

**WORKERS' DISABILITY COMPENSATION ACT OF 1969**  
**Act 317 of 1969**

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**COVERAGE AND LIABILITY**

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**WORKERS' 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.

***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 §§ 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 and pertaining to workmen's compensation, were repealed by Act 317 of 1969.

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.

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 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 N.W.2d 786 (1972).

The agricultural exclusion contained in this section, which was declared unconstitutional in *Gallegos v. Glaser Crandell Company*, 388 Mich. 654, 202 N.W.2d 786 (1972), was void from the date of its enactment. *Stanton v. Lloyd Hammond Produce Farms*, 400 Mich. 135, 253 N.W.2d 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 N.W.2d 684 (1984).

#### 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.

#### 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 § 418.213.

#### 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.

#### 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.

#### 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:

"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."

#### 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.

(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.

#### 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 § 418.213. In the first paragraph of this section, the designation "(1)" evidently should be omitted.

#### 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.

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; § 418.141 inapplicable to certain actions.

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 which made the contract, when the contractor is subject to this act.

(b) Nationals of foreign countries employed pursuant to section 102(a)(1) of the mutual educational and cultural exchange act of 1961, 22 U.S.C. 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 shall not be entitled to like benefits from both the municipality or village and this act; however, this waiver shall not prohibit such 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 when 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 that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships shall be entitled to all the benefits of this act when personally injured in the performance of their duties as on-call members of a fire department whether the on-call member of the fire department 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.

(f) The benefits of this act shall be 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 when 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, Act No. 368 of the Public Acts of 1978, being sections 333.20950 and 333.20952 of the Michigan Compiled Laws, who is an on-call member of a life support agency as defined under section 20906 of Act No. 368 of the Public Acts of 1978, being section 333.20906 of the Michigan Compiled Laws, shall

be considered to be an employee of the county, city, village, or township and entitled to the benefits of this act when personally injured in the performance of duties as an on-call member of a life support agency whether the on-call member of the life support agency is paid or unpaid. An on-call member of a life support agency shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the county, city, village, or township for purposes of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(i) A volunteer licensed under section 20950 or 20952 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20950 and 333.20952 of the Michigan Compiled Laws, who is an on-call member of a life support agency as defined under section 20906 of Act No. 368 of the Public Acts of 1978, being section 333.20906 of the Michigan Compiled Laws, that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships shall be entitled to all the benefits of this act when 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, Act No. 390 of the Public Acts of 1976, being sections 30.408 and 30.409 of the Michigan Compiled Laws, made of and accepted by an emergency rescue team.

(k) A political subdivision of this state shall not be required to provide compensation insurance for a peace officer of the political subdivision with respect to the protection and compensation provided by Act No. 329 of the Public Acts of 1937, being sections 419.101 to 419.104 of the Michigan Compiled Laws.

(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 shall be 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 which mandates the provision of appropriate worker's compensation for participants and which 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 shall be 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.

(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 shall not be 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, Act No. 23 of the Public Acts of 1993, being section 450.4102 of the Michigan Compiled Laws, 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 shall remain in effect until revoked by the employee by giving notice in writing to the carrier. While the exclusion is in effect, section 141 shall 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 which 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 shall remain in effect until revoked by the employee by giving a notice in writing to the carrier. While the exclusion is in effect, section 141 shall 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.

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

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 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 § 418.213.

## 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.

#### 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 standardized travel regulations of the state.

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

#### 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 Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws. He or she shall appoint such assistants and employees as may be necessary, who shall be entitled to necessary travel expenses incurred in the performance of official duties subject to the standardized travel regulations of the state, and such compensation as shall be determined in accordance with civil service rules where applicable. He or she shall appoint an assistant who shall have charge of the Detroit office of the bureau. He or she shall have general supervisory control of the bureau and all officers and employees thereunder. He or she shall have charge of the assignment of the work of the bureau to the assistants, hearing referees, and employees. He or she shall have charge of the docketing and progress of contested cases including the power to order a hearing referee to dismiss without prejudice for lack of progress in the absence of good cause shown, in accordance with rules and procedures established for effecting these purposes. However, cases involving a carrier terminating the payment of benefits which had been paid voluntarily and cases involving a petition to stop or reduce compensation shall take precedence over other cases and a hearing thereon shall be held within 60 days. The director is authorized to provide assistance to employers and employees in the resolution of small disputes. He or she shall have general charge of all administrative functions of the bureau and may delegate such duties, the performance of such administrative functions, and the authority incident thereto.

**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.

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

**Administrative rules:** R 408.31 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.

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

**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 N.W.2d 728 (1986).

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 § 418.213.

418.209 Qualifications advisory committee; appointment, qualifications, and terms of members; quorum; compensation; staff and offices; powers and duties of committee.

Sec. 209. (1) The governor shall appoint a 6-member qualifications advisory committee. The committee shall consist of persons who have experience in the area of worker's compensation. Employer interests and employee interests shall be equally represented on the committee.

(2) Members shall be appointed for terms of 4 years except that of the members first appointed, 2 shall be appointed for terms of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years. Of the 2 members appointed for the 2-year, 3-year, and 4-year terms, 1 member representing employer interests and 1 member representing employee interests shall be appointed. A member shall not serve beyond the expiration of his or her term. The initial members shall be appointed not later than October 1, 1985.

(3) A quorum shall consist of 4 members. All business of the committee shall be conducted by not less than a quorum.

(4) Members of the qualifications advisory committee shall serve without compensation, but shall be reimbursed for all necessary expenses in connection with the discharge of their official duties as members of the committee.

(5) Staff and offices for the committee shall be provided by the bureau.

(6) The committee shall have the powers and perform the duties provided for under sections 210, 212, and 274.

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

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

418.210 Development of written examination; administration of written examination to applicants for position of worker's compensation magistrate; interviews; appointment of qualified applicants; pamphlets.

Sec. 210. (1) The qualifications advisory committee, in consultation with the board of magistrates, shall develop a written examination. The examination shall be administered to applicants for the position of worker's compensation magistrate in order to determine the applicant's ability and knowledge with regard to worker's compensation in the following areas:

(a) Knowledge of this act.

(b) Skills with regard to fact finding.

(c) The Michigan rules of evidence.

(d) A basic understanding of human anatomy and physiology.

(2) An applicant for the position of worker's compensation magistrate, including those persons who were employed as hearing referees under this act on or before March 31, 1987, who successfully completes the examination provided for under subsection (1) or who has not less than 5 years experience as an attorney in the field of worker's compensation shall be interviewed by the qualifications advisory committee for the position of worker's compensation magistrate. To meet the requirement of 5 years' legal experience as an attorney in the field of worker's



compensation, an applicant must document to the qualifications advisory committee a period of time totaling 5 years during which the applicant met 1 of the following criteria:

(a) A significant portion of the applicant's personal practice has been in active worker's compensation trial practice representing claimants or employers.

(b) A significant portion of the applicant's personal practice has been in active worker's compensation appellate practice representing claimants or employers.

(c) Service as a member of the former worker's compensation appeal board or the worker's compensation appellate commission.

(3) The qualifications advisory committee, after completing personal interviews of the eligible applicants, shall determine which of the applicants are considered qualified for the position of worker's compensation magistrate. A person determined to be qualified before this 1994 amendatory act shall continue to be considered qualified after the effective date of this 1994 amendatory act. The personal interviews shall be used to determine the applicant's suitability for the position, especially with regard to his or her objectivity.

(4) The governor shall appoint only an applicant determined to be qualified by the qualifications advisory committee as a worker's compensation magistrate for each available position pursuant to section 213.

(5) The department of labor may develop pamphlets to assist those persons who desire to take the examination for worker's compensation magistrate.

**History:** Add. 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 § 418.213.

#### 418.211 Hearing referees; appointment, qualifications.

Sec. 211. Hearing referees shall be appointed by the director, shall devote their entire time to the duties of their office and shall engage in no other business or professional activity. They shall be attorneys at law licensed to practice in the courts of this state, except for hearing referees who immediately prior to the effective date of this act were acting as such.

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

#### 418.212 Evaluating performance of worker's compensation magistrate; frequency; criteria; report; response.

Sec. 212. (1) The qualifications advisory committee shall evaluate the performance of each worker's compensation magistrate at least once every 2 years. The evaluation shall be based upon at least the following criteria:

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

(b) Productivity including reasonable time deadlines for disposing of cases.

(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 shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Upon completing an evaluation under this section, the qualifications advisory committee shall submit a written report including any supporting documentation to the governor regarding that evaluation which may include recommendations with regard to 1 or more of the following:

(a) Promotion.

(b) Suspension.

(c) Removal.

(d) Additional training or education.

(3) The governor shall respond in writing to the committee regarding the action taken in response to the report of the committee.

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

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

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

Sec. 213. (1) The worker's compensation board of magistrates is established as an autonomous entity in the department of labor. The board shall consist of 30 members appointed by the governor with the advice and consent of the senate. The governor shall designate 1 of the appointees as the member that will be chairperson. A person shall not be appointed to the board who has not been recommended by the qualifications advisory committee. 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 member who has served for 12 years shall not be reappointed to a new term. 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 unless the qualifications advisory committee fails to submit a recommendation to the governor before the expiration of the 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. A member of the board may be removed by the governor for good cause which shall be explained in writing to the worker's compensation magistrate. Good cause for removal shall include, but not be limited to, lack of productivity or other neglect of duties.

(3) The governor may 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 employees of the board and the assignment and scheduling of the work of the board. In the case of an extended leave of absence or disability, the chairperson may select temporary magistrates to serve for not more than 6 months in any 2-year period from a list maintained by the qualifications advisory committee. The list shall be composed of persons who are attorneys licensed to practice in this state and who are former or retired worker's disability compensation magistrates, or former or retired worker's disability compensation hearing referees or administrative law judges. A temporary magistrate selected by the chairperson shall have the same powers and duties as an appointed magistrate under this act. The chairperson 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.

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

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

(6) The board 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.

(7) The board is an independent body with the powers and duties as provided for under this act. The board may promulgate rules on administrative hearing procedures for purposes under this act.

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

(9) The department of labor 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.

**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).
- (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 354(16).
- (m) Section 261(1) to (4)."

**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 N.W.2d 728 (1986).

418.215 Bureau of workmen's compensation; offices, location.

Sec. 215. The department of administration shall provide suitable space for the bureau in Lansing, Detroit, the Upper Peninsula and such other places in the state as, in the discretion of the director, are necessary. The principal office of the bureau shall be in Lansing.

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

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.

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 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 § 418.213.

418.223 Mediation of claim; circumstances; scheduling mediation conference; duties of bureau prior to mediation conference; recommendations by mediator; application for hearing; pretrial conference; willful noncompliance.

Sec. 223. (1) A claim, except a claim concerning a petition to stop or reduce the payment of compensation or involving a carrier terminating the payment of benefits which had been voluntarily paid, shall be mediated by the parties pursuant to this section under any of the following circumstances:

- (a) The claim concerns a definite period of time and the employee has returned to work.
- (b) The claim is for medical benefits only.
- (c) If the claimant is not represented by an attorney.
- (d) If the bureau determines that the claim may be settled by mediation.

(2) All other claims shall be mediated pursuant to this section by the parties unless a party refuses in writing to mediate that claim.

(3) The bureau, upon proper notice to all parties, shall schedule a mediation conference for a claim that is to be mediated.

(4) Immediately before the mediation conference is held, the bureau shall review the carrier's response with the employee. The bureau shall also provide to the employee a clear and concise

explanation of his or her rights and responsibilities under this act including a reasonable estimate of the maximum amount of benefits to which he or she would be entitled if the claim is approved and the amounts that could be deducted for attorney fees and costs.

(5) If a mediation conference has been held and the claim has not been resolved, the mediator shall recommend 1 of the following:

(a) If the amount of the claim is for \$2,000.00 or less, that the claim be heard in the small claims division.

(b) If the amount of the claim is for more than \$2,000.00, that the claim be heard at a hearing held pursuant to section 847.

(6) If a mediation conference has been held regarding a claim and a party files an application for a hearing under section 847, a pretrial conference shall not be held unless specifically requested in writing by a party within 60 days of the completion of the mediation conference.

(7) 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 § 418.213.

#### 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.

#### 418.230 Confidential records; exceptions; applicability of certain provisions to State Accident Fund; power of court to subpoena records not limited.

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, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws:

(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.

(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) or (1)(b), 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 self-insured employers 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.

(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 Act No. 442 of the Public Acts of 1976.

(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 Act No. 350 of the Public Acts of 1980, being section 550.1105 of the Michigan Compiled Laws, 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 Act No. 350 of the Public Acts of 1980, being section 550.1406 of the Michigan Compiled Laws. 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.

(3) The confidentiality provided for in subsection (1) shall not apply to records maintained by the bureau which 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 shall be entitled to inspect and obtain a copy of any record maintained by the bureau concerning himself or herself. Any employer shall be 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) shall 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) The applicable provisions of this section shall apply to the state accident fund 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.

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

**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.

**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."

#### 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.

#### 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 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.

#### 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.

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.

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.

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.

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.

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

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

418.274 Worker's compensation appellate commission; establishment as autonomous entity; appointment, qualifications, and terms of members; vacancy; reappointment; removal for good cause; designation of chairperson; powers and duties of chairperson; duties of members; term of chairperson; salary and expenses of members; employment of staff; 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 worker's compensation appellate commission is established as an autonomous entity in the department of labor. The commission shall consist of 7 members appointed by the governor with the advice and consent of the senate. The governor shall appoint the initial members of the commission not later than January 1, 1986 and shall designate 1 of the appointees as the member that will be chairperson. The governor shall appoint only a person determined to be qualified by the qualifications advisory committee under section 209. All members of the commission shall be members in good standing of the state bar of Michigan.

(2) The members of the commission shall be appointed for terms of 4 years. A member who has served for 12 years shall not be reappointed to a new term. 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 unless the qualification advisory committee fails to submit a recommendation to the governor before the expiration of the 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. A member of the commission may be removed by the governor for good cause which shall be explained in writing. Good cause for removal shall include, but not be limited to, lack of productivity or other neglect of duties.

(3) The governor may designate a member of the commission as the chairperson upon a vacancy occurring in that position. The chairperson of the commission shall have general supervisory control of and be in charge of the employees of the commission and the assignment and scheduling of the work of the commission. The chairperson may also establish productivity standards that are to be adhered to by employees of the commission, the commission, individual members of the commission, and panels of the commission. Each member of the commission shall devote full time to the functions of the commission. Each member shall personally perform the duties of the office during the hours generally worked by officers and employees of the executive departments of the state.

(4) The chairperson of the commission shall serve as chairperson at the pleasure of the governor.

(5) Each member of the commission shall receive an annual salary which shall be not less than the salary paid to worker's compensation magistrates or hearing referees of the most senior classification and shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(6) The commission 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 commission.

(7) The commission is an independent body with the power and authority to review the 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.

(8) Except as otherwise provided in subsection (9), 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.

(9) 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 which 2 or more members of the commission request be reviewed by the entire commission, shall be reviewed and decided by the entire commission.

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

(11) The department of labor 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.

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

### CHAPTER 3 COMPENSATION

418.301 Compensation for personal injury or death resulting from personal injury arising out of and in the 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; "disability" defined; determining entitlement to weekly wage loss benefits; notice to Michigan employment security commission; priorities in finding employment; notice of employee refusing offer of employment; termination of benefits; "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. 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 shall be 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, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.



(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, "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. The establishment of disability does not create a presumption of wage loss.

(5) If disability is established pursuant to subsection (4), entitlement to weekly wage loss benefits shall be determined 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 employment security commission 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 such refusal.

(b) 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 which the injured employee is able to earn after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(c) 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 such employment.

(d) If the employee, after having been employed pursuant to this subsection for 100 weeks or more loses his or her job through no fault of the employee, the employee shall receive compensation under this act pursuant to the following:

(i) If after exhaustion of unemployment benefit eligibility of an employee, a worker's compensation magistrate or hearing referee, as applicable, determines for any employee covered under this subdivision, that the employments since the time of injury have not established a new wage earning capacity, the employee shall receive compensation based upon his or her wage at the original date of injury. There is a presumption of wage earning capacity established for employments totalling 250 weeks or more.

(ii) The employee must still be disabled as determined pursuant to subsection (4). If the employee is still disabled, he or she shall be entitled to wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment, as determined at the time of termination of the employment of the employee, and the wages paid at the time of the injury.

(iii) If the employee becomes reemployed and the employee is still disabled, he or she shall then receive wage loss benefits as provided in subdivision (b).

(e) If the employee, after having been employed pursuant to this subsection for less than 100 weeks loses his or her job for whatever reason, the employee shall receive compensation based upon his or her wage at the original date of injury.

(6) A carrier shall notify the Michigan employment security commission of the name of any injured employee who is unemployed and to which the carrier is paying benefits under this act.

(7) The Michigan employment security commission shall give priority to finding employment for those persons whose names are supplied to the commission under subsection (6).

(8) The Michigan employment security commission shall notify the bureau in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the bureau, the bureau shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (5)(a).

(9) "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.

(10) Weekly benefits shall not be 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.

(11) 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.

(12) This section shall apply 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.

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

Former § 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.

#### 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.

#### 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 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.

#### 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.

#### 418.315 Furnishing medical care for injury arising out of and in course of employment; optometric 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; 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 Act No. 368 of the Public Acts of 1978, being section 333.17401 of the Michigan Compiled Laws, as of May 20, 1992. 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 10 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the worker's compensation magistrate. The worker's compensation magistrate may prorate attorney fees at the contingent fee rate paid by the employee.

(2) Except as otherwise provided in subsection (1), all fees and other charges for any treatment or attendance, service, devices, apparatus, or medicine under subsection (1), are subject to rules promulgated by the bureau of worker's compensation pursuant to Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. 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 bureau 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 bureau 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 bureau that identifies the utilization of health care and health services above the usual range of utilization for the health care and health services based on medically accepted standards and provides for acquiring necessary records, medical bills, and other information concerning the health care or health services.

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

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

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

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

**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.

**Compiler's note:** For legislative intent as to severability, see Compiler's note to § 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 § 18.24 of the Michigan Compiled Laws.

For transfer of duty to conduct hearings pursuant to § 418.315(7) to the Bureau of Workers' Disability Compensation, Department of Labor, see E.R.O. No. 1986-3, compiled at § 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 § 418.2 of the Michigan Compiled Laws.

**Transfer of powers:** See §§ 418.315 and 418.991.

#### 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 a bureau-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) If a dispute arises between the parties concerning application of any of the provisions of subsection (1), any of the parties may apply for a hearing before a hearing referee or worker's compensation magistrate, as applicable.

**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 § 418.213.

#### 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 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 § 418.213.

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

Sec. 331. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, a worker's compensation magistrate shall find the wife was living apart for justifiable cause or because he had deserted her.

(b) A child under the age of 16 years, or over 16 years of age if physically or mentally incapacitated from earning 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 such deceased employee under the age of 16 years, or over if physically or mentally incapacitated from earning, such 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 and in all cases the death benefit shall be divided between or among the surviving spouse and all the children of the deceased employee, and all other persons, if any, who are wholly dependent upon the deceased employee, in equal shares the surviving spouse taking the same share as a child. In all cases mentioned in this section 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 shall continue, a worker's compensation magistrate shall find that the surviving spouse is not properly caring for such

children, the worker's compensation magistrate shall order the shares of such 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 such children. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury. Where a deceased employee leaves a person wholly dependent upon him or her for support, such 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 shall occur before all compensation is paid, and there is but 1 person partially dependent, such person shall be 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.

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

**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 N.W.2d 712 (1982).

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 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 § 418.213.

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.

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 § 418.213.

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.

(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.

418.352 Supplement to weekly compensation.

Sec. 352. (1) Beginning January 1, 1982, 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, shall be 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 which 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 the effective date of this section 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 either section 440a of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.440a of the Michigan Compiled Laws, or section 38b of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.38b of the Michigan Compiled Laws, shall take a credit under either section 440a of Act No. 218 of the Public Acts of 1956, or section 38b of Act No. 228 of the Public Acts of 1975, 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 the 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.

#### 418.353 Determination of dependency.

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

(a) The following shall be conclusively presumed to be dependent for support upon an injured employee:



(i) The wife of an injured employee living with such employee as such wife at the time of the injury.

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

(b) In all other cases questions of dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury, except as provided in subsection (3). No person shall be considered a dependent unless he is a member of the family of the injured employee, or unless such person bears to such injured employee the relation of husband or wife, or lineal descendent, or ancestor or brother or sister. Except as to those conclusively presumed to be dependents, no person shall be deemed a dependent who receives less than 1/2 of his support from an injured employee.

(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 such 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 support from such injured employee, if at such time he is neither physically nor mentally incapacitated from earning, or when such spouse shall be divorced by final decree from his injured spouse, or when such child, spouse or other dependent shall be deceased.

(3) An increase in payments shall be made for increased numbers of conclusive dependents as defined in this act not so 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.

**Constitutionality:** The gender-based conclusive presumption of the workers' compensation act is violative of the Equal Protection Clause of the Fourteenth Amendment; 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 N.W.2d 768 (1988).

#### 418.354 Coordination of benefits.

Sec. 354. (1) This section is applicable when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 351, 361, or 835 with respect to the same time period for which old-age insurance benefit payments under the social security act, 42 U.S.C. 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 pursuant to a plan or program established or maintained by the employer, are also received or being received by the employee. 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.

(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 351, 361, 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 such 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 such 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 351, 361, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

(d) The after-tax amount of the pension or retirement payments received or being received pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, 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 351, 361, 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 351, 361, 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 bureau 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 bureau by the employer or carrier.

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

(i) Make application 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) Failure of the employee to provide the proof of application or the authority for release of information as prescribed in subsection (3) shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable to the employee under section 351, 361, 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 the providing of 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. Failure to provide the new authority for release of information shall allow the employer or carrier with the approval of the bureau to 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 the providing of the new authority for release of information.

(6) Within 30 days after either the date of first payment of compensation benefits under section 351, 361, 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 shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable under section 351, 361, or 835 to the employee until the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue benefits under section 351, 361, 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 351, 361, 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) which 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 351, 361, 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 shall allow the employer or carrier with the approval of the bureau to discontinue 50% of future weekly compensation payments under section 351, 361 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 bureau the amount of any credit or reduction, and as requested by the bureau, furnish to the bureau 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 351, 361, 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 U.S.C. 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 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. 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 shall 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 which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such 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 351, 361, or 835 for personal injuries occurring before March 31, 1982. It is the purpose of this amendatory act 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 351, 361, or 835 for personal injuries occurring on or after March 31, 1982. Any payments made to an employee resulting from liability pursuant to section 351, 361, 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 351, 361, or 835 for a personal injury occurring before March 31, 1982 that have been coordinated before the effective date of this subsection shall be considered to be an underpayment of compensation benefits, and the amounts withheld pursuant to

coordination shall be reimbursed with interest, within 60 days of the effective date of this subsection, 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, within 60 days of the effective date of this subsection, 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.

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

**Constitutionality:** The amendment of the workers' compensation act by 1987 PA 28, § 354(17)-(20), which prohibits the coordination of workers' compensation benefits for employees who were injured before the effective date of 1981 PA 203, § 24, 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 N.W.2d 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*, 112 §Ct 1105 (1992).

#### 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.

#### 418.356 Increase in benefits after 2 years of continuous disability; petition for hearing; evidence; order for adjustment of compensation; payment; reimbursement from second injury fund; minimum weekly benefit for death; minimum weekly benefit for 1 or more losses; no minimum weekly benefit for 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 and the 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.

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

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 N.W.2d 764 (1976).

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, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.67a of the Michigan Compiled Laws, for identical periods of time and chargeable to the same employer.

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

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

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

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

Sec. 360. (1) A person who suffers an injury arising out of and in the course of employment as a professional athlete shall be 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.

(2) This section shall not be construed to prohibit an otherwise eligible person from receiving benefits under section 315, 319, or 361.

**History:** Add. 1978, Act 373, Imd. Eff. July 27, 1978.

418.361 Partial incapacity for work; amount and duration of compensation; 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) While the incapacity for work resulting from a personal injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage which the injured employee is able to earn after the personal injury, 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. However, an employer shall not be liable for compensation under section 351, 371(1), or this subsection for such 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 for the loss of the following:

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

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified. The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

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

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

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

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

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

- (j) Foot, 162 weeks.
- (k) Leg, 215 weeks.

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

- (l) Eye, 162 weeks.

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

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

- (a) Total and permanent loss of sight of both eyes.
- (b) Loss of both legs or both feet at or above the ankle.
- (c) Loss of both arms or both hands at or above the wrist.
- (d) Loss of any 2 of the members or faculties in subdivisions (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.

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

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

#### 418.364 Bi-annual study required; report and recommendations.

Sec. 364. A bi-annual study shall be conducted by the director of the adequacy of weekly benefits paid under this act. The study shall evaluate the effects of inflation on benefits and other factors which the director considers relevant. The director shall report the results of the study and make appropriate recommendations to the legislature by March 1, 1983. By March 1 of each following odd numbered year, the director shall repeat this process.

**History:** Add. 1981, Act 203, Eff. Mar. 31, 1982.

#### 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 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.



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 which 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 volunteer public employees entitled to benefits under section 161(1)(a).

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

418.373 Employee receiving nondisability pension or retirement benefits, including old-age benefits; presumption; other standards of disability superseded; medical benefits under § 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 treatment.

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

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 § 418.213.

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 bureau 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 bureau.

(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 bureau.

(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. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

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

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.

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.

**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 § 418.213.

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, and self-insurer's security fund; certification; 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 pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, 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.

(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 either section 440a of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.440a of the Michigan Compiled Laws, or section 38b of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.38b of the Michigan Compiled Laws, the second injury fund, and the 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. 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, or the 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. A reimbursement shall not be allowed for a period which 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.

## **CHAPTER 4 OCCUPATIONAL DISEASES AND DISABLEMENTS**

418.401 Definitions; determination of entitlement to weekly wage lost benefits; notice to Michigan employment security commission; priorities in finding employment; 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. The establishment of disability does not create a presumption of wage loss.

(2) As used in this act:

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

(b) "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which 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. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be

compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof. 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.

(3) If disability is established pursuant to subsection (1), entitlement to weekly wage loss benefits shall be determined 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 employment security commission 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 such refusal.

(b) 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 which the injured employee is able to earn after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(c) 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 such employment.

(d) If the employee, after having been employed pursuant to this subsection for 100 weeks or more loses his or her job through no fault of the employee, the employee shall receive compensation under this act pursuant to the following:

(i) If after exhaustion of unemployment benefit eligibility of an employee, a worker's compensation magistrate or hearing referee, as applicable, determines for any employee covered under this subdivision, that the employments since the time of injury have not established a new wage earning capacity, the employee shall receive compensation based upon his or her wage at the original date of injury. There is a presumption of wage earning capacity established for employments totalling 250 weeks or more.

(ii) The employee must still be disabled as determined pursuant to subsection (1). If the employee is still disabled, the employee shall be entitled to the wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment as determined at the time of termination of employment of the employee and the wages paid at the time of the injury.

(iii) If the employee becomes reemployed and the employee is still disabled, the employee shall then receive wage loss benefits as provided in subdivision (b).

(e) If the employee, after having been employed pursuant to this subsection for less than 100 weeks, loses his or her job through no fault of the employee, the employee shall receive compensation based upon his or her wage at the original date of injury.

(4) A carrier shall notify the Michigan employment security commission of the name of any injured employee who is unemployed and to which the carrier is paying benefits under this act.

(5) The Michigan employment security commission shall give priority to finding employment for those persons whose names are supplied to the commission under subsection (4).

(6) The Michigan employment security commission shall notify the bureau in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the bureau, the bureau shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (3)(a).

(7) 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.

(8) 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.

**Compiler’s note:** For legislative intent as to severability, see Compiler’s note to § 418.213.

Former § 418.401, which pertained to definitions, was repealed by Act 103 of 1985, Imd. Eff. July 30, 1985.

418.405 Fire or police department members, county sheriff and deputies, state police, conservation officers, and motor carrier inspectors; “personal injury” as including respiratory and heart diseases or resulting illnesses; arising out of and in the course of employment; application for pension benefits as condition precedent; final determination; copies.

Sec. 405. (1) In the case of 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 and the deputies of the county sheriff, members of the state police, conservation officers, and motor carrier inspectors of the Michigan public service commission, “personal injury” shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties for the department.

(2) Such respiratory and heart diseases or illnesses resulting therefrom are deemed to arise out of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he or she is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he or she, or his or her decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of “personal injury” as provided in this section shall apply. The employer or employee may request 2 copies of the determination denying pension benefits, 1 copy of which may be filed with the bureau.

**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.

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.

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.

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 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 § 418.213.

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.

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.

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.

## CHAPTER 5 FUNDS

418.501 Self-insurers' security fund, second injury fund; silicosis, dust disease, and logging industry compensation fund; uninsured employer's security fund; creation; "employment in logging industry" defined.

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) As used in this chapter, "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.

**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.

**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."

#### 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.

#### 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 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.

#### 418.515 Board of trustees; powers and duties; funds administrator; office space; personnel; 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 deem necessary, shall maintain records and institute systems and procedures or take any other administrative action as they deem 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 bureau 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 him in any matter involving the affairs of the funds. The 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.



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 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.

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.

418.532 Uninsured employer; rights and liabilities; repeal of section.

Sec. 532. (1) The trustees of the uninsured employers' security fund shall pay wage loss benefits and medical benefits only by redemption to an employee or dependents of a deceased employee to which the employee or dependents of a deceased employee would be entitled under the act but which an employee or the dependents of a deceased employee are unable to receive from an employer because the employer failed to secure the payment of compensation as required under section 611. However, the trustees of the fund may pay any claim directly to an employee if the total value of the claim does not exceed \$2,500.00.

(2) Money in the uninsured employers' security fund shall only be used with respect to injuries that occur on or after June 29, 1990 and before the effective date of the 1996 amendatory act that amended this section. The state treasurer shall be the custodian of the uninsured employers' security fund. The treasurer may make those investments as in the treasurer's judgment are in the best interest of the fund. The earnings from the investment of the money from the fund shall be credited to the fund. The investment income shall be deposited quarterly and the state treasurer shall notify the trustee of the amount credited. Interest earned on money in the fund shall be credited to the fund from December 28, 1994 until the effective date of the 1996 amendatory act that amended this section and each calendar quarter thereafter. Not more than 10% of the fund balance may be used for administration expenses. An employee shall have not more than 6 months after the effective date of the 1996 amendatory act that amended this section to file a claim under this section. The fund shall send written notice to each claimant and the claimant's attorney, if any, on each claim filed but not currently active on the effective date of this 1996 amendatory act advising them that the fund is now operational, indicating that they have 60 days after receipt of the notice to respond, and inquiring as to whether they intend to pursue their claim. Only the claimant or an attorney retained by the claimant may pursue a claim against the fund. If the claimant or the claimant's attorney, as applicable, does not respond within the 60-day time period, the claim is terminated.

(3) As used in this act, "uninsured employer" means an employer that has failed to secure the payment of compensation as provided in section 611.

(4) If the director of the bureau determines that a claim for benefits under this act is against an uninsured employer, the director shall make all reasonable attempts to notify the employer in writing of the claim and of the employers' liability under this act. If the employer disputes this determination by the director, it shall file an application in accordance with section 847 within 30 days after the date the director's notification was mailed. Claims shall be evaluated for redemption as any other claim for benefits under this act and shall be evaluated by the fund and the claimant and his or her attorney or if the fund and the claimant and his or her attorney are unable to agree on a value, by 1 of the other methods described in this section.

(5) If the fund and the claimant and his or her attorney cannot agree on the value of a claim, either party may petition the director of the bureau to order a magistrate to hear and decide the claim on an expedited basis as provided in section 205.

(6) If the fund and the claimant and his or her attorney cannot agree on the value of a claim, both parties may agree to binding mediation of the claim. The fund trustees shall solicit volunteer attorneys with previous worker's compensation experience for the purpose of mediation of claims under this section. A list of attorneys shall be established for this purpose. The fund trustees shall select 2 attorneys from the list established by this subsection by random selection to review and establish the value of the claim. If the 2 attorneys cannot agree on the value of the claim, a third attorney shall be selected by random selection who shall choose between those 2 values.

(7) The funds administrator shall have discretion to divide currently active claims on the effective date of the amendatory act that added this subsection and all claims permitted to be filed under subsection (2) after the effective date of the amendatory act that added this subsection into not more than 3 review periods within the 4-year time period permitted by this section. Claims on which a decision was rendered before the effective date of the amendatory act that added this subsection shall be evaluated in the first review period established by the trustees irrespective of the date of injury. Claims with dates of injury outside the review period shall not be processed unless the uninsured employer is defending the claim. After all claims have been filed within the time period permitted by this section, the funds administrator shall establish a maximum first payment amount by dividing the total amount remaining in the fund at that time, less the 10% to be set aside for administrative expenses under subsection (2), by the total number of active claims filed. This amount represents the maximum first payment that may be made on any active claim except for those claims for which the employer responsible is able to make full payment. After all active claims have been evaluated and a first payment has been made, the funds administrator shall determine the amount remaining in the fund and shall then determine the proportionate extent to which the remainder of each claim may be satisfied. Any amount remaining in the fund after all claims have been settled shall be transferred to the bureau to be used for enforcement of this act.

(8) The funds administrator shall report to the legislature after each claims review period established under subsection (7) on the fund's activities and specifically the number of claims settled and their dollar value.

(9) An uninsured employer shall pay the claim as provided in this act or appear and contest the claim as provided in this act. If an uninsured employer fails to pay the claim or to appear and contest the claim, the uninsured employer surrenders all rights to contest the claim. The failure to respond as provided in section 222 shall be considered a failure to appear and defend.

(10) If an employer fails to respond to notice as provided in subsection (4) or fails to either pay the claim or appear and contest the claim, the employer surrenders its rights as an employer under this act, and the director shall notify the trustees. The trustees shall then exercise all the rights and obligations of an employer and carrier provided by this act, and the trustees shall have the rights and authority of an employer to redeem a claim as provided in section 836. Redemption of a claim under this section does not prohibit an employee from pursuing an action against the employer for the balance of the value of the claim as established under this section. An uninsured employer shall provide that information necessary to assist the trustees. Refusal by the uninsured employer to provide books, records, payroll, or other pertinent information requested by the trustees shall subject the employer to a civil fine of \$500.00 for each offense, to be collected by civil action in the name of the state and paid into the uninsured employers' security fund. The trustees shall be reimbursed from the fund for the actual and reasonable costs of defending or administering a claim under this section.

(11) If an uninsured employer is found to be liable to pay benefits and fails to pay those benefits, the uninsured employers' security fund shall pay the benefits as provided in this section.

(12) For injuries occurring on or after June 29, 1990, and before the effective date of the 1996 amendatory act that amended this section, the trustees are authorized to seek reimbursement for any money paid or owed to an employee or dependents of a deceased employee from an uninsured employer that shall also be liable to the uninsured employers' security fund for both of the following:

(a) An amount equal to 3 times the benefits to which an employee or dependents of a deceased employee are entitled under this act which have been paid or are to be paid to an employee or dependents of a deceased employee by the fund.

(b) An amount equal to 3 times any actual and reasonable expenses incurred in processing a claim.

(13) An action instituted against an uninsured employer under this section shall also request the relief permitted by civil action under sections 641(1) and 645. If the trustees are able to recover the full amount due the employee or dependents of the employee from the employer, the claim will be paid in full and shall not be subject to the requirements of subsection (7).

(14) If the determination made under subsection (7) results in payment of less than the benefits to which the employee or dependents of a deceased employee would otherwise be entitled under this act, the determination shall not constitute a reduction of the statutory benefits to which the employee is otherwise entitled.

(15) The liability of an uninsured employer provided for in subsection (12) shall not be reduced as the result of any reduction in benefits paid as provided in subsection (14). If reimbursement is obtained from an uninsured employer for a period in which less than 100% of the benefits were paid by the employer to an employee or dependents of a deceased employee, the fund shall pay to the employee or dependents of a deceased employee the difference between the amount paid and the level of benefits to which the employee or dependents of the deceased employee would otherwise be entitled under subsection (6) or (7).

(16) If an employee of an uninsured employer obtains recovery under section 641(2) or section 827, the uninsured employers' security fund shall be entitled to a dollar-for-dollar offset against its obligations under this act. However, the reasonable costs and attorney fees of the employee and interest on any judgment shall first be deducted.

(17) The state shall not be liable for the payment of claims under this act, except to the extent that funds are available in the uninsured employers' security fund for this purpose.

(18) Payments made by the uninsured employers' security fund shall not be subject to section 801(2), (3), and (6). Payments made or owed to employees under section 171 are not subject to this section. An employer or carrier that pays or owes benefits under section 171 is not eligible to seek reimbursement from the uninsured employers' security fund.

(19) This section applies until no money remains in the fund but not to exceed 4 years after the effective date of the amendatory act that added this subsection. An action by the state against an uninsured employer to recover payments made under this section shall continue after this date.

(20) Money remaining in the fund and any payments recovered from uninsured employers after all claims have been settled shall be credited to the general fund.

(21) This section is repealed June 1, 2000.

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1996, Act 357, Imd. Eff. July 1, 1996.

**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."

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 § 418.213.

#### 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 defined 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 payments, the employee or a dependent of the employee as defined 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 defined 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.

**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.

**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."

#### 418.541 Payments from funds; notice of claim for reimbursement; agreements.

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 deemed to be a controversy concerning compensation and shall be determined in accordance with this act.

(2) In all cases in which the carrier shall be entitled to be reimbursed, 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 from the second injury fund which heretofore have been made directly from the fund may be made by carriers who are paying workmen's compensation benefits to such persons and the carriers shall be reimbursed periodically at 6-month intervals from the fund for such payments.

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

#### 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 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.

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.

Sec. 551. (1) As soon as practicable after January 1 each year, the director shall assess upon and collect from each carrier a sum equal to that proportion of 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. The assessment shall bear the same relationship that the total compensation benefits, exclusive of payments made pursuant to sections 315, 319, and 345, paid by each carrier in the state bears to the total compensation benefits paid by all carriers in the state.

(2) As soon as practicable after January 1 each year, the director shall assess upon and collect from each carrier a sum equal to that proportion of 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. The assessment shall bear the same relationship that the total compensation benefits, exclusive of payments made pursuant to sections 315, 319, and 345, paid by each carrier in the state bears to the total of compensation benefits paid by all carriers in the state.

(3) The director shall assess upon and collect from each private self-insurer an amount based on the total compensation the self-insurer paid in the preceding year exclusive of payments made pursuant to sections 315, 319, and 345. The director, upon the advice of the trustee representing the self-insurers, may make additional assessments as the trustee considers necessary to keep the self-insurers' security fund solvent. The assessment shall not exceed 3% in any calendar year exclusive of payments made pursuant to sections 315, 319, and 345.

(4) Notice of the assessments shall be sent by the director by first class mail to each carrier. Payment of assessments shall be made so as to be received in the Lansing office of the bureau on or before a date specified uniformly in the notice, but not less than 90 days after the date of mailing.

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

(6) An employer who has ceased to be a self-insurer or an insurance company which has ceased to write worker's compensation insurance in this state 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 or insurance company during the previous calendar year.

(7) The director shall certify to the trustees the collection and receipt of all money from assessments, 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 pursuant to this section shall be turned over to the state treasurer who shall be the custodian of the 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 what amount 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 bureau.

**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.

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.

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.

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.

418.553 Self-insurers' security fund; subrogation.

Sec. 553. The 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.

418.555 Reimbursement provisions; delinquent self-insurers.

Sec. 555. The reimbursement provisions of the chapter shall not be available to any self-insurer who is delinquent in the payment of any assessment authorized in this chapter.

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

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 his records available to an agent of the self-insurers' security fund to help defend the fund as well as disclosing his inability to pay the injured employee.

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

## 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:

"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."

418.611 Methods of securing payment of compensation; agreement between employers to pool liabilities; purpose; "public employer" defined; security; 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.

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 bureau, 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. 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 shall be considered public employers of the same type of unit. An employer member of the approved group shall be classified as a self-insurer. For purposes of this subsection, universities and colleges, community colleges, and local and intermediate school districts, shall be 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. 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, including the state accident fund, in an amount acceptable to the director. An irrevocable letter of credit in a format currently used by the bureau on December 15, 1992 or a surety bond may be furnished in place of aggregate excess insurance. The current format of the irrevocable letter of credit used by the bureau on December 15, 1992 shall be acceptable until the format of the irrevocable letter of credit is promulgated by rules of the bureau. 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 shall require prior bureau 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 the terms and conditions of 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 bureau against a member of the group. If the case in which the award is entered is appealed by either party, then the award shall first be upheld before a member of the group may be liable. In the case of a public employer that is permitted to become a member of a self-insurers' group, any lawful award entered by the bureau against a public employer which is a member of a group, if the award is upheld on appeal, shall be a liability of the group jointly but not severally and, if the group is unable to pay the award, the group or the bureau shall individually assess those public employers who were members on the date of injury to the extent necessary to pay the award. An assessment shall be 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 comprised of any combination of the foregoing. This subsection shall not alter the obligation of either a group or an employer from complying 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.

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

(a) The forest industry shall be considered as 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 which 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 pursuant to 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 bureau against that nonpublic health care facility employer, if the award is upheld on appeal, shall be a liability of the group and, if the group is unable to pay the award, the group or the bureau 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) shall be 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 shall 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 bureau. 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 such reinstatement shall accompany the request for hearing. Failure to reinstate existing security requirements shall allow the director to 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 pursuant to 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 workers' disability compensation benefits to injured employees covered by the self-insured program. Such security shall be filed with the director at the time an appeal is taken to the appellate commission and shall be consistent with the provisions of

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 workers' 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 shall be 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 bureau 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, such dispute shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The bureau's reply to such motion shall be filed within 15 days after receipt of appellant's motion. The commission shall act on the motion within 15 days after filing of the bureau's 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 bureau'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. Such request shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The commission shall act on the motion within 15 days of filing the motion and shall notify the parties in interest of its decision. Otherwise, and subsequent to the expiration of 15 days, the appellate commission shall hear the case upon the record and shall consider such briefs as 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 bureau's brief is required to be filed. The appellate commission may remand the matter to the bureau for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review. The commencement of proceedings under this section shall not operate as a stay of the bureau's order including any additional security imposed by the director unless stayed by order of the appellate commission. The commission ordered stay shall be subject to such conditions as the appellate commission may impose. The appellate commission shall have the jurisdiction to affirm, modify, or set aside the order or decision of the director. An appeal from a final order entered by the appellate commission 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 made by filing an application for leave to appeal to the court of appeals within 30 days after the order.

(7) The director, from time to time, 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 make application 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 which 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.

**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."

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.

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

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:

"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."

418.625 Insurance policy's notice of issuance; contents; refusal to accept coverage; determination of intentional violations; penalty; operation of electronic data reporting system; proceeding under § 418.631.

Sec. 625. (1) Each insurer mentioned in section 611 issuing an insurance policy covering workmen'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. If the policy covers persons who would otherwise be exempted from the provisions of this act by section 115, the notice shall contain a specific statement to that effect. A notice shall not be required of any insurer where 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.

(2) If, following a hearing held by the director under this act, the director determines that an insurer has engaged in a pattern and practice of numerous intentional violations of this section, the director may assess against that insurer a civil fine of up to \$750.00. This subsection and subsection (3) do not apply after the director certifies that an electronic data reporting system for reporting of this information is operational.

(3) The director may alternatively proceed under section 631.

**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.

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.

418.641 Noncompliance as misdemeanor; penalty; separate offenses; damages for violation of § 418.171 or § 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 § 418.213.

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 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 § 418.213.

418.647 Failure of employer to comply with § 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.

#### 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:

"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."

#### 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 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.

#### 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.

## CHAPTER 7 ACCIDENT FUND

418.700 “Effective date of the transfer” and “permitted transferee” defined.

Sec. 700. As used in this chapter:

(a) “Effective date of the transfer” means the date on which a transfer authorized by section 701a occurs.

(b) “Permitted transferee” means an insurer organized pursuant to chapter 51 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.5100 to 500.5114 of the Michigan Compiled Laws.

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994.

**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.”

418.700a Privatization; minority, women, and handicapper owned and operated businesses.

Sec. 700a. To help ensure participation by minority, women, and handicapper owned and operated businesses in state privatization efforts under this act, the state of Michigan strongly encourages businesses, when responding to privatization requests for proposals and quotations, to either joint venture with or subcontract to minority, women, and handicapper owned and operated businesses.

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994.

**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.”

418.701 State accident fund; creation; purpose; transfer of fund created in 1912; membership and coverage; premiums or assessments; administration; disbursements; liability; appointment and term of chief executive officer; cessation of insurance transactions and operations; winding up affairs.

Sec. 701. (1) The state accident fund is created to provide only worker’s compensation insurance and employer’s liability insurance for employers until the effective date of the transfer. The state accident fund created in 1912, with all its authority, powers, duties, and functions, records, personnel, property, and unexpended balances of funds, including the functions of budgeting and procurement and management related functions shall be transferred to and shall be an autonomous entity in the department of commerce. Upon compliance with underwriting standards adopted by the state accident fund, membership in and coverage by the state accident fund shall be provided to employers subject to this act who shall request such membership and coverage of the fund in writing. Thereupon the accident fund shall assume charge of levying and collecting from the employers such premiums or assessments as may be necessary from time to time to pay the sums which become due under the provisions of this act and also the expense of administration; and shall disburse such sums in accordance with the provisions of this act. The

state shall not be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the sums so collected and received.

(2) The chief executive officer of the state accident fund shall be the executive director who shall be appointed by the governor with the advice and consent of the senate who shall serve at the pleasure of the governor for a term not to exceed 4 years or until 1 year following the effective date of the transfer, whichever is less.

(3) Except as otherwise provided in this chapter, after the effective date of the transfer, the state accident fund shall not transact insurance in this state, and all operations of the state accident fund pursuant to former sections 705, 711a, 712, 714, 715, 722, 723, 725, 735, 742, 745, 746, 755, and 756 shall cease. Section 751 shall not apply in the event of a transfer authorized by section 701a. Fees imposed pursuant to section 713 shall accrue until the effective date of the transfer and shall not apply after the effective date of the transfer. The permitted transferee shall be prohibited from asserting any claim for a tax refund against the fees paid in lieu of taxes by the state accident fund pursuant to section 713.

(4) For a period of not more than 1 year after the effective date of the transfer, the commissioner of insurance or his or her designee shall be authorized to wind up the affairs of the state accident fund including, but not limited to, the completion of records and reports required under section 741 as to the business of the state accident fund through the effective date of the transfer.

**History:** 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

**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."

418.701a Agreement for sale of state accident fund assets and assumption of liabilities; conditions; consideration; authority of state administrative board or executive director of state accident fund; jurisdiction of court; cause of action; liens, claims, or interests; establishing terms and conditions, and evaluating and rejecting proposals; report.

Sec. 701a. (1) The state administrative board created pursuant to Act No. 2 of the Public Acts of 1921, being sections 17.1 to 17.11 of the Michigan Compiled Laws, may authorize the executive director of the state accident fund to enter into and consummate, under terms and conditions approved by the state administrative board, an agreement in the name of the state of Michigan for the sale of all or substantially all of the assets of the state accident fund to a permitted transferee, and assumption of all or substantially all of the liabilities of the state accident fund by the permitted transferee subject to the following conditions:

(a) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized investment banking firm that the consideration for the assets to be transferred is fair from a financial point of view.

(b) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized actuarial firm that the assets of the state accident fund transferred to a permitted transferee are adequate to permit the payment of all liabilities under policies of insurance assumed by the permitted transferee based upon sound actuarial principles.

(c) The state administrative board shall have determined before the effective date of the transfer that the consideration for the assets to be transferred is among the highest cash offers by a qualified bidder as provided for in this section not using the state accident fund assets, is fair from a financial point of view and is sufficient such that the credit of the state shall not have been granted to, nor in aid of any person, association, or corporation, public or private. A person seeking to purchase the state accident fund shall not include as part of its bid the existing assets of the state accident fund. The state administrative board with the advice of the insurance commissioner shall make a determination that the bidder has adequate resources to capitalize the

permitted transferee, and will operate the permitted transferee as a Michigan domestic insurer pursuant to chapter 51 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.5100 to 500.5114 of the Michigan Compiled Laws.

(d) The state administrative board, as it considers appropriate from time to time, may consult with or receive information or recommendations from the insurance commissioner or any other person considered appropriate by the state administrative board, for purposes of assisting the state administrative board in making a final decision in evaluating 1 or more offers from any person seeking to become or establish a permitted transferee for purposes of acquiring the state accident fund pursuant to this section.

(e) The state administrative board shall give due consideration to minority, women, and handicapper owned businesses and prospective bidders that have minority, women, and handicapper owned business participation. A prospective bidder shall indicate in its proposal the name, address, and amount of equity participation for each minority, women, or handicapper owned and operated business that is included as part or all of the bidding group.

(2) The consideration in the transaction referred to in subsection (1) shall be the property of the state of Michigan. The consideration shall not be subject to the assessment of fees pursuant to section 713. The consideration shall be appropriated as follows:

(a) Not more than 1% of the consideration to a separate segregated fund to be held by the state treasurer and administered by the commissioner of insurance and the executive director of the state accident fund for the purposes of winding up the affairs of the state accident fund pursuant to section 701(4).

(c) The remainder to the general fund for transfer to the countercyclical budget and economic stabilization fund established pursuant to section 351 of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1351 of the Michigan Compiled Laws.

(3) The state administrative board or the executive director of the state accident fund with the authorization of the state administrative board, in furtherance of the transactions permitted under this section, may do any of the following:

(a) Sell, convey, lease, exchange, transfer, or otherwise dispose of the assets and liabilities including any real or personal property of the state accident fund, wherever situated.

(b) Sell, exchange, transfer, or otherwise dispose of bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different businesses, or governmental or other activities, including banking corporations or trust companies.

(c) Have and exercise all powers necessary or convenient to effect or complete the transactions permitted under this section.

(4) A court in this state shall not have jurisdiction to enjoin or otherwise restrain the transfer of assets and liabilities under this section. The court of claims shall have exclusive jurisdiction over any claims asserted against the state of Michigan arising out of or related to this section.

(5) No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the permitted transferee arising out of the sale of assets or other transactions permitted under this section, except that this subsection shall not limit the rights or remedies of the holder under a policy of insurance issued by the state accident fund and assumed by the permitted transferee to contest the insurance coverage arising under a policy of insurance issued by the state accident fund. No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the state of Michigan or any political subdivision of the state arising out of the sale of assets or other transactions permitted under this section, or arising under policies of insurance issued by the state accident fund.

(6) Except for taxes otherwise imposed by the state of Michigan or any political subdivision of the state or any fees imposed pursuant to section 713, the sale of assets permitted under this section shall be free and clear of any liens, claims, or interests of the state of Michigan or any person claiming through or under the state of Michigan.

(7) The state administrative board for and on behalf of the state of Michigan and subject to the requirements of this section shall have the right in its sole and absolute discretion to establish the terms and conditions of any proposal for the sale of the state accident fund on the basis of its own criteria, to evaluate those proposals by its own criteria, and to reject any or all proposals without assigning any reasons. If 2 or more prospective bids are substantially similar in terms and conditions and the dollar amount of the bids are within 5% of each other, the board shall give preference to a bidder agreeing to retain, for a period of 5 years after the effective date of the transfer, not less than 75% of the employees employed by the accident fund on the effective date of the transfer. The board shall not consider a bidder who does not agree to offer health coverage without preexisting conditions or exclusions to employees employed by the accident fund on the effective date of the transfer and who are retained by the bidder. The state administrative board shall permit a group that is composed solely of a majority of the employees of the state accident fund the opportunity to meet the bid that the board determines is the most favorable for the sale of the fund. If the employees meet this bid, including the standards and preferences of this section, they must do so within 60 days of the presentation to the state administrative board. The employees shall be given the opportunity to form an insurer for the purpose of acquiring the fund and shall be permitted a period of time not to exceed 10 years within which to consummate the sale of the state accident fund. The state administrative board for and on behalf of the state of Michigan expressly reserves the right without giving any reasons and without any liability therefor, at any time and in any respect, to amend or terminate any activities with respect to the sale of the state accident fund, commence or terminate discussions with any or all persons seeking to purchase the state accident fund, reject any or all proposals to acquire the state accident fund, and to negotiate and consummate the sale of the state accident fund with any person. If a proposal submitted by a nonprofit health care corporation operating under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws, is accepted, the nonprofit health care corporation, in addition to payment of the purchase price, shall remit to the state treasurer an additional amount calculated by the state treasurer as being equal to the single business tax that a nonprofit health care corporation would have paid on the accumulated assets used to acquire the accident fund if the nonprofit health care corporation were a for-profit mutual insurer.

(8) Nothing in this section shall require the state administrative board to approve or authorize any transaction for the sale of the state accident fund.

(9) Not less than 30 days before the transfer is consummated with a permitted transferee, the state administrative board shall make a report to the legislature providing the name and business address of each bidder; the amount, terms, and conditions of each respective bid; and the copies of the opinions required by subsection (1)(a) and (b).

**History:** Add. 1993, Act 198, Eff. Dec. 28, 1994.

**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."

The following provision of this section, as added by Act 198 of 1993, was vetoed by the governor on October 18, 1993:

"(b) An amount equal to \$5,500,000.00 to the pension reserve fund and the dental-vision reserve fund created by section 11 of the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.11 of the Michigan Compiled Laws, to be divided between the funds in the same proportion that each bears to the total percent of payroll charged to state agencies for the cost of these benefits for the fiscal year ending September 30, 1994."

418.702 Cessation of operation or dissolution of certain authorities, municipal councils, or municipal corporations with contract to provide transportation services; payment of claims; determination of amount; processing of claims; compensation for services; assignment of carrier; duties; conditions; lien; use of state funds for payment of private obligations.

Sec. 702. (1) If the suburban mobility authority regional transportation authority created pursuant to the metropolitan transportation authorities act of 1967, Act No. 204 of the Public Acts of 1967,

as amended, being sections 124.401 to 124.426 of the Michigan Compiled Laws, an authority created by interlocal agreement pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, an authority created pursuant to the public transportation authority act, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, a metropolitan council established pursuant to the metropolitan council act, Act No. 292 of the Public Acts of 1989, being sections 124.651 to 124.685 of the Michigan Compiled Laws, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws, or Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws, or an authority created pursuant to Act No. 55 of the Public Acts of 1963, as amended, being sections 124.351 to 124.359 of the Michigan Compiled Laws, 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.

(2) Except as otherwise provided in subsection (3), the accident fund shall determine in detail as the director of the department of 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 accident fund 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 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 shall be responsible for the processing of these claims and shall be compensated for its services in the same manner as for processing the claims of state employees. This subsection 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. If 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, then this subsection shall apply and subsection (2) shall not apply.

(4) The state shall be entitled to a lien which shall take 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 Act No. 204 of the Public Acts of 1987, being sections 124.401 to 124.426 of the Michigan Compiled Laws, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, a metropolitan council established pursuant to Act No. 292 of the Public Acts of 1989, being sections 124.651 to 124.685 of the Michigan Compiled Laws, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation

services pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws, or Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws, 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. 1978, Act 480, Eff. Mar. 30, 1979;—Am. 1980, Act 387, Imd. Eff. Jan. 6, 1981;—Am. 1990, Act 282, Imd. Eff. Dec. 14, 1990;—Am. 1993, Act 198, Eff. Apr. 1, 1994;—Am. 1993, Act 223, Imd. Eff. Nov. 1, 1993.

**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."

**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.

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

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

**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.

**418.713 Fees; assessment, collection, and remittance; applicability of section.**

Sec. 713. (1) The following fees shall be assessed and collected on the state accident fund in the same manner as on a private insurance company:

(a) Beginning January 1, 1991, a fee equal to the amount of taxes that would be assessed and collected against the real and personal property of the state accident fund under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(b) Beginning January 1, 1991, a fee equal to the amount of taxes that would be assessed and collected on sales at retail to the state accident fund under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(c) Beginning January 1, 1991, a fee equal to the amount of taxes that would be assessed to and collected from the state accident fund under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(d) Beginning January 1, 1991, a fee equal to the amount of taxes that would be assessed and collected from the state accident fund under the internal revenue code in effect for the 1990 tax year. If the federal government imposes federal income tax liability on the state accident fund, the fee in this subdivision shall not apply.

(e) The fee paid by and provisions required of the state accident fund pursuant to section 476c of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.476c of the Michigan Compiled Laws.

(f) The fee paid by insurers pursuant to section 224(4) through (13) of Act No. 218 of the Public Acts of 1956, being section 500.224 of the Michigan Compiled Laws.

(2) Except as provided in subsection (3), the fees assessed on the state accident fund in subsection (1) shall be remitted at the times and in the manner provided by the respective tax acts for which the fees are paid in lieu of.

(3) The fees assessed on the state accident fund in subsection (1) shall be remitted in the following manner:

(a) The revenue from the fee assessed and collected under subsection (1)(a) shall be remitted to the local treasurer in the local unit in which the property of the accident fund is located.

(b) The revenue from the fees imposed under subsection (1)(b), (c), and (e) shall be remitted to the state treasurer for deposit in the general fund.

(c) The revenue from the fee imposed under subsection (1)(d) shall be deposited in the workplace safety fund.

(d) The revenue from the fee imposed under subsection (1)(f) shall be paid pursuant to section 225 of Act No. 218 of the Public Acts of 1956, being section 500.225 of the Michigan Compiled Laws.

(4) Except for the fees paid by the state accident fund described in subsection (1)(e), this section shall not apply during any time period when the insurance commissioner certifies pursuant to sections 2409 and 2409a of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2409 and 500.2409a of the Michigan Compiled Laws, that a reasonable degree of competition does not exist in the worker's compensation insurance market.

**History:** Add. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1994, Act 171, Imd. Eff. June 17, 1994.

**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.

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

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

**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.

**418.731 Controversies; procedure.**

Sec. 731. Any controversy between the executive director and an employer insured in the state accident fund shall be subject to the review provided by law for controversies arising between insurance companies and insured employers. Any controversy between the state accident fund and a claimant for benefits from the state accident fund under the provisions of this act shall be determined in accordance with the provisions of this act in respect to controversies concerning compensation.

**History:** 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1990, Act 157, Imd. Eff. June 29, 1990.

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

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

**418.741 Administration of accident fund; records of business transacted; deputies, assistants, and clerical help; salaries and expenses; annual reports.**

Sec. 741. (1) Subject to the conditions described in section 701(4), the executive director shall keep complete records of all business transacted by him or her in the administration of the accident fund. He or she shall be an independent appointing authority and may employ such deputies and assistants and clerical help consistent with civil service rules as may be necessary, for the proper administration of the state accident fund and the performance of the duties imposed upon him or her by the provisions of this act. All salaries and expenses shall be charged to and paid out of the state accident fund until the effective date of the transfer.

(2) The executive director shall make an annual report and a final report within 6 months after the effective date of the transfer to the governor, the legislature, and to the policyholders that shall include a full and correct statement of the administration of the state accident fund, showing its financial status and outstanding obligations, and any other information considered appropriate.

**History:** 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1990, Act 157, Imd. Eff. June 29, 1990;—Am. 1993, Act 198, Eff. Dec. 28, 1994.

**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."

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

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

**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.

**418.751 Dissolution of fund; disposition of fund.**

Sec. 751. If this chapter is repealed, or if in the judgment of the commissioner it becomes necessary to dissolve the accident fund, all moneys which are in the accident fund at such time shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard to the obligation incurred and existing to pay compensation under the provisions of this act.

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

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

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

## **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.**

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 bureau 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, in cases where 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 travel allowance are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where 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 are 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 the rate of 10% per annum from the date each payment was due, until paid.



**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.

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

#### 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.

#### 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.

#### 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.

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

Sec. 821. (1) A payment under this act shall not be assignable or subject to attachment or garnishment or be held liable in any way for a debt. In the case of the insolvency of an employer, liability for compensation under this act shall constitute a first lien upon all the property of the employer liable for the compensation, paramount to all other claims or liens, except for wages and taxes, which lien shall be enforced by order of the court.

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

director, a portion of the attorney fees of the attorney who secured the worker's compensation recovery.

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

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

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

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

#### 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.

#### 418.827 Third party liability.

Sec. 827. (1) Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his or her dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with this section. If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of action by any party under this section, the parties shall notify, by certified mail at their last known address, the bureau, the injured employee, or in the event of the employee's death, his or her known dependents or personal representative or known next of kin, his or her employer, and the carrier. Any party in interest shall have a right to join in the action.

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

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

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

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

(6) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the

attorneys for the plaintiff as directed by the court. Expenses of recovery shall be apportioned by the court between the parties as their interests appear at the time of the recovery.

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

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

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

**Compiler's 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."

#### 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.

#### 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.

#### 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 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 bureau, 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 bureau shall develop a system to provide for the collection of the fee provided for by this subsection. The fee provided by this subsection does not apply to proposed redemption agreements in which the uninsured employer's security fund is a party under section 532.

(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 bureau, the worker's compensation board of magistrates, and the worker's 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.

**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 § 418.213.

**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 § 418.213.

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

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

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

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

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

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

(f) The marital status of the injured employee.

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

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

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

(3) 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.

(4) 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.

**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 § 418.213.

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 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.

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

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 § 418.847.

Sec. 841. (1) Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. The director may be an interested party in all worker's compensation cases in questions of law.

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

(a) For \$2,000.00 or less, concerns a definite period of time, and the employee has returned to work.

(b) For \$2,000.00 or less and is for medical benefits only.

(c) For \$2,000.00 or less, as determined by the bureau, with regard to any dispute or controversy.

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

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

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

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

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

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

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

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

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

#### 418.845 Out of state injuries; jurisdiction, benefits.

Sec. 845. The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act.

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

#### 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.

#### 418.847 Setting case for mediation or hearing; hearing; order and opinion.

Sec. 847. (1) Except as otherwise provided for under this act, upon the filing with the bureau 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. A worker's compensation magistrate shall hear a case that is set for hearing.

(2) For cases in which an application for a hearing under this section is filed after March 31, 1986, 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.

**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 § 418.213.

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 § 418.213.

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

**Compiler's note:** The repealed section granted further time to claim review under § 418.851.

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 § 418.213.

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 board shall have the power to administer oaths, subpoena witnesses, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. 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.

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

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.

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

Sec. 858. (1) The cost of a hearing, including the cost of taking stenographic notes of the testimony presented at the hearing, not exceeding the taxable costs allowed in actions at law in the circuit courts of this state, shall be fixed by the board of magistrates and paid by the state as other expenses of the state are paid. The payment of fees for all attorneys and physicians for services under this act shall be subject to the approval of a worker's compensation magistrate. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the worker's compensation magistrate, review may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appellate commission on request of an interested party, if a request is filed within 15 days.

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

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

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

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

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

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

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 § 418.213.

**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.

**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.

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

Sec. 861a. (1) Any matter for which a claim for review under section 859a has been filed shall be heard and decided by the appellate commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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 § 418.213.

#### 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 859, 859a, 860, 861, or 864(11) shall 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 shall be 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 shall be considered as accrued compensation for purposes of determining attorneys' fees under the rules of the bureau.

(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 shall not operate as a stay of providing 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 which 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.

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

**Constitutionality:** This section, the "70% statute", is constitutional. *McAvoy v. H. B. Sherman Company*, 401 Mich. 419, 258 N.W.2d 414 (1977).

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

Sec. 863. Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

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

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

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 § 418.213.

#### 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.

#### 418.867 Investigation commission; report, expenses.

Sec. 867. Whenever in the opinion of the governor the provisions of this act shall be unfair to either employees or employers, he may appoint a commission to investigate thoroughly the workings of the act and report thereon to the governor. The report shall be submitted by him to the legislature at its first regular or special session held after the receipt of the report. The report, in addition to the recommendations thereof, shall contain the text of needed changes or amendments to place this act upon a perfectly fair basis. The members of the commission shall have power to summon witnesses, administer oaths and compel the production of books and papers. They shall each receive compensation at the rate of \$10.00 per day, together with actual and necessary expenses incurred in the performance of official duties, such compensation and expenses to be audited and allowed by the department of administration and paid out of the general fund. Such compensation and expenses shall not exceed the sum of \$3,000.00.

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

#### 418.891 Application of prior law; new benefit rates; saving clause.

Sec. 891. (1) To the extent that they are reenacted herein, all the provisions of former Act No. 44 of the Public Acts of 1965 shall apply only to personal injuries the date of which occurs on or after September 1, 1965, except as otherwise provided in such 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, such employee or his dependents shall receive, without application to the bureau, 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 shall 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 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. The first adjustment to the maximum rates of weekly compensation provided previously in subsection (f) of section 9 of part 2 of Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, 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.

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

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

#### 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.

#### 418.899 Effective date.

Sec. 899. This act shall take effect December 31, 1969.

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

## CHAPTER 9 VOCATIONALLY HANDICAPPED

#### 418.901 Definitions.

Sec. 901. As used in this chapter:

(a) "Vocationally handicapped" 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 handicapped.

(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.

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

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

Sec. 905. An unemployed person who wishes to be certified as vocationally handicapped 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 handicapped 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.

#### 418.911 Filing by employer of information requested by certifying agency.

Sec. 911. Upon commencement of employment of a certified vocationally handicapped 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 handicapped 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.

#### 418.915 Rules.

Sec. 915. The director of the certifying agency shall promulgate rules of procedure for certification of vocationally handicapped persons in accordance with Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948.

**History:** Add. 1971, Act 183, Eff. July 1, 1972.

#### 418.921 Compensation for personal injury resulting in death or disability; liability of fund.

Sec. 921. A person certified as vocationally handicapped 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.

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

#### 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 handicapped 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 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.

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

#### 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 § 418.213.

#### 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 § 418.213.

#### 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.