be heard, may refer the employee to an agency-approved facility for evaluation of the need for, and kind of service, treatment, or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of such report, the director may order that the training, services, or treatment recommended in the report be provided at the expense of the employer. The director may order that any employee participating in vocational rehabilitation shall receive additional payments for transportation or any extra and necessary expenses during the period and arising out of his or her program of vocational rehabilitation. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than 52 weeks except in cases when, by special order of the director after review, the period may be extended for an additional 52 weeks or portion thereof. If there is an unjustifiable refusal to accept rehabilitation pursuant to a decision of the director, the director shall order a loss or reduction of compensation in an amount determined by the director for each week of the period of refusal, except for specific compensation payable under section 361(1) and (2).

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

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

Compiler's note: 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

Popular name: Heart and Lung Act

418.321 Compensation for death resulting from personal injury.

Sec. 321. If death results from the personal injury of an employee, the employer shall pay, or cause to be paid, subject to section 375, in 1 of the methods provided in this section, to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury, a weekly payment equal to 80% of the employee's after-tax average weekly wage, subject to the maximum and minimum rates of compensation under this act, for a period of 500 weeks from the date of death. If at the expiration of the 500-week period any such wholly or partially dependent person is less than 21 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation or some portion thereof until the wholly or partially dependent person reaches the age of 21. If the employee leaves dependents only partially dependent upon his or her earnings for support at the time of injury, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as 80% of the amount contributed by the employee to the partial dependents

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bears to the annual earnings of the deceased at the time of injury.

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

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.331 Persons conclusively presumed to be wholly dependent for support upon deceased employee.

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

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.

Constitutionality: The Michigan supreme court held violative of the fourteenth amendment the conclusive presumption of dependency for widows set forth in the worker's disability compensation act. Day v W A Foote Memorial Hospital, 412 Mich 698; 316 NW2d 712 (1982).

Compiler's note: 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

Popular name: Heart and Lung Act

418.335 Cessation of payments upon remarriage of dependent wife or upon dependent person reaching certain age; reinstatement of dependency; persons to whom section applicable.

Sec. 335. (1) Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but not to exceed the sum of $500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in section 331(b). A worker's compensation magistrate shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 18 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation, or

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some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years, if at the age of 18 years he or she is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent wife.

(2) This section shall apply to all persons who are entitled to receive compensation or are receiving compensation under this act on July 30, 1985 and who have not attained the age of 18 years on July 30, 1985.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.341 Dependents; qualifications; party in interest.

Sec. 341. Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions except as otherwise specifically provided in sections 321, 331 and 335. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto, or their legal guardians or trustees. In case of the death of a dependent, his proportion of the compensation shall be payable to the surviving dependents pro rata. Upon the death of all dependents compensation shall cease. No person shall be excluded as a dependent who is a nonresident alien. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employee.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.345 Death resulting from injury; expense of last sickness, funeral, and burial; payment by employer; limitation; application; order.

Sec. 345. If death results from the injury, the employer shall pay, or cause to be paid, the reasonable expense of the employee's last sickness, funeral, and burial. The cost of the funeral and burial shall not exceed $6,000.00 or the actual cost, whichever is less. Any person who performed such service or incurred such liability may file an application with the bureau. A worker's compensation magistrate may order the employer to pay such sums.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 187, Imd. Eff. Dec. 20, 1971;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 1996, Act 107, Imd. Eff. Mar. 5, 1996.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.351 Total incapacity for work; amount and duration of compensation; limitation on conclusive presumption of total and permanent disability; determining question of permanent and total disability.

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

(2) A totally and permanently disabled employee whose date of injury preceded July 1, 1968, is entitled to the compensation under this act that was payable to the employee immediately before the effective date of this subsection, or compensation equal to 50% of the state average weekly wage as last determined under section 355, whichever is greater.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1976, Act 393, Imd. Eff. Jan. 3, 1977;—Am. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.352 Supplement to weekly compensation.

Sec. 352. (1) An employee receiving or entitled to receive benefits equal to the maximum payable to that employee under section 351 or the dependent of a deceased employee receiving or entitled to receive benefits under section 321 whose benefits are based on a date of personal injury between September 1, 1965, and December 31, 1979, is entitled to a supplement to weekly compensation. The supplement shall be computed using the total annual percentage change in the state average weekly wage, rounded to the nearest 1/10 of 1%, as determined under section 355. The supplement shall be computed as a percentage of the weekly compensation rate that the employee or the dependent of a deceased employee is receiving or is entitled to receive on January 1, 1982 had the employee been receiving benefits at that time, rounded to the nearest dollar. The supplement shall not exceed 5% compounded for each calendar year in the adjustment period. The percentage change for purposes of the adjustment shall be computed from the base year through December 31, 1981. A supplement shall not be paid retroactively for any period of disability before January 1, 1982.

(2) For personal injuries occurring from September 1, 1965, through December 31, 1968, the base year shall be 1968. For personal injuries occurring between January 1, 1969 and December 31, 1979, the base year shall be the year in which the personal injury occurred.

(3) Pursuant to subsection (1), the director shall announce on December 1, 1981, the supplement percentages payable on January 1, 1982.

(4) All personal injuries found compensable under this act after January 1, 1982 with a personal injury date before January 1, 1980, shall be paid at a rate determined pursuant to this section.

(5) An employee who is eligible to receive differential benefits from the second injury fund shall be paid the supplement pursuant to this section as reduced by the amount of the differential payments being made to the employee by the second injury fund at the time of the payment of the supplement pursuant to this section.

(6) The supplement paid pursuant to this section, when added to the original benefit, shall not exceed the maximum weekly rate of compensation provided in section 355 in effect on the date of the adjustment.

(7) An employee is not entitled to supplements under this section for a personal injury for which the liability has been redeemed.

(8) The supplements under this section shall be paid by an insurer or self-insurer on a weekly basis. The insurer, self-insurer, the second injury fund, and the self-insurers' security fund are entitled to quarterly reimbursement for these payments from the compensation supplement fund in section 391, except that an insurer or self-insurer subject to section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of former 1975 PA 228, or, for periods prior to January 1, 2012, section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423, shall take a credit under section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of former 1975 PA 228, or, for periods prior to January 1, 2012, section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423, as applicable.

(9) This section does not apply to an employee receiving benefits under section 361(1).

(10) An insurer, self-insurer, the second injury fund, or the self-insurers' security fund shall make the supplemental payments required by this section for each quarter of the state's fiscal year that the state treasurer certifies that there are sufficient funds available to meet the obligations of the fund created in section 391 for that quarter. The state treasurer shall certify whether there are sufficient funds in the fund created in section 391 to meet the obligations of that fund for each quarter of the fiscal year of this state on or before the first day of each quarter.

(11) An insurer, self-insurer, the second injury fund, or the self-insurers' security fund shall make the supplemental payments required by this section for the period July 1, 1982 to September 30, 1982 and shall be reimbursed for those payments.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1982, Act 282, Imd. Eff. Oct. 7, 1982;—Am. 1984, Act 46, Imd. Eff. Apr. 9, 1984;—Am. 2007, Act 190, Imd. Eff. Dec. 21, 2007;—Am. 2014, Act 268, Imd. Eff. July 2, 2014.

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Popular name: Act 317

Popular name: Heart and Lung Act

418.353 Determination of dependency.

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

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

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

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 215, Imd. Eff. Dec. 30, 1971;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Constitutionality: The gender-based conclusive presumption of the workers' compensation act is violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the doctrine of res judicata did not preclude a redetermination of dependency of the wife of an injured worker. Pike v City of Wyoming, 431 Mich 589; 433 NW2d 768 (1988).

Compiler's note: 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

Popular name: Heart and Lung Act

418.354 Coordination of benefits.

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

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

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

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

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premiums regarding the disability insurance policy.

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

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

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

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

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

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

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

(*i*) Apply for social security benefits.

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

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

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

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

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

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comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information allows the employer or carrier with the approval of the agency to discontinue benefits under section 301(7) or (8), 351, or 835 until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

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

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

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

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

(11) Disability insurance benefit payments under the social security act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 301(7) or (8), 351, or 835 as old-age benefit payments under the social security act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. However, social security disability insurance benefits shall only be so considered if section 224 of the social security act, 42 USC 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of worker's compensation benefits by the employee.

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

(13) As used in this section, "after-tax amount" means the gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) reduced by the prorated weekly amount which would have been paid, if any, under the federal insurance contributions act, 26 USC 3101 to 3128, and state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the "after-tax amount" the tables provided for in section 313(2) shall be used. The gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table will be multiplied by 1.25 which will be conclusive for determining the "after-tax amount" of benefits under subsection (1)(b), (1)(c), (1)(d), or (1)(e).

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

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

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

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addition to the wage loss concept, coordination of benefits should not apply to those benefits.

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

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

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

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

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

History: Add. 1981, Act 203, Eff. Mar. 31, 1982;—Am. 1983, Act 159, Imd. Eff. July 24, 1983;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1987, Act 28, Imd. Eff. May 14, 1987;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Constitutionality: The amendment of the workers' compensation act by 1987 PA 28, MCL 418.354(17)-(20), which prohibits the coordination of workers' compensation benefits for employees who were injured before the effective date of 1981 PA 203, MCL 418.354, does not violate the Due Process Clauses of the federal and state constitutions, the Contract Clause of the federal constitution, or the Separation of Powers Clause of the Michigan Constitution; the amendment was a constitutional exercise of legislative power retroactively modifying benefit levels for a legitimate purpose furthered by rational means; the statute does not abrogate any vested rights of the employees and validly may be applied to all compensation liabilities within its terms except those reduced to a final judgment before its effective date. Romein v General Motors, 436 Mich 515; 462 NW2d 555 (1990).

The U.S. Supreme Court, affirming the 1990 Michigan Supreme Court decision, held that the statute: (1) did not substantially impair the obligations of petitioners' contracts with their employees in violation of the Contract Clause because there was no contractual agreement regarding the specific terms allegedly at issue, and (2) did not violate the Due Process Clause since its retroactive provision was a rational means of furthering a legitimate legislative purpose. Romein v General Motors, 503 US 181; 112 S Ct 1105; 117 L Ed2d 328 (1992).

Compiler's note: 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

Popular name: Heart and Lung Act

418.355 Adjustment of maximum weekly rate; computing supplemental benefit.

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

(2) Effective January 1, 1982, and each January 1 thereafter, the maximum weekly rate of compensation for injuries occurring within that year shall be established as 90% of the state average weekly wage as of the prior June 30, adjusted to the next higher multiple of $1.00.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.356 Increase in benefits after 2 years of continuous disability; petition for hearing; evidence; order for adjustment of compensation; payment; reimbursement from second

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injury fund; minimum weekly benefit for death; minimum weekly benefit for 1 or more losses; total disability; exception.

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

(2) The minimum weekly benefit for death under section 321 shall be 50% of the state average weekly wage as determined under section 355.

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

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

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

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 2014, Act 231, Imd. Eff. June 27, 2014.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.357 Employee 65 or older; reduction of weekly payments; exception.

Sec. 357. (1) When an employee who is receiving weekly payments or is entitled to weekly payments reaches or has reached or passed the age of 65, the weekly payments for each year following his or her sixty-fifth birthday shall be reduced by 5% of the weekly payment paid or payable at age 65, but not to less than 50% of the weekly benefit paid or payable at age 65, so that on his or her seventy-fifth birthday the weekly payments shall have been reduced by 50%; after which there shall not be a further reduction for the duration of the employee's life. Weekly payments shall not be reduced below the minimum weekly benefit as provided in this act.

(2) Subsection (1) shall not apply to a person 65 years of age or over otherwise eligible and receiving weekly payments who is not eligible for benefits under the social security act, 42 U.S.C. 301 to 1397f, or to a person whose payments under this act are coordinated under section 354.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1974, Act 184, Imd. Eff. July 2, 1974;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Constitutionality: This section is not unconstitutional as a denial of equal protection of the law. Cruz v Chevrolet Grey Iron Division of General Motors Corporation, 398 Mich 117; 247 NW2d 764 (1976).

Popular name: Act 317

Popular name: Heart and Lung Act

418.358 Reduction of benefits.

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

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: 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

Popular name: Heart and Lung Act

418.359 Repealed. 1985, Act 103, Imd. Eff. July 10, 1985.

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Compiler's note: The repealed section pertained to payments for total disability of employees under 25.

Popular name: Act 317

Popular name: Heart and Lung Act

418.360 Professional athlete; weekly benefits; condition; benefits under other provisions; exemptions.

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

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

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

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

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

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

History: Add. 1978, Act 373, Imd. Eff. July 27, 1978;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: 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

Popular name: Heart and Lung Act

418.361 Effect of imprisonment or commission of crime; scheduled disabilities; meaning of total and permanent disability; limitations; payment for loss of second member.

Sec. 361. (1) An employer is not liable for compensation under section 301(7) or (8), 351, 371(1), or 401(5) or (6) for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

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

(a) Thumb, 65 weeks.

(b) First finger, 38 weeks.

(c) Second finger, 33 weeks.

(d) Third finger, 22 weeks.

(e) Fourth finger, 16 weeks.

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

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

(f) Great toe, 33 weeks.

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

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

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

(h) Hand, 215 weeks.

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(i) Arm, 269 weeks.

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

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

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

(*l*) Eye, 162 weeks.

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

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

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

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

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

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

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

(f) Incurable insanity or imbecility.

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Constitutionality: The statutory limitation in subsection (2)(g) of this section is not unconstitutional. Johnson v Harnischfeger Corp, 414 Mich 102; 323 NW2d 912 (1982).

Compiler's note: 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

Popular name: Heart and Lung Act

418.364 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to biannual study concerning adequacy of weekly benefits.

Popular name: Act 317

418.371 Weekly loss in wages; average weekly wage.

Sec. 371. (1) The weekly loss in wages referred to in this act shall consist of the percentage of the average weekly earnings of the injured employee computed according to this section as fairly represents the proportionate extent of the impairment of the employee's earning capacity in the employments covered by this act in which the employee was working at the time of the personal injury. The weekly loss in wages shall be fixed as of the time of the personal injury, and determined considering the nature and extent of the personal injury. The compensation payable, when added to the employee's wage earning capacity after the personal injury in the same or other employments, shall not exceed the employee's average weekly earnings at the time of the injury.

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

(3) If the employee worked less than 39 weeks in the employment in which the employee was injured, the average weekly wage shall be based upon the total wages earned by the employee divided by the total number of weeks actually worked. For purposes of this subsection, only those weeks in which work is performed shall

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be considered in computing the total wages earned and the number of weeks actually worked.

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

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

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1981, Act 192, Eff. Mar. 31, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.372 Employee engaged in more than 1 employment at time of personal injury or personal injury resulting in death; liability; apportionment of weekly benefits; exception.

Sec. 372. (1) If an employee was engaged in more than 1 employment at the time of a personal injury or a personal injury resulting in death, the employer in whose employment the injury or injury resulting in death occurred is liable for all the injured employee's medical, rehabilitation, and burial benefits. Weekly benefits shall be apportioned as follows:

(a) If the employment which caused the personal injury or death provided more than 80% of the injured employee's average weekly wages at the time of the personal injury or death, the insurer or self-insurer is liable for all of the weekly benefits.

(b) If the employment which caused the personal injury or death provided 80% or less of the employee's average weekly wage at the time of the personal injury or death, the insurer or self-insurer is liable for that portion of the employee's weekly benefits as bears the same ratio to his or her total weekly benefits as the average weekly wage from the employment which caused the personal injury or death bears to his or her total weekly wages. The second injury fund is separately but dependently liable for the remainder of the weekly benefits. The insurer or self-insurer has the obligation to pay the employee or the employee's dependents at the full rate of compensation. The second injury fund shall reimburse the insurer or self-insurer quarterly for the second injury fund's portion of the benefits due the employee or the employee's dependents.

(2) For purposes of apportionment under this section, only wages that were reported to the internal revenue service shall be considered, and the reports of wages to the internal revenue service are conclusive for the purpose of apportionment under this section.

(3) This section does not apply to individuals entitled to benefits under section 161(1)(d), (e), (f), (g), (h), (i), (j), and (o).

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 2012, Act 83, Imd. Eff. Apr. 11, 2012.

Popular name: Act 317

Popular name: Heart and Lung Act

418.373 Employee receiving nondisability pension or retirement benefits, including old-age benefits; presumption; other standards of disability superseded; medical benefits under MCL 418.315 not barred.

Sec. 373. (1) An employee who terminates active employment and is receiving nondisability pension or retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the social security act, 42 U.S.C. 301 to 1397f, that was paid by or on behalf of an employer from whom weekly benefits under this act are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a compensable injury or disease under either this chapter or chapter 4. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work related disability, to perform work suitable to the employee's qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under either this chapter or chapter 4.

(2) This section shall not be construed as a bar to an employee receiving medical benefits under section 315 upon the establishment of a causal relationship between the employee's work and the need for medical

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treatment.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.375 Death of injured employee; death benefits in lieu of further disability indemnity.

Sec. 375. (1) The death of the injured employee before the expiration of the period within which he or she would receive weekly payments shall be considered to end the disability and all liability for the remainder of such payments which he or she would have received in case he or she had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity.

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

(3) If an application for benefits has been filed but has not been decided by a worker's compensation magistrate, or on appeal and the claimant dies from a cause unrelated to his or her injury, the proceedings shall not abate but may be continued in the name of his or her personal representative. In such case, the benefits payable up to time of death shall be paid to the same beneficiaries and in the same amounts as would have been payable if the employee had suffered a compensable injury resulting in death.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.381 Claim for compensation; time limit; extension of time period; payment for nursing or attendant care; compliance.

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

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

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

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1981, Act 197, Eff. Jan. 1, 1982;—Am.

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1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: 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

Popular name: Heart and Lung Act

418.383 Notice of injury; unintentional errors; actual knowledge.

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

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.385 Physical examination of employee; payment; report; copy; evidence; failure of party to provide medical report.

Sec. 385. After the employee has given notice of injury and from time to time thereafter during the continuance of his or her disability, if so requested by the employer or the carrier, he or she shall submit himself or herself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer or the carrier. If an examination relative to the injury is made, the employee or his or her attorney shall be furnished, within 15 days of a request, a complete and correct copy of the report of every such physical examination relative to the injury performed by the physician making the examination on behalf of the employer or the carrier. The employee shall have the right to have a physician provided and paid for by himself or herself present at the examination. If he or she refuses to submit himself or herself for the examination, or in any way obstructs the same, his or her right to compensation shall be suspended and his or her compensation during the period of suspension may be forfeited. Any physician who makes or is present at any such examination may be required to testify under oath as to the results thereof. If the employee has had other physical examinations relative to the injury but not at the request of the employer or the carrier, he or she shall furnish to the employer or the carrier a complete and correct copy of the report of each such physical examination, if so requested, within 15 days of the request. If a party fails to provide a medical report regarding an examination or medical treatment, that party shall be precluded from taking the medical testimony of that physician only. The opposing party may, however, elect to take the deposition of that physician.

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History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

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

Popular name: Act 317

Popular name: Heart and Lung Act

418.391 Compensation supplement fund; creation; administration; appropriation; rules; payments; personnel; recommendations; carrying forward unexpended funds; reduction of appropriation; report; reimbursement of insurers, self-insurers, second injury fund, self-insurers' security fund, or private employer group self-insurers security fund; application.

Sec. 391. (1) The compensation supplement fund is created as a separate fund in the state treasury. The fund shall be administered by the state treasurer pursuant to this section. The legislature shall appropriate to the compensation supplement fund from the general fund the amounts necessary to meet the obligations of the compensation supplement fund under section 352, and the administrative costs incurred by the bureau under this section.

(2) The director shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that prescribe the conditions under which the money in the compensation supplement fund shall be expended pursuant to section 352 and this section.

(3) The department of treasury shall cause to be paid from the compensation supplement fund those amounts and at those times as are prescribed by the director pursuant to subsection (2).

(4) The director may employ the personnel the director considers necessary for the proper administration of the compensation supplement fund.

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(5) The director shall annually recommend to the governor and the chairpersons of the senate and house appropriations committees the amount of money the director considers necessary to implement and enforce this section and section 352 during the ensuing fiscal year. The compensation supplement fund may carry forward into a subsequent fiscal year any unexpended funds, and reduce the necessary appropriation by the amount of the unobligated balance in the fund.

(6) Not later than April 1 of each year the director shall submit a report to the governor and the legislature summarizing the transactions of the compensation supplement fund during the preceding calendar year. The report shall identify each insurer and self-insurer that receives a reimbursement payment from the compensation supplement fund and the amount of reimbursement. When all liabilities of the compensation supplement fund for reimbursements required pursuant to section 352 are paid, the director shall recommend to the governor and the legislature that the compensation supplement fund be abolished. The director shall certify to the department of treasury and the commissioner of insurance the identity of each insurer and self-insurer that claims a credit as provided for under section 352(8) and the amount of each supplemental payment under section 352 paid by that insurer or self-insurer to which the credit applies.

(7) Pursuant to section 352, insurers and self-insurers not subject to section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of former 1975 PA 228, or, for periods prior to January 1, 2012, section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423; the second injury fund; the self-insurers' security fund; and the private employer group self-insurers security fund are entitled to reimbursement from the compensation supplement fund. An application for reimbursement shall be on the forms and contain information as required by the director. Except as otherwise authorized by the director, application for a claim for reimbursement from the compensation supplement fund shall be filed with the director within 3 months after the date on which the right to reimbursement first accrues. After the insurer, self-insurer, the second injury fund, the self-insurers' security fund, or the private employer group self-insurers security fund has established a right to reimbursement, payment from the compensation supplement fund shall be made without interest on a proper showing every quarter. Except as otherwise authorized by the director, a reimbursement shall not be allowed for a period that is more than 1 year before the date of the filing of the application for reimbursement pursuant to this section. A reimbursement shall not be allowed for payments made under section 352 for which an insurer or self-insurer takes a credit as provided for in section 352(8).

History: Add. 1980, Act 357, Eff. Jan. 1, 1981;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1984, Act 46, Imd. Eff. Apr. 9, 1984;—Am. 2007, Act 190, Imd. Eff. Dec. 21, 2007;—Am. 2014, Act 268, Imd. Eff. July 2, 2014.

Popular name: Act 317

Popular name: Heart and Lung Act

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CHAPTER 4
OCCUPATIONAL DISEASES AND DISABLEMENTS

418.401 Definitions; determination of entitlement to weekly wage lost benefits; notice of employee refusing offer of employment; termination of benefits; “reasonable employment” defined; personal injuries or work related diseases to which section applicable.

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

(2) As used in this chapter:

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

(b) "Personal injury" includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if

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contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and be promptly reported to the employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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maximum weekly rate of compensation, as determined under section 355.

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

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

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

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

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

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

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

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

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1986, Act 314, Imd. Eff. Dec. 23, 1986;—Am. 1987, Act 28, Imd. Eff. May 14, 1987;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.
Former MCL 418.401, which pertained to definitions, was repealed by Act 103 of 1985, Imd. Eff. July 30, 1985.
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

418.405 Fire or police department members, county sheriff and deputies, state police, conservation officer, motor carrier officer, forest fire officer, and fire/crash rescue officer; "personal injury" as including respiratory and heart diseases or resulting illnesses; presumption; claim against Christopher R. Slezak first responder presumed coverage fund for certain cancers; suspension of claim against employer; application for pension benefits as condition precedent; determination denying pension benefits; medical expenses not provided by pension program; first responder presumed coverage fund; creation; duties of state treasurer; director as administrator; notice to legislature of insufficient funds; operation and management of fund; report; rights.

Sec. 405. (1) For a member of a fully paid fire department of an airport operated by a county, public airport authority, or state university or college; a member of a fully paid fire or police department of a city, township, or village employed and compensated upon a full-time basis; a member of a fully paid public fire authority employed and compensated upon a full-time basis; a county sheriff and the deputies of the county sheriff; a member of the state police; a conservation officer; or an officer of the motor carrier enforcement division of the department of state police, "personal injury" includes respiratory and heart diseases, or illnesses resulting therefrom, that develop or manifest themselves during a period while the member of the department is in the active service of the department and that result from the performance of duties for the department.

(2) A full-time member, and, beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a part-time, paid on-call, or volunteer member, of a fire department or public fire authority, and, beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a former member who was a full-time, part-time, paid on-call, or volunteer member of a fire department or public fire authority, who has or had 60 months or more active service in the department or public fire authority at the time the cancer manifests itself, and who is or was exposed to the hazards

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incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties with the department or authority shall suspend a claim he or she may have against his or her employer under this act and may claim like benefits from the Christopher R. Slezak first responder presumed coverage fund created under subsection (6) for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, lymphatic, ovarian, breast, or non-HPV cervical cancer. Beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a full-time, part-time, paid on-call, volunteer, or former forest fire officer or fire/crash rescue officer who has or had 60 months or more active service at the time the cancer manifests itself, and who is or was exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties shall suspend a claim he or she may have against his or her employer under this act and may claim like benefits from the Christopher R. Slezak first responder presumed coverage fund created under subsection (6) for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic, ovarian, breast, or non-HPV cervical cancer. The cancers described in this subsection are presumed to arise out of and in the course of employment only with respect to a claim against the fund and in the absence of non-work-related causation or specific incidents that establish a cause independent of the employment. Neither mere evidence that the condition was preexisting, nor an abstract medical opinion that the employment was not the cause of the disease or condition, is sufficient to overcome the presumption for purposes of a claim against the Christopher R. Slezak first responder presumed coverage fund. The presumption under this subsection may be rebutted by scientific evidence that the member or former member of the fire department or public fire authority was a substantial and consistent user of cigarettes or other tobacco products within the 10 years immediately preceding the date of injury, and that this use was a significant factor in the cause, aggravation, or progression of the cancer. The suspension of the member's or former member's claim against his or her employer under this subsection is in effect only during the period the member receives like benefits from the Christopher R. Slezak first responder presumed coverage fund. If a redemption agreement between the Christopher R. Slezak first responder presumed coverage fund and the claimant is approved, the suspension of a claim against an employer under this subsection continues indefinitely. A claimant may not receive benefits covering the same time period from both the Christopher R. Slezak first responder presumed coverage fund and the employer. The presumption created in this subsection applies only to a claim for like benefits against the Christopher R. Slezak first responder presumed coverage fund. For purposes of a claim against the Christopher R. Slezak first responder presumed coverage fund created under subsection (6), a fire department or public fire authority is considered the employer of a volunteer member.

(3) Respiratory and heart diseases or illnesses resulting therefrom as described in subsection (1) are presumed to arise out of and in the course of employment in the absence of evidence to the contrary.

(4) As a condition precedent to filing an application for benefits, a claimant described in subsection (1) or a claimant under subsection (2) must first apply for and do all things necessary to qualify for any pension benefits to which he or she, or his or her decedent, may be entitled or must demonstrate that he or she, or his or her decedent, is ineligible for any pension benefits. If a final determination is made that pension benefits will not be awarded or that the claimant or his or her decedent is ineligible for any pension benefits, then the designation of "personal injury" as provided in subsection (1) or the presumption under subsection (2) applies. The employer, employee, or former member described in subsection (2) may request 2 copies of the determination denying pension benefits, 1 copy of which must be filed with the workers' compensation agency upon request.

(5) If an employee described in subsection (1) or (2) or a former member described in subsection (2) is eligible for any pension benefits, that eligibility does not prohibit the employee or dependents of that employee from receiving benefits under section 315 for the medical expenses or portion of medical expenses that are not provided for by the pension program.

(6) The Christopher R. Slezak first responder presumed coverage fund is created as a separate fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The director shall be the administrator of the fund for auditing purposes. The director shall expend money from the fund only for the purpose of paying claims authorized under subsection (2) and costs of administration. The department of treasury shall cause to be paid from the Christopher R. Slezak first responder presumed coverage fund those amounts and at those times as are prescribed by the director to pay claims under subsection (2) pursuant to this subsection and subsection (7). Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund. If there is insufficient money in the fund to pay claims authorized under subsection (2), claims that are approved but not paid must be paid if fund revenues become available, and those claims must be paid before

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subsequently approved claims. The director shall develop and implement a process to notify the legislature that money in the Christopher R. Slezak first responder presumed coverage fund may be insufficient to cover future claims when the director reasonably believes that within 60 days the money in the fund will be insufficient to pay claims. The process must, at a minimum, do all of the following:

(a) Identify a specific date by which the money in the fund will become insufficient to pay claims.

(b) Outline a clear process indicating the order in which claims pending with the fund will be paid.

(c) Outline a clear process indicating the order in which claims that were pending with the fund when money became insufficient will be paid, if money subsequently becomes available.

(7) The director shall develop the application, approval, and compliance process necessary to operate and manage the Christopher R. Slezak first responder presumed coverage fund. The director shall develop and implement the use of an application form to be used by a claimant for benefits payable by the fund under subsection (2). When a claim under subsection (2) is received, the director shall notify the employer against whom a claim is suspended or the carrier. The employer or carrier may access all information the agency receives respecting the claim and may request that the agency obtain specific additional information. The fund standards, guidelines, templates, and any other forms used by the director to implement the Christopher R. Slezak first responder presumed coverage fund must be posted and maintained on the department's website. The director shall review and consider claims in the order in which they are received and shall approve or deny a claim within 30 days after receipt of the claim.

(8) The director shall submit an annual report to the state budget director and the senate and house of representatives standing committees on appropriations not later than April 1 of each year that includes, but is not limited to, all of the following:

(a) The total number of claims received under the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.

(b) The number of claims approved and the total dollar amount of claims paid by the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.

(c) The costs of administering the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.

(9) By March 31 of each year, the worker's compensation agency shall report to the chairs of the appropriations committees of the senate and the house of representatives the estimated amount of both of the following:

(a) The anticipated cost of benefits in the next fiscal year for claims authorized under subsection (2) and payable by the Christopher R. Slezak first responder presumed coverage fund.

(b) The amount of any anticipated shortfall in the Christopher R. Slezak first responder presumed coverage fund that would prevent payment of claims under subsection (6) for the current fiscal year.

(10) The Christopher R. Slezak first responder presumed coverage fund has the same rights under this act as an employer or carrier.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 17, Imd. Eff. May 5, 1971;—Am. 1971, Act 188, Imd. Eff. Dec. 20, 1971;—Am. 1980, Act 457, Imd. Eff. Jan. 15, 1981;—Am. 2014, Act 515, Imd. Eff. Jan. 14, 2015;—Am. 2021, Act 117, Imd. Eff. Nov. 30, 2021;—Am. 2021, Act 129, Imd. Eff. Dec. 17, 2021.

Popular name: Act 317

418.411 Disablement treated as personal injury.

Sec. 411. The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

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

Popular name: Act 317

418.415 Death or disablement compensation.

Sec. 415. If an employee is disabled or dies and his disability or death is caused by a disease and the disease is due to the nature of the employment in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation and other benefits for his death or for his disablement, all as provided in this act.

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

Popular name: Act 317

418.425 Date of disablement.

Sec. 425. For the purposes of this chapter the date of disablement shall be the date the hearing referee or

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worker's compensation magistrate, as applicable, may determine on hearing of the claim.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

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

Popular name: Act 317

418.431 Employer's liability; conditions exempting and limiting.

Sec. 431. No compensation shall be payable for an occupational disease if the employee at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of the disability or death. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable shall be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

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

Popular name: Act 317

418.435 Employer from whom total compensation recoverable; effect of dispute or controversy.

Sec. 435. The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If any dispute or controversy arises as to the payment of compensation or as to liability for the compensation, the employee shall make claim upon the last employer only and apply for a hearing against the last employer only.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1972, Act 337, Imd. Eff. Jan. 4, 1973;—Am. 1980, Act 357, Eff. Jan. 1, 1981.

Popular name: Act 317

418.441 Claim for occupational disease and death resulting from occupational disease; requirements; commencement; time limit.

Sec. 441. (1) The requirements of claim for occupational disease and death resulting from an occupational disease and the requirements as to the bringing of proceedings for compensation for disability or death resulting from the occupational disease are the same as required in chapter 3, except that the claim of occupational disease or death resulting from an occupational disease shall commence from the date the employee or a deceased employee's dependents had knowledge, or a reasonable belief, or through ordinary diligence could have discovered, that the occupational disease or death was work related.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

CHAPTER 5
FUNDS

418.501 Self-insurers' security fund and second injury fund; silicosis, dust disease, and logging industry compensation fund; uninsured employer's security fund; private employer group self-insurers security fund; definitions.

Sec. 501. (1) A self-insurers' security fund and a second injury fund are created.

(2) A silicosis, dust disease, and logging industry compensation fund is created.

(3) An uninsured employer's security fund is created. The fund shall succeed to all of the assets, if any, of the former uninsured employer's security account of the workplace health and safety fund created in former section 723.

(4) The private employer group self-insurers security fund is created on January 1, 2020. The PEGSISF shall receive assessments from and be responsible for payment of eligible claims made against individual members of groups of self-insured private employers who pool their liabilities under this act as group funds in

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the manner provided in section 611, if the group is otherwise unable to pay.

(5) As used in this chapter:

(a) "Employment in the logging industry" means employment in the logging industry as described in the section in the workmen's compensation and employers liability insurance manual, entitled, "logging or lumbering and drivers code no. 2702," which is filed with and approved by the commissioner of insurance.

(b) "Private employer group self-insurers security fund" or "PEGSISF" means the fund created in subsection (4).

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 2014, Act 228, Imd. Eff. June 27, 2014.

Compiler's note: 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."

For transfer of powers and duties of the board of trustees of the funds established in MCL 418.501 relating to management activities from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

Popular name: Act 317

418.501a Liability of self-insurer's security fund; termination on January 1, 2020; responsibility of PEGSISF on and after January 1, 2020; assessment.

Sec. 501a. (1) The liability of the self-insurers' security fund under this act for any payment of claims made against a self-insured member of a private employer group self-insurer terminates on January 1, 2020. The PEGSISF is responsible for payment of eligible claims made against the PEGSISF on and after January 1, 2020, and for claims against a private employer group self-insurer for which the self-insurers' security fund was formerly liable under this act.

(2) If the director determines that a trust established under R 408.43s(2) of the Michigan administrative code is reasonably likely to be insufficient to fulfill the liability for claims made against the self-insured members of a private employer group self-insurer before January 1, 2020, the director may assess all private employer group self-insurers based on the proportion of the total paid losses, as defined in section 551(3)(b), of each private employer group self-insurer paid in the prior year to cover the cost of benefits incurred. An assessment made under this subsection is payable to the trust to satisfy liability for those claims.

History: Add. 2014, Act 229, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.501b Assessments.

Sec. 501b. If the director determines that there is a reasonable likelihood that the remedies available under R 408.43s of the Michigan administrative code will be insufficient to meet the obligations of the trust, the director may assess private employer group self-insurers to the extent necessary to secure payment of benefits for which the private employer group self-insurers security fund may become responsible under this act and associated overhead and administrative expenses. The assessments shall be apportioned among the private employer group self-insurers based on each self-insurer group's proportion of the total paid losses, as defined in section 551(3)(b), of each private group self-insurer paid by private employer self-insured groups in the prior year. An assessment made under this section is payable to the PEGSISF.

History: Add. 2014, Act 232, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.502 "Insolvent private self-insured employer" defined.

Sec. 502. For the purposes of this act, an insolvent private self-insured employer means either an employer who files for relief under the bankruptcy act or an employer against whom bankruptcy proceedings are filed or an employer for whom a receiver is appointed in a court of this state.

History: Add. 1971, Act 149, Imd. Eff. Nov. 16, 1971.

Popular name: Act 317

418.511 Board of trustees; appointment, term, expenses.

Sec. 511. The funds shall be managed by a board of 3 trustees, 1 of whom shall be the director, the remaining 2 of whom shall be appointed by the governor with the advice and consent of the senate and so selected by the governor that 1 trustee will represent the insurance industry and the remaining trustee shall

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represent those employers who have been authorized to act as self-insurers. The director shall be a permanent trustee but the other 2 trustees shall be appointed for terms of 4 years and shall serve until their successors are appointed and qualified. The present trustees of the silicosis and dust disease fund shall continue to serve for the balance of their terms and shall exercise the powers granted by this chapter. The trustees shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses during the performance of their duties.

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

Popular name: Act 317

418.515 Board of trustees; powers and duties; funds administrator; office space; clerical assistance; expenses; legal advice and representation.

Sec. 515. (1) The trustees shall have general authority to carry out the purposes of this chapter, shall make such rules as they consider necessary, shall maintain records and institute systems and procedures or take any other administrative action as they consider necessary to carry out the purposes of this chapter.

(2) The trustees may appoint an administrative officer to be referred to as the funds administrator who shall perform duties as shall be designated or delegated by the trustees.

(3) The worker's compensation agency shall provide the trustees of the funds with suitable office space and clerical assistance. All other expenses authorized by the trustees for the proper administration of the funds, including but not limited to, the salary and expenses of the funds administrator and the investigation, determination and defense of claims against the funds shall be borne ratably by and paid from the assets of the funds. The trustees may secure legal advice and be represented by the attorney general or any assistant designated by the attorney general in any matter involving the affairs of the funds. The self-insurers' security fund and the private employer group self-insurers security fund shall be represented by an assistant attorney general who is not representing the second injury fund or the silicosis and dust disease fund. The cost of such services and expenses in connection therewith shall be borne ratably by and paid from the funds. All expenses so incurred and charged to the funds shall be accounted for on a fiscal year basis.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 2014, Act 233, Imd. Eff. June 27, 2014.

Popular name: Act 317

CAUTION! This document is from an archive and may contain outdated information.

418.521 Second injury fund; payments reimbursable.

Sec. 521. (1) If an employee has a permanent disability in the form of the loss of a hand, arm, foot, leg or eye and subsequently has an injury arising out of and in the course of his employment which results in another permanent disability in the form of the loss of a hand, arm, foot, leg or eye, at the conclusion of payments made for the second permanent disability he shall be conclusively presumed to be totally and permanently disabled and paid compensation for total and permanent disability after subtracting the number of weeks of compensation received by the employee for both such losses. The payment of compensation under this section shall be made by the second injury fund, and shall begin at the conclusion of the payments for the second permanent disability.

(2) Any permanently and totally disabled person as defined in this act, if such total and permanent disability arose out of and in the course of his employment, who, on and after June 25, 1955, is entitled to receive payments of workmen's compensation in amounts per week of less than is presently provided in the workmen's compensation schedule of benefits for permanent and total disability, and for a lesser number of weeks than the duration of such permanent and total disability, after the effective date of any amendatory act by which his disability is defined as permanent and total disability, or by which the weekly benefits for permanent and total disability are increased, shall receive weekly from the carrier on behalf of the second injury fund differential benefits equal to the difference between what he is now or shall hereafter be entitled to receive from his employer under the provisions of this act as the same was in effect at the time of his injury, and the amounts now provided for his permanent and total disability by this or any other amendatory act, with appropriate application of the provisions of sections 351 to 359. Such payments shall continue after the period for which the person is otherwise entitled to compensation under this act for the duration of the permanent and total disability. Any payments so made by a carrier pursuant to this section shall be reimbursed to the carrier by the second injury fund as provided in this chapter.

(3) Any person who prior to July 1, 1968, has been receiving or is entitled to receive benefits from the second injury fund pursuant to any prior provisions of the workmen's compensation law shall continue to receive or be entitled to receive such benefits from such fund which shall be paid directly to him from such fund unless such payments are paid in accordance with an agreement made pursuant to section 541.

(4) If any carrier is unable to make the payments on behalf of the fund as provided for herein, the trustees

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of the second injury fund may make the payments directly to the permanently and totally disabled employee.

(5) The obligation imposed by this section on a carrier to make payments on behalf of the second injury fund shall not impose an independent liability on the carrier nor obligate the carrier to make payments on behalf of the fund if the carrier does not have a separate obligation to make payments of compensation simultaneously to the permanently and totally disabled employee.

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

Popular name: Act 317

418.531 Disability or death from silicosis, dust disease, employment in logging industry, or exposure to polybrominated biphenyl; reimbursement of carrier; limitation; right of funds to commence action and obtain recovery.

Sec. 531. (1) In each case in which a carrier including a self-insurer has paid, or causes to be paid, compensation for disability or death from silicosis or other dust disease, or for disability or death arising out of and in the course of employment in the logging industry, to the employee, the carrier including a self-insurer shall be reimbursed from the silicosis, dust disease, and logging industry compensation fund for all sums paid in excess of $12,500.00 for personal injury dates before July 1, 1985, and for all compensation paid in excess of $25,000.00 or 104 weeks of weekly compensation, whichever is greater, for personal injury dates after June 30, 1985, excluding payments made pursuant to sections 315, 319, 345, and 801(2), (5), and (6) which have been paid by the carrier including a self-insurer as a portion of its liability.

(2) A benefit paid as a result of disability or death caused, contributed to, or aggravated, by previous exposure to polybrominated biphenyl shall entitle a carrier including a self-insurer to reimbursement from the silicosis, dust disease, and logging industry compensation fund pursuant to this act, if the exposure occurred before July 24, 1979, and arose out of and in the course of employment by an employer located in this state engaged in the manufacture of polybrominated biphenyl. To be reimbursable, the disability or death shall have occurred or become known after July 24, 1979.

(3) All of the funds under this chapter shall have a right to commence an action and obtain recovery under section 827.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1979, Act 62, Imd. Eff. July 24, 1979;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1984, Act 98, Imd. Eff. May 8, 1984;—Am. 1994, Act 97, Imd. Eff. Apr. 13, 1994.

Popular name: Act 317

418.532 Repealed. 1996, Act 357, Eff. June 1, 2000.

Compiler's note: The repealed section pertained to rights and liabilities of uninsured employer.

Popular name: Act 317

418.535 Disability caused by combination of causes; apportionment; reimbursement of employer.

Sec. 535. If an employee's disability is caused by a combination of silicosis or other dust disease, or arose in the course of employment in the logging industry, and other compensable causes, a worker's compensation magistrate shall apportion the amount of disability between that due to silicosis or other dust disease, or to employment in the logging industry, and other compensable causes. The trustees of the silicosis, dust disease, and logging industry compensation fund shall reimburse the employer liable for compensation for that portion of compensation paid in excess of $12,500.00 for personal injury dates before July 1, 1985, and for all compensation paid in excess of $25,000.00 or 104 weeks of weekly compensation, whichever is greater, for personal injury dates after June 30, 1985, that the silicosis or other dust disease disability, or disability arising out of and in the course of employment in the logging industry, bears to the total disability.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1984, Act 99, Imd. Eff. May 8, 1984;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

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

Popular name: Act 317

418.537 Payments from self-insurers' security fund.

Sec. 537. (1) The trustees may authorize payments from the self-insurers' security fund upon request to the fund's administrator by a disabled employee or a dependent of the disabled employee as described in section 331 who is receiving or is entitled to receive worker's compensation benefits from a private self-insurer who becomes insolvent after November 16, 1971, and is unable to continue the payments.

(2) If an employee becomes disabled or dies because of a compensable injury or disease while in the employ of a private self-insurer who has become insolvent and who is unable to make compensation

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payments, the employee or a dependent of the employee as described in section 331 may seek payment from the self-insurers' security fund either by request through the fund's administrator or by filing a petition for hearing with the bureau.

(3) Payments shall not be made from the self-insurers' security fund to an employee or a dependent of the employee as described in section 331 for any period of disability that is before the date of the request to the administrator or the date of the petition for hearing before the bureau.

(4) If there is an apportionment as provided in section 435, the trustees may reimburse subsequent employers.

(5) Notwithstanding anything else in this section, the trustees may authorize payments from the self-insurers' security fund that are requested by a disabled employee or a dependent of a disabled employee, as described in section 331, of any employer that was granted authority by the workers' compensation agency under section 611(1)(a) to operate as a self-insurer for the first time in May of 1999 and filed for bankruptcy in 2005, if the employee is entitled to worker's compensation benefits arising out of employment during the period from May 28, 1999 to October 7, 2009. The self-insurers' security fund may redeem any claim by a former employee against an employer described in this subsection if the claimant voluntarily agrees. No other party may object to that redemption. Upon a binding final judgment by any state court or tribunal or a federal court that any carrier is responsible for the worker's compensation benefit payments to a disabled employee or dependent of a disabled employee, as described in section 331, of an employer described in this subsection, the self-insurers' security fund is entitled to reimbursement from that carrier for any and all benefit payments it makes to the employee or dependent under this act.

(6) Any unexpended balance derived from an appropriation shall be returned to the general fund if, after an annual review, the director determines that the remaining balance in the self-insurer's security fund would exceed the amount necessary to cover the known claims made under subsection (5).

History: Add. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 1972, Act 337, Imd. Eff. Jan. 4, 1973;—Am. 1977, Act 9, Imd. Eff. Apr. 6, 1977;—Am. 1992, Act 269, Imd. Eff. Dec. 15, 1992;—Am. 2014, Act 238, Imd. Eff. June 27, 2014.

Compiler's note: Section 2 of Act 9 of 1977 provides: "This amendatory act shall be effective for all payments authorized pursuant to section 537(1), (2) and (3) after November 15, 1971."

Popular name: Act 317

418.538 Claims authorized under MCL 418.501a; payment.

Sec. 538. The trustees may authorize payments from the private employer group self-insurers security fund for claims authorized under section 501a. A claim may be made against the PEGSISF by request through the funds administrator or by filing a petition for hearing with the agency.

History: Add. 2014, Act 230, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.541 Payments from funds; notice of claim for reimbursement; agreements; rights of fund as employer or carrier.

Sec. 541. (1) All payments from the funds shall be determined by the trustees and made upon an order signed by a trustee. If a dispute arises between the trustees and a carrier as to any determination by the trustees or the obligation of any carrier to make payments on behalf of the second injury fund, the dispute shall be considered a controversy concerning compensation and shall be determined in accordance with this act.

(2) In all cases in which the carrier is entitled to reimbursement, notice of claim for reimbursement shall be filed with the trustees within 1 year from the date on which the right to reimbursement first accrues. After the carrier has established a right to reimbursement, payment shall be made promptly on a proper showing periodically every 6 months.

(3) The trustees may enter into agreements with carriers whereby the payment of benefits to persons permanently and totally disabled, which payments heretofore have been made directly from the second injury fund, may be made by carriers who are paying worker's compensation benefits to those persons, and the carriers shall be reimbursed periodically at 6-month intervals from the fund for those payments.

(4) A fund under this chapter has the same rights under this act as an employer or carrier.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 2014, Act 239, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.545 Compromising liability of silicosis, dust disease, and logging industry compensation fund; redemption of liability.

Sec. 545. The trustees may compromise the liability of the silicosis, dust disease, and logging industry

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compensation fund by entering into a redemption of liability directly with the employee if, in the judgment of the trustees, it is in the employee's best interest to do so. Redemption of liability shall terminate the liability of the fund. A redemption of liability by a carrier including a self-insurer in which the fund is not a party for compensation paid for disability or death from silicosis or other dust disease or for disability or death arising out of and in the course of employment in the logging industry, made with the employee before the actual payment by the carrier including a self-insurer of $12,500.00 in compensation benefits for personal injury dates before July 1, 1985, or before the actual payment by the carrier of $25,000.00 or 104 weeks of benefits, whichever is greater, for personal injury dates after June 30, 1985, shall eliminate the liability of the silicosis, dust disease, and logging industry compensation fund.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1984, Act 97, Imd. Eff. May 8, 1984;—Am. 1996, Act 357, Imd. Eff. July 1, 1996.

Popular name: Act 317

418.551 Assessments; notice; payment; assessments as elements of loss in establishing rates; continuation of liability; certification of receipts; delinquencies; disposition of money; investments; disposition of earnings; reports and accounting; annual financial report; report regarding self-insurers' security fund's management of claims; exclusion of personally identifiable information.

Sec. 551. (1) As soon as practicable after January 1 of each year, the director shall assess pursuant to subsection (3) a sum that in total is equal to 175% of the total disbursements made from the second injury fund during the preceding calendar year, less the amount of net assets in excess of $200,000.00 in that fund as of December 31 of the preceding calendar year.

(2) As soon as practicable after January 1 of each year, the director shall assess pursuant to subsection (3) a sum that in total is equal to 175% of the total disbursements made from the silicosis, dust disease, and logging industry compensation fund during the preceding calendar year, less the amount of net assets in excess of $200,000.00 in that fund as of December 31 of the preceding calendar year.

(3) The portion of the total assessment amounts under subsections (1) and (2) allocated to self-insurers shall be equal to a percentage determined as follows: The total paid losses of all self-insurers for the preceding calendar year divided by the total paid losses of all carriers during the preceding calendar year. The portion of the total assessment amounts under subsections (1) and (2) allocated to insurers shall be equal to a percentage determined as follows: The total paid losses of all insurers for the preceding calendar year divided by the total paid losses of all carriers during the preceding calendar year. The portion of the total assessments allocated to self-insurers that shall be collected from each self-insurer shall be equal to a percentage determined as follows: The total paid losses of that self-insurer divided by the total paid losses of all self-insurers during the preceding calendar year. The portion of the total assessment allocated to insurers that shall be collected from each insurer shall be equal to a percentage determined as follows: The amount of total direct premiums written as reported by that insurer divided by the amount of total direct premiums written as reported by all insurers during the preceding calendar year. As used in this subsection:

(a) "Direct premiums written" means standard written Michigan workers' compensation premium prior to the application of deductible credits, as reported to the designated advisory organization, through policy declarations and unit statistical reports compiled pursuant to the authority in section 2407 of the insurance code of 1956, 1956 PA 218, MCL 500.2407. For the purposes of determining assessments under this section, the reported data for the most recent full calendar year on file with the designated advisory organization shall be used.

(b) "Total paid losses" means total compensation benefits paid under this act, exclusive of payments made pursuant to sections 315, 319, and 345.

(4) The director, upon the advice of the trustee representing the self-insurers, may make additional assessments upon private self-insurers as the trustee considers necessary to keep the self-insurers' security fund solvent. After December 31, 2019, the director shall not assess private employer group self-insurers on behalf of the self-insurers' security fund. The assessment for the 2015 calendar year and each calendar year thereafter shall be calculated based exclusively on claims payments and administrative expense of the self-insurers' security fund for the immediately preceding calendar year and the estimate of future liability for the current calendar year as reported in the annual financial report required under subsection (10), and shall not exceed 3% in any calendar year exclusive of payments made pursuant to sections 315, 319, and 345. Effective January 1, 2015 through December 31, 2019, the assessment limit under this subsection is increased to a percentage not to exceed 3.5%, if the proceeds of any assessment above 3% are used exclusively for claims against the self-insurers' security fund by disabled employees or dependents, as described in section 331, of Delphi corporation or Delphi automotive systems corporation that arise out of employment during the

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period from May 28, 1999 to October 7, 2009. However, any temporary increase that raises the assessment above 3.0% shall not be assessed unless all of the following requirements are met:

(a) An appropriation of $15,000,000.00 or more is made and placed in a restricted account for the sole purpose of paying claims described in this subsection, which appropriation does not lapse at the end of a fiscal year.

(b) An actuarial analysis has confirmed that the sources of funding described in subdivision (c) will be insufficient to pay the expected claims.

(c) The claims the self-insurers' security fund receives that may be paid from the temporary additional assessment exceed the amount that will be raised from the current assessment plus $8,000,000.00 of the appropriation under subdivision (a).

(d) Claims are first paid from the 2 sources identified in subdivision (c) before amounts attributed to the temporary assessment increase or money from the appropriation above the $8,000,000.00 identified in subdivision (c) are used to pay claims.

(e) After subtracting the $8,000,000.00 from the appropriation for use as provided in subdivision (d), an amount equal to 20% of the balance of the appropriation under subdivision (a) is the maximum that may be expended from the remainder of the appropriation in any fiscal year.

(5) Notice of the assessments shall be sent by the director by first-class mail to each carrier. The notice shall state that the assessment must be received by the agency at the address indicated in the notice by 90 days after the notice mailing date and that interest and penalties will accrue at the following rates:

(a) Subject to subdivision (c), for an assessment that is unpaid 90 days after the notice mailing date, interest accrues on the unpaid balance beginning the ninety-first day and is 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.

(b) Subject to subdivision (c), in addition to the interest under subdivision (a), a penalty of 1% per month for each month an assessment is unpaid beginning 181 days after the notice mailing date.

(c) If a carrier's delinquent assessments and any applicable interest and penalties total $25.00 or less for all funds in a single assessment year, the director may waive the assessments, interest, and penalties.

(6) All assessments constitute elements of loss for the purpose of establishing rates for worker's compensation insurance.

(7) An employer who has stopped being a self-insurer shall continue to be liable for a second injury fund; silicosis, dust disease, and logging industry compensation fund; or self-insurers' security fund assessment on account of any compensation benefits, exclusive of payments made pursuant to sections 315, 319, and 345, paid by the employer during the previous calendar year.

(8) The director shall certify to the trustees the collection and receipt of all money from assessments, including interest and penalties, noting any delinquencies. The trustees shall immediately notify delinquent carriers, including private self-insurers, of their delinquency in writing by certified mail, return receipt requested. The trustees shall take action as in their judgment is proper to effect collection of any delinquent assessment. All money received from assessments, including interest and penalties, under this section shall be turned over to the state treasurer who shall be the custodian of the self-insurers' security fund; the private employer group self-insurers security fund; the second injury fund; and the silicosis, dust disease, and logging industry compensation fund. The treasurer may make those investments as in the treasurer's judgment are in the best interest of the funds. The earnings from the investment of the money from the funds shall be credited to the funds. The state treasurer, at the end of each fiscal year, shall determine the amount that represents a pro rata earnings share due to each fund, shall credit the pro rata earning share to each fund, and shall notify the trustee of the amount credited and the balance of the respective fund as of September 30. The trustees shall make separate annual reports and accountings for each fund, which reports shall be included in the annual report of the agency.

(9) If, after an annual review, the trustee representing the self-insurers determines that the remaining balance, exclusive of funds derived from an appropriation from the general fund, exceeds the amount necessary to pay the known claims, the trustee representing the self-insurers shall recommend to the director that the surplus derived from the temporary assessment increase under subsection (4) be returned, pro rata, to the self-insurers that paid the assessment increase.

(10) Not later than March 31, 2015 and each year thereafter, the director shall make available to the public and include in the agency's annual report an annual financial report of the accounts and records of the self-insurers' security fund covering the immediately preceding calendar year. The annual financial report shall be prepared in accordance with generally accepted accounting principles and shall contain certificates of examination by an independent auditor based on generally accepted accounting principles and generally accepted auditing standards, and supported by actuarial review and opinion of the future contingent liabilities.

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The director may require a special audit to be made at other times if the financial stability of the fund or the adequacy of its monetary reserves is in question. An audited financial statement included in the annual financial report shall include, but is not limited to, all of the following:

(a) A detailed statement of assets, liabilities, and net assets.

(b) A detailed statement of revenues and expenses.

(c) A detailed statement of cash flow.

(d) Any related information relevant to the financial accounting and operations of the self-insurers' security fund.

(e) An estimate of future liability of the self-insurers' security fund for payment of claims made against a private self-insurer based on computations that reflect the probable total future cost of compensation and medical benefits due, or that can reasonably be expected to be due, over the life of the claim.

(f) A report of each liability assumed for payment of claims made against a private self-insurer.

(11) Not later than March 31, 2015 and each year thereafter, the director shall make available to the public and include in the agency's annual report a report detailing information regarding the self-insurers' security fund's management of claims. The report shall include, but is not limited to, all of the following:

(a) Total cost per claim.

(b) Cost per active claim and cost per closed claim.

(c) Indemnity cost per claim.

(d) Medical cost for indemnity claims.

(e) Medical costs for medical-only claims.

(f) Average redemption.

(g) Average paid claim amount.

(h) Average loss adjustment expense.

(i) Methods utilized to increase efficiency and provide quality control in claims management.

(12) A report prepared under subsection (10) or (11) shall not include any personally identifiable information.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 73, Imd. Eff. July 1, 1985;—Am. 1992, Act 269, Imd. Eff. Dec. 15, 1992;—Am. 2002, Act 25, Imd. Eff. Mar. 6, 2002;—Am. 2014, Act 236, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.552 Insufficiency of funds; borrowing; repayment; restriction; special assessment.

Sec. 552. (1) If, before the end of any calendar year, the annual assessments, after having been substantially collected, have not provided funds sufficient to either the second injury fund or the silicosis, dust disease, and logging industry compensation fund to meet the known obligations of those funds as they mature before the next available assessment date, the trustees, if the trustees find it to be reasonably required, may borrow on behalf of 1 fund from the other fund a sum or sums as may be required.

(2) Any sum or sums borrowed on behalf of 1 fund from the other fund shall be included in the next assessment of the borrowing fund and shall be repaid after the assessment has been substantially collected and the fund from which the sum or sums were borrowed during the period before repayment shall record the sum or sums as an asset.

(3) The trustees shall not borrow in the manner described in this section if it would impair the ability of either fund to meet its known obligations as the obligations mature before the next available assessment date.

(4) If the trustees find that it is reasonably required that they borrow on behalf of 1 fund from the other, but that the borrowing will impair the ability of the fund to meet the fund's known obligations as the obligations mature before the next assessment date, then, and in that event only, the trustees may order the director to levy a special assessment on each carrier in a sum sufficient to permit the fund making the assessment to meet the fund's known obligations as the obligations mature before the next available assessment date. The assessment shall be levied on each carrier in the same proportion as used in the preceding annual assessment. Payment of the special assessment shall be paid by each carrier within 45 days after the date of the mailing of the notice of special assessment.

History: Add. 1970, Act 3, Imd. Eff. Feb. 19, 1970;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

418.552a Expired. 1980, Act 357, Eff. Jan. 1, 1986.

Compiler's note: The expired section pertained to employers required to participate in safety education and training programs or to utilize department of labor services.

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Popular name: Act 317

418.552b Silicosis, dust disease, and logging industry compensation fund; review; report.

Sec. 552b. The silicosis, dust disease, and logging industry compensation fund created in section 501 shall be reviewed by the department of labor and reported upon to the legislature not later than January 1, 1985.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

418.553 Self-insurers' security fund or private employer group self-insurers security fund; subrogation.

Sec. 553. The self-insurers' security fund or the private employer group self-insurers security fund, after paying an injured employee, shall have all the rights of the injured employee as a creditor of the insolvent employer to the extent of benefits it paid. The trustees of the fund shall have the right and obligation to obtain reimbursement to the fund from an insolvent employer for any funds paid out as benefits to the employees of the insolvent employer, including expenses pertinent to payments or recovery thereof.

History: Add. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 2014, Act 234, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.555 Reimbursement provisions; delinquent carriers.

Sec. 555. The reimbursement provisions of this chapter are not available to any carrier currently delinquent in paying any assessment authorized in this chapter.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 2014, Act 237, Imd. Eff. June 27, 2014.

Popular name: Act 317

418.561 Application for self-insurance; agreement as to insolvency.

Sec. 561. The application for self-insurance by a private employer shall contain an agreement that in case of insolvency the employer shall make its records available to an agent of the self-insurers' security fund or the private employer group self-insurers security fund, as applicable, to help defend the fund and shall disclose the employer's inability to pay the injured employee.

History: Add. 1971, Act 149, Imd. Eff. Nov. 16, 1971;—Am. 2014, Act 235, Imd. Eff. June 27, 2014.

Popular name: Act 317

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CHAPTER 6
SECURITY FOR COMPENSATION

418.601 Definitions.

Sec. 601. Whenever used in this act:

(a) "Insurer" means an organization that transacts the business of worker's compensation insurance within this state.

(b) "Self-insurer" means either of the following:

(*i*) An individual employer authorized to carry its own risk.

(*ii*) A group of employers who pool their liabilities under this act as a group fund in the manner provided in section 611.

(c) "Carrier" means a self-insurer or an insurer.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1992, Act 269, Imd. Eff. Dec. 15, 1992;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

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.

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

418.611 Methods of securing payment of compensation; agreement among employers to pool liabilities; qualification as self-insurers; security; "public employer" defined; employer's liability insurance; employers in same industry; determination; nonpublic health care facility employer as member of self-insurers' group; denial or termination of self-insured status; appeal; review; application to service self-insurance program.

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Sec. 611. (1) Each employer under this act, subject to the approval of the director, shall secure the payment of compensation under this act by either of the following methods:

(a) By receiving authorization from the director to be a self-insurer. In the case of an individual employer, the director may grant that authorization upon a reasonable showing by the employer of the employer's solvency and financial ability to pay the compensation and benefits provided for in this act and to make payments directly to the employer's employees as the employees become entitled to receive the payment under the terms and conditions of this act and pursuant to R 408.43c of the Michigan administrative code. If the director determines it to be necessary, the director shall require the furnishing of a bond or other security in a reasonable form and amount. Such security as may be required by the director may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state in an amount acceptable to the director, a surety bond, an irrevocable letter of credit in a format acceptable to the agency, and claims payment guarantees.

(b) By insuring against liability with an insurer authorized to transact the business of worker's compensation insurance within this state.

(2) Under procedures and conditions specifically determined by the director, 2 or more employers in the same industry with combined assets of $1,000,000.00 or more, or 2 or more public employers of the same type of unit, may be permitted by the director to enter into agreements to pool their liabilities under this act for the purpose of qualifying as self-insurers. Each of the employer members participating in a self-insurer group possesses ownership in its proportional share of the assets of the group in excess of the self-insurer group obligations. The trustees of a self-insurer group, acting in their fiduciary capacity, shall establish processes and procedures for the distribution of excess assets with the approval of the director. For purposes of this subsection, cities, townships, counties, and villages; or 1 or more of the agencies, instrumentalities, or other legal entities of cities, townships, counties, or villages or any combination thereof; or authorities of 1 or more of cities, townships, counties, or villages or any combination thereof created pursuant to law are considered public employers of the same type of unit. An employer member of the approved group is classified as a self-insurer. For purposes of this subsection, universities and colleges, community colleges, and local and intermediate school districts, are considered public employers of the same type of unit. The director may grant authorization to become a member of an approved group upon a reasonable showing by an employer of the employer's solvency and financial stability to meet the employer's obligations as a member of the group. If the director determines it to be necessary, the director may require the furnishing of a surety bond, fidelity bond, or other security by the group in a reasonable form and amount. The security the director requires may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state in an amount acceptable to the director. An irrevocable letter of credit or a surety bond may be furnished in place of aggregate excess insurance. The format of the irrevocable letter of credit used by the agency on December 15, 1992 is acceptable until the format of the irrevocable letter of credit is promulgated by agency rules. If an irrevocable letter of credit is proposed, the director may require an independent actuarial opinion from the group fund supporting the proposal and estimating the ultimate loss at 90% confidence level. Assets of the fund allocated for the payment of administrative expenses or set aside for claims payments shall not be used as collateral for the irrevocable letter of credit. Use of surplus assets as collateral must have prior agency approval. If the director determines it to be necessary, the director may obtain an independent review of the actuarial opinion submitted by the group fund at the expense of the group fund to determine the ability of the group fund to meet its obligation under this act. The group fund shall make available all documentation used for the actuarial report if requested by the director for an independent review. An employer, except a public employer, permitted to become a member of a self-insurers' group under this act shall execute a written agreement in which the employer agrees to jointly and severally assume and discharge, by payment, any lawful award entered by the agency against a member of the group. If the case is appealed by either party, the award must be upheld before a member of the group is liable. Any lawful award entered by the agency, and upheld if appealed, against a public employer that is a member of a group is a liability of the group jointly but not severally. If the group is unable to pay the award, the group or the agency shall individually assess those public employers who were members on the date of injury to the extent necessary to pay the award. An assessment is a contractual obligation of the public employer. As used in this subsection, "public employer" means a city, village, township, county, school district, or community college; or an agency, entity, or instrumentality thereof; or an authority comprising any combination of the foregoing. This subsection does not alter the obligation of either a group or an employer to comply with section 862. For purposes of this subsection, an authorized group self-insurer, in conjunction with providing security for the payment of compensation and benefits provided for in this act, may provide coverage customarily known as employer's liability insurance for members of the group.

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(3) For the purpose of determining whether employers are in the same industry under subsection (2), the following apply:

(a) The forest industry includes those businesses engaged in the growing, harvesting, processing, or sale of forest products, except at the retail level, unless more than 80% of the income from the retailer comes from the growing, harvesting, processing, or wholesale sale of forest products, and any supplier or service companies that receive more than 80% of their income from these businesses.

(b) "Forest products" include Christmas trees, firewood, maple syrup, and all other products derived from wood or wood fiber that are manufactured with woodworking equipment including saws, planers, drills, chippers, lumber dry kilns, sanders, glue presses, nailers, notchers, shapers, lathes, molders, and other similar finishing processes.

(4) The director may permit a nonpublic health care facility employer to become a member of a self-insurers' group with public employers under subsection (2) if the principal service rendered by the nonpublic health care facility employer is the same type of service rendered by the public employers. If a nonpublic health care facility employer is permitted to become a member of the same self-insurers' group with public employers, any lawful award entered by the agency against that nonpublic health care facility employer, if the award is upheld on appeal, is a liability of the group and, if the group is unable to pay the award, the group or the agency shall individually assess those nonpublic health care facility employers who were members on the date of injury to the extent necessary to pay the award. The director may waive the requirement of the written agreement required of a nonpublic health care facility employer under subsection (2) as to any member of a group involving a combination of public and nonpublic health care facility employers. Except as otherwise provided in this subsection, subsection (2) is applicable to all self-insurers' groups and their individual employer members.

(5) The director may decline to approve an application for individual or group self-insurance or terminate the self-insured privilege if the self-insurer fails to demonstrate that the self-insurer will be able to meet all present and future obligations under this act or the self-insurer fails to maintain security requirements previously imposed as a condition for approval. Notice of intent to deny or terminate self-insured status shall be mailed to the self-insurer. The notice must include the grounds for denial or termination. The self-insurer may request a hearing before the director within 15 days after the mailing of the notice by the agency. If the recommendation for termination of self-insured status is based on the self-insurer's failure to maintain existing security requirements such as excess insurance, letters of credit, guarantees, or surety bonds, the self-insurer shall reinstate the security requirements pending the hearing. Proof of the reinstatement shall accompany the request for hearing. If the self-insurer fails to reinstate existing security requirements, the director may make a final decision on the evidence before him or her without further hearing.

(6) If an appeal is taken from a decision of the director made under subsection (5), the director may require the self-insurer to post a surety bond, irrevocable letter of credit, or other security in a reasonable amount to guarantee that money will be available to pay worker's disability compensation benefits to injured employees covered by the self-insured program. The security must be filed with the director at the time an appeal is taken to the appellate commission and must be consistent with R 408.43a and R 408.43q of the Michigan administrative code. If the self-insurer is a group fund, the director shall review the assets and liabilities, claims experience history, and future claims potential of the group fund and recognize the ability of the group fund to assess its membership in making a decision on the need for additional security. A claim for review of the director's order or decision made pursuant to subsection (5) shall be filed with the Michigan compensation appellate commission within 15 days after the mailing date of the order or decision. If a claim for review is not filed within 15 days, the aggrieved party is considered to have waived the right to appeal. Within 15 days after service of a copy of the claim for review, unless the time is extended by order of the appellate commission, the agency shall file the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for review stipulate that the record be shortened. A party who unreasonably refuses to so stipulate may be taxed by the appellate commission for the additional costs of preparation. If the self-insurer disputes the imposition of additional security at time of appeal, the dispute must be in the form of a motion directed to the appellate commission within 15 days after the filing of the record. The agency's reply to the motion shall be filed within 15 days after receipt of appellant's motion. The appellate commission shall act on the motion within 15 days after the agency files its reply to appellant's motion and shall notify the parties of interest of its decision. The appealing party's brief shall be filed with the appellate commission 15 days after the filing of the record and a copy shall be served upon the opposite party. The agency's reply brief shall be filed within 15 days after receipt of the appellant's brief. Oral argument may be requested by any party to the proceedings. The request must be in the form of a motion directed to the appellate commission within 15 days after the filing of the record. The appellate commission shall act on the motion within 15 days of filing the motion and shall notify the parties in interest of its decision. Otherwise, after 15 days, the

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appellate commission shall hear the case upon the record and shall consider the briefs that have been filed. The decision of the appellate commission shall be made within 30 days after the date of the oral argument or, if no oral argument, within 30 days after the date that the agency's brief is required to be filed. The appellate commission may remand the matter to the agency for purposes of supplying a complete record if it determines that the record is insufficient for purposes of review. Proceedings under this section do not operate as a stay of the agency's order, including any additional security imposed by the director, unless stayed by order of the appellate commission. The commission-ordered stay is subject to any conditions that the appellate commission imposes. The appellate commission has jurisdiction to affirm, modify, or set aside the order or decision of the director. A final order the appellate commission enters relating to a decision or order of the director to deny an application for self-insurance or to terminate the self-insured privilege under subsection (5) may be appealed by filing an application for leave to appeal to the court of appeals within 30 days after the order.

(7) The director may review and alter a decision approving the election of an employer to adopt any 1 of the methods permitted by subsection (1), (2), or (4) if, in the director's judgment, that action is necessary or desirable for any reason.

(8) Under procedures and conditions specifically determined by the director, an individual, partnership, or corporation desiring to engage in the business of servicing an approved worker's compensation self-insurance program for an individual or group of employers shall apply to the director before entering into a contract with the individual or group of employers and shall satisfy the director that the individual, partnership, or corporation has adequate facilities and competent personnel to service a self-insurance program in a manner that will fulfill the employer's obligations under this act.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1974, Act 45, Imd. Eff. Mar. 19, 1974;—Am. 1976, Act 404, Imd. Eff. Jan. 5, 1977;—Am. 1978, Act 35, Imd. Eff. Feb. 24, 1978;—Am. 1978, Act 245, Imd. Eff. June 20, 1978;—Am. 1980, Act 494, Imd. Eff. Jan. 21, 1981;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1988, Act 386, Eff. Mar. 30, 1989;—Am. 1992, Act 269, Imd. Eff. Dec. 15, 1992;—Am. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 2015, Act 195, Eff. Feb. 14, 2016.

Compiler's note: 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."

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

418.613 Misclassification of services; penalties or interest.

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

History: Add. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: 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."

In this section, the word "subsection" evidently should read "section."

Popular name: Act 317

418.615 Report by employer not self-insurer; failure to file.

Sec. 615. Upon written request of the director, every employer who has not been exempted by the director from insuring his compensation risk shall report to him in writing the number of employees, the nature of their work, the name of the insurer with whom he has insured his liability under this act and the number and date of expiration of such policy. Failure to furnish the report within 10 days from the making of a request by registered mail constitutes presumptive evidence that the delinquent employer is violating the provisions of section 611.

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

Popular name: Act 317

418.621 Insurance contracts subject to act; separate policy for certain employees;

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construction site; required provisions; form; applicability of section to State Accident Fund.

Sec. 621. (1) Every contract for the insurance of the compensation provided in this act for or against liability therefore, shall be subject to the provisions of this act and provisions inconsistent with this act are void.

(2) The state accident fund and each insurer issuing an insurance policy to cover any employer not permitted to be a self-insurer under section 611 shall insure, cover, and protect in the same insurance policy, all the businesses, employees, enterprises, and activities of the employer.

(3) Under procedures and conditions specifically determined by the director, a separate insurance policy may be issued to cover employers performing work at a specified construction site if the director finds that the liability under this act of each employer to all his or her employees would at all times be fully secured and the cost of construction at the site, not including the cost of land acquisition, will exceed $65,000,000.00, and the contemplated completion period for the construction will be 5 years or less.

Each construction site shall have an appointed construction safety and health director employed by the owner, construction manager, general contractor of the construction site, or insurance carrier for the project. The safety and health director shall have experience in the field of construction safety and health. The construction safety and health director shall be a full-time director with job duties limited to occupational safety and health related issues. The safety and health director shall be located at and work from the construction site, whenever construction activity takes place on the site. The owner, construction manager, or general contractor shall designate an alternate construction safety and health director with experience in the field of construction safety and health during multiple shifts and temporary absences of the construction safety and health director. The alternate construction safety and health director shall exercise the same responsibilities and authority as the construction safety and health director and report to the safety and health director on the activities at the site during the safety and health director's absence. The safety and health director shall be responsible for coordination among all employers at the construction site to provide a safe and healthful worksite. The construction safety and health director shall be the final authority for resolution of all disputes related to construction safety and health at the worksite. All construction contractors at the construction site shall accept the services of the education and training personnel from the departments of labor or public health, or both, who provide such services pursuant to the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws. The construction safety and health director shall assist all contractors at the construction site in developing comprehensive accident prevention programs as required by R 408.40114 of the Michigan administrative code.

A notice of issuance of insurance policy shall be filed on a form provided by the bureau for each employer working on the specific construction site. The notice of issuance shall conform to the requirements of section 625.

(4) Except as modified by the director as provided for herein, each policy of insurance covering worker's compensation in this state shall contain the following provisions:

"Notwithstanding any language elsewhere contained in this contract or policy of insurance, the insurer issuing this policy hereby contracts and agrees with the insured employer:

Compensation.

(a) That it will pay to the persons that may become entitled thereto all worker's compensation for which the insured employer may become liable under the provisions of the Michigan worker's disability compensation act for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

Medical services.

(b) That it will furnish or cause to be furnished to all employees of the employer, all reasonable medical, surgical, and hospital services and medicines when they are needed which the employer may be obligated to furnish or cause to be furnished to his or her employees under the provisions of the Michigan worker's disability compensation act and that it will pay to the persons entitled thereto for all such services and medicines when they are needed for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

Rehabilitation services.

(c) That it will furnish or cause to be furnished such rehabilitation services for which the insured employer may become liable to furnish or cause to be furnished under the provisions of the Michigan worker's disability compensation act for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

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Funeral expenses.

(d) That it will pay or cause to be paid the reasonable expense of the last sickness and burial of all employees whose deaths are caused by compensable injuries or compensable occupational diseases happening during the life of this contract or policy and arising out of and in the course of their employment with the employer, which the employer may be obligated to pay under the provisions of the Michigan worker's disability compensation act;

Scope of contract.

(e) That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, the employer may engage in during the life of this contract or policy, and all employees the employer may employ in any of his or her businesses during the period covered by this policy;

Obligations assumed.

(f) That it hereby assumes all obligations imposed upon the employer by his or her acceptance of the Michigan worker's disability compensation act, as far as the payment of compensation, death benefits, medical surgical, hospital care or medicine and rehabilitation services is concerned;

Termination notice.

(g) That it will file with the bureau of workmen's compensation at Lansing, Michigan, at least 20 days before the taking effect of any termination or cancellation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy shall not be effective as far as the employees of the insured employer are concerned until 20 days after notice of proposed termination or cancellation is received by the bureau of workmen's compensation;

Conflicting provisions.

(h) That all the provisions of this contract, if any, which are not in harmony with this paragraph are to be construed as modified hereby, and all conditions and limitations in the policy, if any conflicting herewith are hereby made null and void."

(5) The provisions shall be printed upon or conspicuously attached to every insurance contract or policy issued by the state accident fund or insurer in type size not smaller than 10-point and shall constitute a separate paragraph of the policy. Any provision of the policy inconsistent with the undertakings and agreements of the state accident fund or insurer contained in such provisions shall be null and void.

(6) This section applies to the state accident fund until 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.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1973, Act 117, Imd. Eff. Aug. 21, 1973;—Am. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

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.

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

418.625 Insurance policy's notice of issuance; contents; refusal to accept coverage.

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1993, Act 117, Eff. Apr. 1, 1994;—Am. 1995, Act 271, Imd. Eff. Jan. 8, 1996;—Am. 2002, Act 626, Imd. Eff. Dec. 23, 2002;—Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011;—Am. 2012, Act 83, Imd. Eff. Apr. 11, 2012

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Compiler's note: 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

418.631 Claim payments; filing reports.

Sec. 631. (1) If any insurer licensed to transact the business of workmen's compensation insurance within this state repeatedly or unreasonably fails to pay promptly claims for compensation for which it shall become liable or if it repeatedly fails to make reports to the director as provided in this act, the director may recommend to the commissioner of insurance that the license of the company be revoked, setting forth in detail the reasons for his recommendation. The commissioner shall thereupon furnish a copy of the report to the insurer and shall set a date for a hearing, at which both the insurer and the director shall be afforded an opportunity to present evidence. If after the hearing the commissioner is satisfied that the insurer has failed to live up to all of its obligations under this act, he shall promptly revoke its license otherwise he shall dismiss the complaint.

(2) If any employer who is subject to this act as an approved self-insurer repeatedly or unreasonably fails to pay promptly claims for compensation for which it shall become liable or if it repeatedly fails to make reports to the director as provided in this act, the director may revoke the privilege granted to the employer to carry its own risk and require it to insure its liability. Such action shall not be taken by the director against any employer until the employer has been notified in writing of the charges made against it by the director and has been given an opportunity to be heard before the director in answer to the charges.

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

Popular name: Act 317

418.641 Noncompliance as misdemeanor; penalty; separate offenses; damages for violation of MCL 418.171 or MCL 418.611; recovery from uninsured employer; disposition of fines; director as party; injuries to which subsections (3), (4), and (5) applicable.

Sec. 641. (1) An employer who fails to comply with the provisions of section 611 is guilty of a misdemeanor and may be fined not more than $1,000.00, or imprisoned for not more than 6 months, or both. Each day's failure is a separate offense. An individual employee of an employer who refuses to provide information requested by the fund trustees under section 532(10) is guilty of a misdemeanor and may be fined not more than $1,000.00, or imprisoned for not more than 6 months, or both.

(2) The employee of an employer who violates the provisions of section 171 or 611 shall be entitled to recover damages from the employer in a civil action because of an injury that arose out of and in the course of employment notwithstanding the provisions of section 131.

(3) The director of the bureau shall have the right and obligation to recover on behalf of the workplace health and safety fund from an uninsured employer in a civil action the amounts provided in section 723. If the employer is a corporation, the officers and directors of the corporation shall be individually and jointly and severally liable for any portion of the obligation and expenses that are not satisfied by the corporation.

(4) Any amounts collected pursuant to subsection (3) shall be paid to the uninsured employer's security account within the workplace health and safety fund established in sections 722 and 723.

(5) For the purposes of this section, the director shall be considered a party as described in section 863.

(6) Subsections (3), (4), and (5) shall apply to injuries that occur on or after June 29, 1990.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1993, Act 118, Imd. Eff. July 20, 1993;—Am. 1996, Act 357, Imd. Eff. July 1, 1996.

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

Popular name: Act 317

418.645 Complaint; order to show cause; injunction; civil fine; limitation; collection and payment.

Sec. 645. (1) The director may file a complaint in the circuit court for the county in which the employer is located, or in the circuit court for Ingham county, requesting the relief permitted by this section against an employer that has failed, at any time within the immediately preceding 3 years, to comply with section 611.

(2) If the director's complaint alleges that the employer's liability is currently uninsured, there shall immediately be served on the employer an order to show cause why the employer should not be restrained from employing any person in his or her business pending the proceedings or until the employer shall have satisfied the court that the employer has complied with the provisions of section 171 or 611. The order to show cause shall be returnable before the court at a time to be fixed in the order not less than 24 hours nor

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more than 7 days after its issuance.

(3) Upon a complaint filed pursuant to subsection (1), an injunction shall be issued unless the employer proves that he or she is not subject to the provisions of this act or furnishes a surety company bond in an amount to secure all of the liability of the employer under this act. An injunction issued against an employer under this subsection shall perpetually enjoin the employer from employing any person in his or her business at any time the employer is not complying with section 171 or 611.

(4) The director's complaint may seek a civil fine of not more than $1,000.00 per day against an employer who has failed, at any time within the immediately preceding 3 years, to comply with section 611, whether or not the employer is currently in noncompliance. A civil fine shall be assessed by the court of not more than $1,000.00 for each day the court finds the employer not to have been in compliance with section 611.

(5) A civil fine collected pursuant to this section shall be paid to the worker's compensation administrative revolving fund established by section 835a.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1993, Act 118, Imd. Eff. July 20, 1993.

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

Popular name: Act 317

418.647 Failure of employer to comply with MCL 418.611; liability of employer as corporation, limited liability company, or limited liability partnership.

Sec. 647. (1) If compensation is awarded under this act against any employer who at the time of the injury has not complied with section 611, the employer shall not be entitled as to any judgment entered upon the award, to any of the exemptions of property from seizure and sale on execution allowed by statute.

(2) If the employer is a corporation, the officers and directors of the corporation shall be individually and jointly and severally liable for any portion of the judgment returned unsatisfied after execution against the corporation. If the employer is a limited liability company, the managers who are also members shall be individually and jointly and severally liable for any portion of the judgment returned unsatisfied after execution against the company. If the employer is a limited liability partnership, the partners shall be individually and jointly and severally liable for any portion of the judgment returned unsatisfied after execution against the partnership.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1995, Act 206, Imd. Eff. Nov. 29, 1995.

Popular name: Act 317

418.651 Existing contracts unaffected; rights and liabilities.

Sec. 651. Nothing in this act shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company or any arrangement now existing between employers and employees, providing for the payment to the employees, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. Liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation. The person so entitled, irrespective of any insurance or other contract, shall have the right to recover the same directly from the employer; and in addition the right to enforce in his or her own name in the manner provided in this act the liability of any insurance company who may have insured, in whole or in part, the liability for such compensation. Payment in whole or in part of such compensation by either the employer or the insurance company carrying the risk shall be a bar, to the extent of the payment, to recovery against the other of the amount so paid.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

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.

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

418.655 Relief from liability.

Sec. 655. Any employer against whom liability may exist for compensation under this act, with the approval of the director, may be relieved therefrom by:

(a) Depositing the present value of the total unpaid compensation for which such liability exists, assuming

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interest at 3% per annum, with a trust company of this state designated by the employee, or by his dependents, in case of his death and such liability exists in their favor, or in default of such designation, after 10 days notice in writing from the employer, with a trust company of this state designated by the director.

(b) Purchasing an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employee, his dependents or the director, as provided in subdivision (a).

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

Popular name: Act 317

418.657 Public employers; operating expense; tax levy.

Sec. 657. Incorporated public boards and commissions shall treat the cost of benefits payable pursuant to the provisions of this act or the cost of insuring their liability for such benefits as part of their necessary operating expense and such sums shall be separately budgeted in any requisition authorized by law to be made on any other public corporation, body or officer. If the incorporated public board or commission is authorized by law to require the levying of taxes through any other public corporation or officer for its use, the expense, separately itemized, may be made a part of the tax levy.

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

Popular name: Act 317

418.659 Dissolution of certain authorities; payment of claims.

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

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

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

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

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

History: Add. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

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Compiler's note: 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

CHAPTER 7
ACCIDENT FUND

418.700 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.700a Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.701 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.701a Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.702 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.705 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed section pertained to payment of losses and expenses and purchase and sale of securities.

Popular name: Act 317

418.711 Repealed. 1990, Act 157, Imd. Eff. June 29, 1990.

Compiler's note: The repealed section pertained to self-supporting accident fund.

Popular name: Act 317

418.711a, 418.712 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed sections pertained to premiums and assessments,revisions to underwriting standards, rules, surplus, escrow accounts, and advances.

Popular name: Act 317

418.713 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.714, 418.715 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed sections pertained to provision of membership and coverage to applicants at rates not excessive, inadequate, or unfairly discriminatory; classification of plants, establishments, or places of work in respect to safety; manner of paying premiums and assessments; and changing amount or premiums and assessments.

Popular name: Act 317

418.721 Repealed. 1990, Act 157, Imd. Eff. June 29, 1990.

Compiler's note: The repealed section pertained to assessments.

Popular name: Act 317

418.722-418.725 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed sections pertained to workplace health and safety fund, uninsured employers, and policy.

Popular name: Act 317

418.731 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

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Popular name: Act 317

418.735 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed section pertained to inspection of books, records, and payrolls.

Popular name: Act 317

418.741 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.742 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed section pertained to authority of licensed agents.

Popular name: Act 317

418.745, 418.746 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed sections pertained to payments from fund and purposes of revolving fund.

Popular name: Act 317

418.751 Repealed. 2011, Act 266, Imd. Eff. Dec. 19, 2011.

Compiler's note: The repealed section pertained to provisions relating to accident fund.

Popular name: Act 317

418.755, 418.756 Repealed. 1993, Act 198, Eff. Dec. 28, 1994.

Compiler's note: The repealed sections pertained to duties of advisory board.

Popular name: Act 317

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

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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 note: 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,

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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 note: 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

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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 note: Section 3 of Act 198 of 1993 provides as follows:

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.

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.

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(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 note: 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 note: 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.

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(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 note: 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 note: 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.

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(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 note: 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 note: 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.

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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 note: 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 note: 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 note: 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 note: 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.

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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 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 note: 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 note: 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 note: 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 note: 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

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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.

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

Compiler's note: 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 note: 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 note: 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

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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 note: 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 note: 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

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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 note: 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

CHAPTER 9
VOCATIONALLY HANDICAPPED

418.901 Definitions.

Sec. 901. As used in this chapter:

(a) "Vocationally disabled" means a person who has a medically certifiable impairment of the back or heart, or who is subject to epilepsy, or who has diabetes, and whose impairment is a substantial obstacle to employment, considering such factors as the person's age, education, training, experience, and employment rejection.

(b) "Certifying agency" means the division of vocational rehabilitation of the department of education.

(c) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally disabled.

(d) "Fund" means the second injury fund created in chapter 5. Payments made by the fund under this chapter shall be treated the same as all other payments made by the second injury fund.

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History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1973, Act 198, Imd. Eff. Jan. 11, 1974;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

Popular name: Act 317

418.905 Application for certification as vocationally disabled; investigation; issuance, expiration, renewal, and validity of certificate.

Sec. 905. An unemployed person who wishes to be certified as vocationally disabled for purposes of this chapter shall apply to the certifying agency on forms furnished by the agency. The certifying agency shall conduct an investigation and shall issue a certificate to a person who meets the requirements for vocationally disabled certification. The certificate is valid for 2 calendar years after the date of issuance. After expiration of a certificate an unemployed person may apply for a new certificate. A certificate is not valid with an employer by whom the person has been employed within 52 weeks before issuance of the certificate.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

Popular name: Act 317

418.911 Filing by employer of information requested by certifying agency.

Sec. 911. Upon commencement of employment of a certified vocationally disabled person the employer shall submit to the certifying agency, on forms furnished by the agency, all pertinent information requested by the agency. The certifying agency shall acknowledge receipt of the information. Failure to file the required information with the certifying agency within 60 days after the first day of the vocationally disabled person's employment precludes the employer from the protection and benefits of this chapter unless such information is filed before an injury for which benefits are payable under this act.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

Popular name: Act 317

418.915 Rules.

Sec. 915. The director of the certifying agency shall promulgate rules of procedure for certification of vocationally disabled persons in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

Popular name: Act 317

418.921 Compensation for personal injury resulting in death or disability; liability of fund.

Sec. 921. A person certified as vocationally disabled who receives a personal injury arising out of and in the course of his employment and resulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his dependents. The liability of the employer for payment of compensation, for furnishing medical care or for payment of expenses of the employee's last illness and burial as provided in this act shall be limited to those benefits accruing during the period of 52 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and expenses of the employee's last sickness and burial shall be the liability of the fund. The fund shall be liable, from the date of injury, for those vocational rehabilitation benefits provided in section 319.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

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

Popular name: Act 317

418.925 Procedure and practice applicable in personal injury proceedings; notice to fund; payments by carrier on behalf of fund; reimbursement; direct payments by fund.

Sec. 925. (1) When a vocationally disabled person receives a personal injury, the procedure and practice provided in this act applies to all proceedings under this chapter, except where specifically otherwise provided herein. Not less than 90 nor more than 150 days before the expiration of 52 weeks after the date of injury, the carrier shall notify the fund whether it is likely that compensation may be payable beyond a period of 52 weeks after the date of injury. The fund, thereafter, may review, at reasonable times, such information as the carrier has regarding the accident, and the nature and extent of the injury and disability.

(2) If the fund does not notify the carrier of its intent to dispute the payment of compensation, the carrier shall continue to make payments on behalf of the fund, and shall be reimbursed by the fund for all compensation paid and pertaining to the period beyond 52 weeks after the date of injury. However at any time

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subsequent to 52 weeks after the date of injury, the fund may notify the carrier of a dispute as to the payment of compensation. The liability of the fund to reimburse the carrier shall be suspended 30 days thereafter until such controversy is determined.

(3) The obligation imposed by this section on a carrier to make payments on behalf of the fund does not impose an independent liability on the carrier. After a carrier has established the right to reimbursement, payment shall be made promptly on a proper showing every 6 months. If a carrier does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to such payments.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

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

Popular name: Act 317

418.931 Dispute or controversy as to payment of compensation; notice to and claim upon employer; hearing; joinder of fund; notice to fund; objection; evidence; appearances; order.

Sec. 931. (1) If an employee was employed under the provisions of this chapter and a dispute or controversy arises as to payment of compensation or the liability therefor, the employee shall give notice to, and make claim upon, the employer as provided in chapters 3 and 4 and apply for a hearing. On motion made in writing by the employer, the director, or the worker's compensation magistrate to whom the case is assigned, shall join the fund as a party defendant.

(2) The bureau within 5 days of the entry of an order joining the fund as a party defendant shall give the fund written notice thereof by first-class mail which notice shall be mailed not less than 30 days before the date of hearing and shall include the name of the employee and employer and the date of the alleged personal injury or disability.

(3) The fund, named as a defendant pursuant to motion, shall have 10 days after the date of mailing of notice of joinder to file objection to being named a party defendant. On the date of the hearing at which the liability of the parties is determined, the worker's compensation magistrate first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed a timely objection, and if the argument and evidence warrant, the worker's compensation magistrate shall grant a motion to dismiss.

(4) At the time of the hearing, the employer and the fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(5) The worker's compensation magistrate shall enter an order determining the respective liability of the employer and the fund.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

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

Popular name: Act 317

418.935 Redemption of liability.

Sec. 935. After an employer has paid an employee those benefits which have accrued during the period of 52 weeks after the date of injury, the trustees may compromise the liability of the fund by entering into a redemption of liability directly with the employee if in the judgment of the trustees it is in the employee's best interest to do so. Redemption of liability terminates all liability, including vocational rehabilitation, of the fund. A redemption of liability by the employer made with the employee before actual payment by the employer of those benefits which have accrued during the period of 52 weeks after the date of injury eliminates all liability, including vocational rehabilitation, of the fund.

History: Add. 1971, Act 183, Eff. July 1, 1972;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

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

Popular name: Act 317

418.941 Reports; investigation.

Sec. 941. A copy of all reports required by the bureau of the carrier under the bureau's rules shall be sent to the fund. The fund may conduct an investigation of the personal injury.

History: Add. 1971, Act 183, Eff. July 1, 1972.

Popular name: Act 317

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