

SENATE BILL NO. 1079

November 07, 2024, Introduced by Senator CHERRY and referred to the Committee on Labor.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. (1) An employee ~~—~~who receives a personal injury

1 arising out of and in the course of employment by an employer who
 2 is subject to this act at the time of the injury ~~, shall~~ **must** be
 3 paid compensation as provided in this act. A personal injury under
 4 this act is compensable if work causes, contributes to, or
 5 aggravates pathology in a manner so as to create a pathology that
 6 is medically distinguishable from any pathology that existed prior
 7 to the injury. In the case of death resulting from the personal
 8 injury to the employee, compensation ~~shall~~ **must** be paid to the
 9 employee's dependents as provided in this act. Time of injury or
 10 date of injury as used in this act ~~in the case of~~ **for** a disease or
 11 ~~in the case of~~ an injury not attributable to a single event is the
 12 last day of work in the employment in which the employee was last
 13 subjected to the conditions that resulted in the employee's
 14 disability or death.

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

23 (3) An employee going to or from ~~his or her~~ **the employee's**
 24 work, while on the premises where the employee's work is to be
 25 performed, and within a reasonable time before and after ~~his or her~~
 26 **the employee's** working hours, is presumed to be in the course of
 27 ~~his or her~~ **the employee's** employment. Notwithstanding this
 28 presumption, an injury incurred in the pursuit of an activity, the
 29 major purpose of which is social or recreational, is not covered

1 under this act, ~~Any~~ **and any** cause of action brought for ~~such an~~
2 **the** injury is not subject to section 131.

3 (4) As used in this chapter:

4 (a) "Disability" means a limitation of an employee's wage
5 earning capacity in work suitable to ~~his or her~~ **the employee's**
6 qualifications and training resulting from a personal injury or
7 work-related disease. A limitation of wage earning capacity occurs
8 ~~only if a personal injury covered under this act results in the~~
9 ~~employee's~~ **employee** being unable to perform all ~~jobs paying the~~
10 ~~maximum wages~~ **or obtain 1 or more jobs** in work **that the employee**
11 **performed before or at the time of the personal injury and that is**
12 suitable to ~~that~~ **the** employee's qualifications and training. ~~7~~
13 ~~which includes work that may be performed using the employee's~~
14 ~~transferable work skills. A disability is total if the employee is~~
15 ~~unable to earn in any job paying maximum wages in work suitable to~~
16 ~~the employee's qualifications and training. A disability is partial~~
17 ~~if the employee retains a wage earning capacity at a pay level less~~
18 ~~than his or her maximum wages in work suitable to his or her~~
19 ~~qualifications and training. The establishment of disability does~~
20 not create a presumption of wage loss.

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

1 **(b)** ~~(c)~~ "Wage loss" means ~~the amount of~~ **reduced** wages ~~lost due~~
2 **connected** to a disability. The employee ~~shall~~ **must** establish a
3 connection between the disability and ~~reduced wages in establishing~~
4 ~~the wage loss. Wage loss may be established, among other methods,~~
5 ~~by demonstrating the employee's good-faith effort to procure work~~
6 ~~within his or her wage earning capacity. A partially disabled~~
7 ~~employee who establishes a good-faith effort to procure work but~~
8 ~~cannot obtain work within his or her wage earning capacity is~~
9 ~~entitled to weekly benefits under subsection (7) as if totally~~
10 ~~disabled.~~ **wage loss to receive weekly wage loss benefits. If the**
11 **employee establishes a connection between disability and wage loss,**
12 **other factors that contribute to the employee's wage loss do not**
13 **affect the payment or amount of wage loss benefits due the**
14 **employee.**

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

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

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

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

26 ~~(d) If the employee is capable of performing any of the jobs~~
27 ~~identified in subdivision (c), show that he or she cannot obtain~~
28 ~~any of those jobs. The evidence shall include a showing of a good-~~
29 ~~faith attempt to procure post-injury employment if there are jobs~~

1 ~~at the employee's maximum wage earning capacity at the time of the~~
 2 ~~injury.~~

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

11 ~~(5) (7) If~~ **Except as otherwise provided in subsection (7) and**
 12 **section 311, if** a personal injury arising out of the course of
 13 employment ~~causes total~~ **results in** disability and ~~connected to~~ wage
 14 loss and the **injured** employee ~~is entitled to wage loss benefits,~~
 15 ~~the~~ **does not receive wages in any week after the injury, the**
 16 employer shall pay or cause to be paid to the injured employee as
 17 provided in this section ~~weekly~~ **compensation for each week the**
 18 **injured employee did not receive wages that is** equal to 80% of the
 19 employee's after-tax average weekly wage, but not more than the
 20 maximum weekly rate determined under section 355. Compensation
 21 ~~shall~~ **must** be paid for the duration of the disability.

22 ~~(6) (8) If~~ **Except as otherwise provided in subsection (7) and**
 23 **section 311, if** a personal injury arising out of the course of
 24 employment ~~causes partial~~ **results in** disability and ~~connected to~~
 25 wage loss and the employee ~~is entitled to wage loss benefits,~~
 26 **receives wages in any week after the personal injury,** the employer
 27 shall pay or cause to be paid to the injured employee as provided
 28 in this section ~~weekly~~ **compensation that is** equal to 80% of the
 29 difference between the injured employee's after-tax average weekly

1 wage before the personal injury and the **injured** employee's wage
2 ~~earning capacity~~ **after-tax actual weekly wage paid for each week**
3 **the injured employee received wages** after the personal injury, but
4 not more than the maximum weekly rate determined under section 355.
5 Compensation ~~shall~~ **must** be paid for the duration of the disability.

6 (7) ~~(9)~~ If disability and wage loss are established,
7 entitlement to weekly wage loss benefits ~~shall~~ **must** be determined
8 as applicable ~~pursuant to~~ **under** this section and as follows:

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

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

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

1 ~~compensation, as determined under section 355.~~

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

7 **(c)** Except as otherwise provided in this subdivision, if an
8 employee, after being employed under this subsection for less than
9 100 weeks, loses the employee's job, the employee's personal injury
10 is conclusively presumed to result in disability connected to wage
11 loss, unless the employee's employer establishes that the
12 employee's willful and serious misconduct resulted in the
13 termination of the employee's employment.

14 **(d)** If the presumption under subdivision (c) does not apply
15 and the employee, after being employed under this subsection, loses
16 the employee's job, proof of work-related disability connected to
17 wage loss is a question of fact.

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

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

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

1 ~~determination, benefits shall be based on his or her average weekly~~
2 ~~wage at the original date of injury. If the magistrate does not~~
3 ~~make that determination, the employee is presumed to have~~
4 ~~established a post-injury wage earning capacity and benefits shall~~
5 ~~not be paid based on the wage at the original date of injury.~~

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

9 **(8)** ~~(10)~~—The Michigan unemployment insurance agency shall
10 notify the agency in writing of the name of any employee who
11 refuses any bona fide offer of reasonable employment. Upon
12 notification to the agency, the agency shall notify the carrier ~~who~~
13 ~~shall that must~~ terminate the benefits of the employee ~~pursuant to~~
14 **under** subsection ~~(9)(a)~~. **(7) (a)** .

15 **(9)** ~~(11)~~—"Reasonable employment", as used in this section,
16 means work that is within ~~the~~**an** employee's capacity to perform
17 that poses no clear and proximate threat **unreasonable risk** to that
18 employee's health and safety, and that is within a reasonable
19 distance from ~~that~~**the** employee's residence. The employee's
20 capacity to perform ~~shall~~**must** not be limited to jobs in work
21 suitable to ~~his or her~~**the employee's** qualifications and training.

22 **(10)** ~~(12)~~—Weekly benefits are not payable during the period of
23 confinement to a person who is incarcerated in a penal institution
24 for violation of the criminal laws of this state or who is confined
25 in a mental institution pending trial for a violation of the
26 criminal laws of this state, if the violation or reason for the
27 confinement occurred while at work and is directly related to the
28 claim.

29 **(11)** ~~(13)~~—A person **or entity** shall not discharge an employee

1 or in any manner discriminate against an employee because the
2 employee filed a complaint or instituted or caused to be instituted
3 a proceeding under this act or because of the exercise by the
4 employee on behalf of ~~himself or herself~~ **the employee** or others of
5 a right afforded by this act.

6 **(12)** ~~(14)~~ This section applies to personal injuries and work
7 related diseases occurring on or after June 30, 1985.

8 Sec. 313. (1) As used in this act, "after-tax average weekly
9 wage" means average weekly wage as defined in section 371 reduced
10 by the prorated weekly amount ~~which~~ **that** would have been paid under
11 the federal insurance contributions act, 26 U.S.C. ~~USC~~ 3101 to
12 3126, state income tax and federal income tax, calculated on an
13 annual basis using as the number of exemptions the disabled
14 employee's dependents plus the employee, and without excess
15 itemized deductions. Effective January 1, 1982, and each January 1
16 thereafter, the applicable federal and state laws in effect on the
17 preceding July 1 ~~shall~~ **must** be used in determining the after-tax
18 weekly wage.

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

24 **(3) The tables described under subsection (2) that were**
25 **published for the year in which an employee's injury occurred must**
26 **be used to calculate the injured employee's after-tax average**
27 **weekly wage, wage loss, or amount of benefits to be coordinated**
28 **under this act.**

29 Sec. 354. (1) This section applies if either weekly or lump

1 sum payments are made to an employee ~~as a result~~ **because** of
 2 liability under section ~~301(7)~~ **301(5)** or ~~(8)~~, **(6)**, 351, or 835 ~~with~~
 3 ~~respect to~~ **during** the same time period for which the employee also
 4 received or is receiving old-age insurance benefit payments under
 5 the social security act, 42 USC 301 to 1397f; payments under a
 6 self-insurance plan, a wage continuation plan, or a disability
 7 insurance policy provided by the employer ~~;~~ **or under a** pension or
 8 retirement ~~payments under a~~ plan or program established or
 9 maintained by the employer. Except as otherwise provided in this
 10 section, the employer's obligation to pay or cause to be paid
 11 weekly benefits other than specific loss benefits under section
 12 361(2) and (3) ~~shall~~ **must** be reduced by ~~these~~ **the following**
 13 amounts:

14 (a) Fifty percent of the amount of the old-age insurance
 15 benefits received or being received under the social security act,
 16 chapter 531, 49 ~~Stat.~~ **Stat** 620. However, if the injured employee
 17 has been receiving old-age insurance benefit payments under the
 18 social security act, chapter 531, 49 ~~Stat.~~ **Stat** 620, before the
 19 date of the personal injury or work-related disease, then ~~in no~~
 20 ~~event shall~~ the weekly benefits payable after the reduction
 21 provided by this subdivision **must not** be less than 50% of the
 22 weekly benefits otherwise payable without the reduction.

23 (b) The after-tax amount of the payments received or being
 24 received under a self-insurance plan, a wage continuation plan, or
 25 under a disability insurance policy provided by the same employer
 26 from whom benefits under section ~~301(7)~~ **301(5)** or ~~(8)~~, **(6)**, 351, or
 27 835 are received if the employee did not contribute directly to the
 28 plan or to the payment of premiums regarding the disability
 29 insurance policy. If the self-insurance plans, wage continuation

1 plans, or disability insurance policies are entitled to repayment
2 in the event of a worker's compensation benefit recovery, the
3 carrier shall satisfy that repayment out of funds the carrier has
4 received through the coordination of benefits provided for under
5 this section. Notwithstanding ~~the provisions of~~ this subsection,
6 attorney fees ~~shall~~ **must** be paid pursuant to section 821 to the
7 attorney who secured the worker's compensation recovery.

8 (c) The proportional amount, based on the ratio of the
9 employer's contributions to the total insurance premiums for the
10 policy period involved, of the after-tax amount of the payments
11 received or being received by the employee pursuant to a disability
12 insurance policy provided by the same employer from whom benefits
13 under section ~~301(7)~~ **301(5)** or ~~(8)~~, **(6)**, 351, or 835 are received,
14 if the employee did contribute directly to the payment of premiums
15 regarding the disability insurance policy.

16 (d) Subject to subsection (12), the after-tax amount of the
17 pension or retirement payments received or being received by the
18 employee, or which the employee is currently eligible to receive if
19 the employee has suffered total and permanent disability and has
20 reached full retirement age, pursuant to a plan or program
21 established or maintained by the same employer from whom benefits
22 under section ~~301(7)~~ **301(5)** or ~~(8)~~, **(6)**, 351, or 835 are received,
23 if the employee did not contribute directly to the pension or
24 retirement plan or program. Subsequent increases in a pension or
25 retirement program ~~shall~~ **do** not affect the coordination of these
26 benefits.

27 (e) The proportional amount, based on the ratio of the
28 employer's contributions to the total contributions to the plan or
29 program, of the after-tax amount of the pension or retirement

1 payments received or being received by the employee pursuant to a
 2 plan or program established or maintained by the same employer from
 3 whom benefits under section ~~301(7)~~**301(5)** or ~~(8)~~**(6)**, 351, or 835
 4 are received, if the employee did contribute directly to the
 5 pension or retirement plan or program. Subsequent increases in a
 6 pension or retirement program ~~shall~~**do** not affect the coordination
 7 of these benefits.

8 (f) For those employers ~~who~~**that** do not provide a pension
 9 plan, the proportional amount, based on the ratio of the employer's
 10 contributions to the total contributions made to a qualified profit
 11 sharing plan under section 401(a) of the internal revenue code, **26**
 12 **USC 401**, or any successor to section 401(a) of the internal revenue
 13 code, **26 USC 401**, covering a profit sharing plan ~~which~~**that**
 14 provides for the payment of benefits only upon retirement,
 15 disability, death, or other separation of employment to the extent
 16 that benefits are vested under the plan.

17 (2) To satisfy any remaining obligations under section ~~301(7)~~
 18 **301(5)** or ~~(8)~~**(6)**, 351, or 835, the employer shall pay or cause to
 19 be paid to the employee the balance due in either weekly or lump
 20 sum payments after the application of subsection (1).

21 (3) In the application of subsection (1) any credit or
 22 reduction ~~shall~~**must** occur ~~pursuant to~~**under** this section and all
 23 of the following:

24 (a) The agency shall promulgate rules to provide for
 25 notification by an employer or carrier to an employee of possible
 26 eligibility for ~~social security~~**Social Security** benefits and the
 27 requirements for establishing proof of application for those
 28 benefits. ~~Notification shall be~~**The employer or carrier shall**
 29 promptly ~~mailed~~**mail the notification** to the employee after the

1 date on which by reason of age the employee may be entitled to
 2 ~~social security~~ **Social Security** benefits. A copy of the
 3 notification of possible eligibility ~~shall~~ **must** be filed with the
 4 agency by the employer or carrier.

5 (b) ~~Within~~ **Not more than** 30 days after receipt of the
 6 notification of possible employee eligibility the employee shall:

7 (i) Apply for ~~social security~~ **Social Security** benefits.

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

10 (iii) Provide the employer or carrier with an authority for
 11 release of information ~~which shall be utilized by that~~ the employer
 12 or carrier **must use** to obtain necessary benefit entitlement and
 13 amount information from the ~~social security administration.~~ **Social**
 14 **Security Administration.** The authority for release of information
 15 ~~shall be is~~ effective for 1 year.

16 (4) If the employee fails to provide the proof of application
 17 or the authority for release of information as prescribed in
 18 subsection (3), the employer or carrier, with the approval of the
 19 agency, may discontinue the compensation benefits payable to the
 20 employee under section ~~301(7)~~ **301 (5)** or ~~(8), (6)~~, 351, or 835 until
 21 the proof of application and the authority for release of
 22 information is provided. Compensation benefits withheld ~~shall~~ **must**
 23 be reimbursed to the employee upon providing the required proof of
 24 application, or the authority for release of information, or both.

25 (5) If the employer or carrier is required to submit a new
 26 authority for release of information to the ~~social security~~
 27 ~~administration~~ **Social Security Administration** in order to receive
 28 information necessary to comply with this section, the employee
 29 shall provide the new authority for release of information ~~within~~

1 **not more than** 30 days ~~of~~**after** a request by the employer or
2 carrier. If the employee fails to provide the new authority for
3 release of information, the employer or carrier, with the approval
4 of the agency, may discontinue benefits until the authority for
5 release of information is provided as prescribed in this
6 subsection. Compensation benefits withheld ~~shall~~**must** be reimbursed
7 to the employee upon providing the new authority for release of
8 information.

9 (6) ~~Within~~**Not more than** 30 days after either the date of
10 first payment of compensation benefits under section ~~301(7)~~**301(5)**
11 or ~~(8)~~**(6)**, 351, or 835, or 30 days after the date of application
12 for any benefit under subsection (1)(b), (c), (d), or (e),
13 whichever is later, the employee shall provide the employer or
14 carrier with a properly executed authority for release of
15 information, which ~~shall be utilized by~~ the employer or carrier
16 **must use** to obtain necessary benefit entitlement and amount
17 information from the appropriate source. The authority for release
18 of information is effective for 1 year. Failure of the employee to
19 provide a properly executed authority for release of information
20 allows the employer or carrier with the approval of the agency to
21 discontinue the compensation benefits payable under section ~~301(7)~~
22 **301(5)** or ~~(8)~~**(6)**, 351, or 835 to the employee until the authority
23 for release of information is provided. Compensation benefits
24 withheld ~~shall~~**must** be reimbursed to the employee upon providing
25 the required authority for release of information. If the employer
26 or carrier is required to submit a new authority for release of
27 information to the appropriate source in order to receive
28 information necessary to comply with this section, the employee
29 shall provide a properly executed new authority for release of

1 information ~~within~~**not more than** 30 days after a request by the
 2 employer or carrier. Failure of the employee to provide a properly
 3 executed new authority for release of information allows the
 4 employer or carrier with the approval of the agency to discontinue
 5 benefits under section ~~301(7)~~**301(5)** or ~~(8)~~**(6)**, 351, or 835 until
 6 the authority for release of information is provided as prescribed
 7 in this subsection. Compensation benefits withheld shall be
 8 reimbursed to the employee upon the providing of the new authority
 9 for release of information.

10 (7) A credit or reduction under this section ~~shall~~**must** not
 11 occur because of an increase granted by the ~~social security~~
 12 ~~administration~~**Social Security Administration** as a cost of living
 13 adjustment.

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

20 (9) Except as otherwise provided in this section, any benefit
 21 payments under the social security act, or any fund, policy, or
 22 program as specified in subsection (1) that the employee has
 23 received or is receiving after March 31, 1982 and during a period
 24 in which the employee was receiving unreduced compensation benefits
 25 under section ~~301(7)~~**301(5)** or ~~(8)~~**(6)**, 351, or 835 ~~shall be~~**are**
 26 considered to have created an overpayment of compensation benefits
 27 for that period. The employer or carrier shall calculate the amount
 28 of the overpayment and send a notice of overpayment and a request
 29 for reimbursement to the employee. Failure by the employee to

1 reimburse the employer or carrier within 30 days after the mailing
 2 date of the notice of request for reimbursement allows the employer
 3 or carrier with the approval of the agency to discontinue 50% of
 4 future weekly compensation payments under section ~~301(7)~~**301(5)** or
 5 ~~(8)~~, ~~(6)~~, 351, or 835. The compensation payments withheld ~~shall~~
 6 **must** be credited against the amount of the overpayment. Payment of
 7 the appropriate compensation benefit ~~shall resume~~**resumes** when the
 8 total amount of the overpayment has been withheld.

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

14 (11) Disability insurance benefit payments under the social
 15 security act ~~shall be~~**are** considered to be payments from funds
 16 provided by the employer and to be primary payments on the
 17 employer's obligation under section ~~301(7)~~**301(5)** or ~~(8)~~, ~~(6)~~, 351,
 18 or 835 as old-age benefit payments under the social security act
 19 are considered ~~pursuant to~~**under** this section. The coordination of
 20 ~~social security~~**Social Security** disability benefits ~~shall commence~~
 21 **begins** on the date of the award certificate of the ~~social security~~
 22 **Social Security** disability benefits. Any accrued ~~social security~~
 23 **Social Security** disability benefits ~~shall must~~ not be coordinated.
 24 However, ~~social security~~**Social Security** disability insurance
 25 benefits shall only be so considered if section 224 of the social
 26 security act, 42 USC 424a, is revised so that a reduction of ~~social~~
 27 ~~security~~**Social Security** disability insurance benefits is not made
 28 because of the receipt of worker's compensation benefits by the
 29 employee.

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

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

22 (14) This section does not apply to any payments received or
 23 to be received under a disability pension plan provided by the same
 24 employer, which plan is in existence on March 31, 1982. Any
 25 disability pension plan entered into or renewed after March 31,
 26 1982 may provide that the payments under that disability pension
 27 plan provided by the employer ~~shall~~ **must** not be coordinated
 28 ~~pursuant to~~ **under** this section.

29 (15) With respect to volunteer ~~fire fighters,~~ **firefighters,**

1 volunteer safety patrol officers, volunteer civil defense workers,
 2 and volunteer ambulance drivers and attendants who are considered
 3 employees for purposes of this act ~~pursuant to~~ **under** section
 4 161(1) (a), the reduction of weekly benefits provided for disability
 5 insurance payments under subsection (1) (b) and (c) and subsection
 6 (11) may be waived by the employer. An employer that is not a self-
 7 insurer may make the waiver provided for under this subsection only
 8 at the time a worker's compensation insurance policy is entered
 9 into or renewed.

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

18 (17) The decision of the Michigan ~~Supreme Court~~ **supreme court**
 19 in Franks v White Pine Copper Division, **Franks v White Pine Copper**
 20 **Division**, 422 Mich 636 (1985) is declared to have been erroneously
 21 rendered insofar as it interprets this section, it having been and
 22 being the legislative intention not to coordinate payments under
 23 this section resulting from liability pursuant to section ~~301(7)~~
 24 **301(5)** or ~~(8)~~, **(6)**, 351, or 835 for personal injuries occurring
 25 before March 31, 1982. It is the purpose of the amendatory act that
 26 added this subsection to so affirm. This remedial and curative
 27 amendment ~~shall~~ **must** be liberally construed to effectuate this
 28 purpose.

29 (18) This section applies only to payments ~~resulting that~~

1 **result** from liability ~~pursuant to under~~ section ~~301(7) 301(5)~~ or
 2 ~~(8), (6)~~, 351, or 835 for personal injuries ~~occurring that occur~~ on
 3 or after March 31, 1982. Any payments made to an employee ~~resulting~~
 4 **that result** from liability ~~pursuant to under~~ section ~~301(7) 301(5)~~
 5 or ~~(8), (6)~~, 351, or 835 for a personal injury ~~occurring that~~
 6 **occurred** before March 31, 1982 that have not been coordinated under
 7 this section as of the effective date of this subsection ~~shall must~~
 8 not be coordinated, ~~shall are~~ not be considered to have created an
 9 overpayment of compensation benefits, and ~~shall are~~ not be subject
 10 to reimbursement to the employer or carrier.

11 (19) Notwithstanding any other section of this act, any
 12 payments made to an employee ~~resulting that result~~ from liability
 13 ~~pursuant to under~~ section ~~301(7) 301(5)~~ or ~~(8), (6)~~, 351, or 835
 14 for a personal injury ~~occurring that occurred~~ before March 31, 1982
 15 that have been coordinated before May 14, 1987 ~~shall be are~~
 16 considered to be an underpayment of compensation benefits, and the
 17 **employer or carrier shall reimburse the** amounts withheld pursuant
 18 to coordination ~~shall be reimbursed~~ with interest, by July 13,
 19 1987, to the employee. ~~by the employer or carrier.~~

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

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

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

5 (2) Effective January 1, 1982, and each January 1 thereafter ~~7~~
6 **until the first January 1 after the effective date of the 2024**
7 **amendatory act that amended this section**, the maximum weekly rate
8 of compensation for injuries occurring within that year ~~shall~~**must**
9 be established as 90% of the state average weekly wage as of the
10 prior June 30, adjusted to the next higher multiple of \$1.00.

11 (3) **Effective the January 1 after the effective date of the**
12 **2024 amendatory act that amended this section, and each January 1**
13 **thereafter, the maximum weekly rate of compensation for injuries**
14 **occurring within that year must be established as 100% of the state**
15 **average weekly wage as of the prior June 30, adjusted to the next**
16 **higher multiple of \$1.00.**

17 (4) ~~(3)~~ For the purpose of computing the supplemental benefit
18 under section 352, the state average weekly wage for any injury
19 year ~~shall~~**must** be the average weekly wage in covered employment
20 determined by the Michigan employment security commission for the
21 12 months ending June 30 of the preceding year.

22 Sec. 361. (1) An employer is not liable for compensation under
23 section ~~301(7)~~**301(5)** or ~~(8)~~**(6)**, 351, 371(1), or ~~401(5)~~**401(3)** or
24 ~~(6)~~**(4)** for periods of time that the employee is unable to obtain
25 or perform work because of imprisonment or ~~commission of a~~
26 ~~crime~~**incarceration because of a criminal conviction.**

27 (2) In cases included in the following schedule, the
28 disability in each case ~~shall be~~**is** considered to continue for the
29 period specified, and the compensation paid for the personal injury

1 ~~shall be~~**is** 80% of the after-tax average weekly wage subject to the
 2 maximum and minimum rates of compensation under this act. The
 3 effect of any internal joint replacement surgery, internal implant,
 4 or other similar medical procedure ~~shall~~**must** be considered in
 5 determining whether a specific loss has occurred. The specific loss
 6 period for the loss ~~shall be~~**is** considered as follows:

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

12 The loss of the first phalange of the thumb, or of any finger,
 13 ~~shall be~~**is** considered to be equal to the loss of 1/2 of that thumb
 14 or finger, and compensation ~~shall be~~**is** 1/2 of the amount above
 15 specified.

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

- 20 (f) Great toe, 33 weeks.
- 21 (g) A toe other than the great toe, 11 weeks.

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

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

- 27 (h) Hand, 215 weeks.
- 28 (i) Arm, 269 weeks.

29 An amputation between the elbow and wrist that is 6 or more

1 inches below the elbow ~~shall be~~**is** considered a hand, and an
2 amputation above that point ~~shall be~~**is** considered an arm.

3 (j) Foot, 162 weeks.

4 (k) Leg, 215 weeks.

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

8 (l) Eye, 162 weeks.

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

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

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

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

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

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

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

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

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

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

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

27 (g) Permanent and total loss of industrial use of both legs or
28 both hands or both arms or 1 leg and 1 arm. ~~;~~~~for~~**For** the purpose
29 of this subdivision, ~~such permanency shall be~~**is** determined not

1 less than 30 days before the expiration of 500 weeks from the date
2 of injury.

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

10 Sec. 371. (1) ~~The weekly loss in wages referred to in this act~~
11 ~~shall consist of the percentage of the average weekly earnings of~~
12 ~~the injured employee computed according to this section as fairly~~
13 ~~represents the proportionate extent of the impairment of the~~
14 ~~employee's earning capacity in the employments covered by this act~~
15 ~~in which the employee was working at the time of the personal~~
16 ~~injury. The weekly loss in wages shall be fixed as of the time of~~
17 ~~the personal injury, and determined considering the nature and~~
18 ~~extent of the personal injury. The~~ **Except as otherwise provided in**
19 **this act, the** compensation payable, when added to the employee's
20 ~~wage earning capacity~~ **earned weekly wage** after the personal injury
21 in the same or other employments, ~~shall~~**must** not exceed the
22 employee's average weekly earnings at the time of the injury.

23 (2) As used in this act, "average weekly wage" means the
24 weekly wage earned by ~~the~~**an** employee at the time of the employee's
25 injury in all employment, inclusive of overtime, premium pay, and
26 cost of living adjustment, and exclusive of any fringe or other
27 benefits ~~which~~**that** continue during the disability. ~~Any~~ **Except as**
28 **otherwise provided in this subsection, any** fringe or other benefit
29 ~~which~~**that** does not continue during the disability ~~shall be~~**is**

1 included for purposes of determining an employee's average weekly
 2 wage to the extent that the inclusion of the fringe or other
 3 benefit will not result in a weekly benefit amount ~~which~~**that** is
 4 greater than 2/3 of the state average weekly wage at the time of
 5 injury. **If an employee's health insurance, dental insurance, or**
 6 **both do not continue during the disability, the value of the health**
 7 **insurance, dental insurance, or both must be included in the**
 8 **calculation of the employee's average weekly wage regardless of**
 9 **whether the calculation results in an amount that is greater than**
 10 **2/3 of the state average weekly wage at the time of injury.** The
 11 average weekly wage ~~shall be~~**is** determined by computing the total
 12 wages paid in the highest paid 39 weeks of the 52 weeks immediately
 13 preceding the date of injury, and dividing by 39.

14 (3) If ~~the~~**an** employee worked less than 39 weeks in the
 15 employment in which the employee was injured, the average weekly
 16 wage ~~shall be~~**is** based ~~upon~~**on** the total wages earned by the
 17 employee divided by the total number of weeks **the employee** actually
 18 worked. For purposes of this subsection, only those weeks in which
 19 work is performed ~~shall be~~**are** considered in computing the total
 20 wages earned and the number of weeks actually worked.

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

27 (5) If the hourly ~~earning~~**earnings** of ~~the~~**an** employee cannot
 28 be ascertained, or if the pay has not been designated for the work
 29 required, the wage, for the purpose of calculating compensation,

1 ~~shall~~**must** be taken to be the usual wage for similar services if
2 the services are rendered by paid employees.

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

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

12 Sec. 401. (1) As used in this chapter, "disability" means a
13 limitation of an employee's wage earning capacity in work suitable
14 to ~~his or her~~**the employee's** qualifications and training resulting
15 from a personal injury or work related disease. A limitation of
16 wage earning capacity occurs only if a personal injury covered
17 under this act results in the ~~employee's~~**employee** being unable to
18 perform ~~all jobs paying the maximum wages~~**or obtain 1 or more jobs**
19 in work **that the employee performed before or at the time of the**
20 **personal injury and that is** suitable to ~~that~~**the** employee's
21 qualifications and training. ~~, which includes work that may be~~
22 ~~performed using the employee's transferable work skills. A~~
23 ~~disability is total if the employee is unable to earn in any job~~
24 ~~paying maximum wages in work suitable to the employee's~~
25 ~~qualifications and training. A disability is partial if the~~
26 ~~employee retains a wage earning capacity at a pay level less than~~
27 ~~his or her maximum wages in work suitable to his or her~~
28 ~~qualifications and training.~~The establishment of disability does
29 not create a presumption of wage loss.

1 (2) As used in this chapter:

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

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

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

1 ~~are reasonably available.~~

2 (c) ~~(d)~~ "Wage loss" means ~~the amount of~~ **reduced** wages ~~lost due~~
3 **connected** to a disability. The employee ~~shall~~ **must** establish a
4 connection between the disability and ~~reduced wages in establishing~~
5 ~~the wage loss. Wage loss may be established, among other methods,~~
6 ~~by demonstrating the employee's good-faith effort to procure work~~
7 ~~within his or her wage earning capacity. A partially disabled~~
8 ~~employee who establishes a good faith effort to procure work but~~
9 ~~cannot obtain work within his or her wage earning capacity is~~
10 ~~entitled to weekly benefits under subsection (5) as if totally~~
11 ~~disabled.~~ **wage loss to receive weekly wage loss benefits. If the**
12 **employee establishes a connection between disability and wage loss,**
13 **other factors that contribute to the employee's wage loss do not**
14 **affect the payment or amount of wage loss benefits due the**
15 **employee.**

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

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

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

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

27 ~~(d) If the employee is capable of performing any of the jobs~~
28 ~~identified in subdivision (c), show that he or she cannot obtain~~
29 ~~any of those jobs. The evidence shall include a showing of a good-~~

1 ~~faith attempt to procure postinjury employment if there are jobs at~~
 2 ~~the employee's maximum wage earning capacity at the time of the~~
 3 ~~injury.~~

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

12 ~~(3) (5) If~~ **Except as otherwise provided under subsection (5)**
 13 **and section 311, if** a personal injury arising out of the course of
 14 employment causes ~~total~~ **results in** disability and ~~connected to~~ wage
 15 loss and the **injured** employee ~~is entitled to wage loss benefits,~~
 16 **does not receive wages in any week after the injury,** the employer
 17 shall pay or cause to be paid to the injured employee as provided
 18 in this section ~~weekly~~ **for each week the injured employee did not**
 19 **receive wages that is** compensation equal to 80% of the **injured**
 20 employee's after-tax average weekly wage, but not more than the
 21 maximum weekly rate determined under section 355. Compensation
 22 ~~shall~~ **must** be paid for the duration of the disability.

23 ~~(4) (6) If~~ **Except as otherwise provided under subsection (5)**
 24 **and section 311, if** a personal injury arising out of the course of
 25 employment causes ~~partial~~ **results in** disability and ~~connected to~~
 26 wage loss and the employee ~~is entitled to wage loss benefits,~~
 27 **receives wages in any week after the personal injury,** the employer
 28 shall pay or cause to be paid to the injured employee as provided
 29 in this section ~~weekly~~ compensation **that is** equal to 80% of the

1 difference between the injured employee's after-tax average weekly
 2 wage before the personal injury and the **injured** employee's wage
 3 ~~earning capacity~~ **after-tax actual weekly wage paid for each week**
 4 **the injured employee received wages** after the personal injury, but
 5 not more than the maximum weekly rate determined under section 355.
 6 Compensation ~~shall~~ **must** be paid for the duration of the disability.

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

10 (a) If an employee receives a bona fide offer of reasonable
 11 employment from the ~~previous~~ **employee's** employer, another employer,
 12 or through the Michigan unemployment insurance agency and the
 13 employee refuses that employment without good and reasonable cause,
 14 the employee ~~shall be~~ **is** considered to have voluntarily removed
 15 ~~himself or herself~~ **the employee** from the ~~work force~~ **workforce** and
 16 is no longer entitled to any wage loss benefits under this act
 17 during the period of refusal. **The employer has the burden of proof**
 18 **of establishing that the employee received a bona fide offer of**
 19 **reasonable employment.**

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

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

1 ~~date of injury, but not more than the maximum weekly rate of~~
 2 ~~compensation, as determined under section 355.~~

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

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

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

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

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

28 **(c) If an employee, after being employed under this subsection**
 29 **for less than 100 weeks, loses the employee's job, the employee's**

1 **personal injury is conclusively presumed to result in disability**
 2 **connected to wage loss, unless the employee's employer establishes**
 3 **that the employee's willful and serious misconduct resulted in the**
 4 **termination of the employee's employment.**

5 (d) **If the presumption under subdivision (c) does not apply**
 6 **and the employee, after being employed under this subsection, loses**
 7 **the employee's job, proof of work-related disability connected to**
 8 **wage loss is a question of fact.**

9 (6) ~~(8)~~ **The Michigan unemployment insurance agency shall**
 10 **notify the agency in writing of the name of any employee who**
 11 **refuses any bona fide offer of reasonable employment. Upon**
 12 **notification to the agency, the agency shall notify the carrier who**
 13 **shall terminate the benefits of the employee pursuant to under**
 14 **subsection ~~(7)(a)~~ (5)(a).**

15 (7) ~~(9)~~ **As used in this section, "reasonable employment" means**
 16 **suitable work that is within the an employee's qualifications,**
 17 **training, and capacity to perform that poses no clear and proximate**
 18 **threat unreasonable risk to that employee's health and safety, and**
 19 **that is within a reasonable distance from that employee's**
 20 **residence. The employee's capacity to perform shall must not be**
 21 **limited to work suitable to his or her the employee's**
 22 **qualifications and training.**

23 (8) ~~(10)~~ **This section shall apply applies to personal injuries**
 24 **or work related diseases occurring on or after June 30, 1985.**

25 Sec. 891. (1) **To the extent that they are reenacted herein,**
 26 **all the provisions of former 1965 PA 44 apply only to personal**
 27 **injuries occurring on or after September 1, 1965, except as**
 28 **otherwise provided in that act and except for the amendment to part**
 29 **2, section 4 of that act, concerning selection of physicians as**

1 provided in that act.

2 (2) In all cases where the date of injury is on or after
3 September 1, 1965, and the employee or ~~his-employee's~~ dependents
4 would be entitled to the new maximum weekly benefit rates, the
5 employee or ~~his-employee's~~ dependents shall receive, without
6 application to the workers' compensation agency, an adjustment to
7 the increased maximum rate as it becomes effective September 1,
8 1966, or September 1, 1967, for any compensable weeks subsequent to
9 the above dates.

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

21 (4) Notwithstanding sections ~~301(14)-301(12)~~ and ~~401(10),~~
22 **401(8)**, the amendments to this act made by 2011 PA 266 apply to
23 personal injuries and work-related diseases incurred on or after
24 December 19, 2011.

25 (5) **Notwithstanding sections 301(12) and 401(8), the**
26 **amendments to this act made by the amendatory act that added this**
27 **subsection apply to personal injuries and work-related diseases**
28 **incurred on or after the effective date of the amendatory act that**
29 **added this subsection.**

1 Enacting section 1. Sections 302 and 431 of the worker's
2 disability compensation act of 1969, 1969 PA 317, MCL 418.302 and
3 418.431, are repealed.