STATE OF MICHIGAN

Worker's Disability Compensation Act of 1969

AND

Administrative Rules

March, 1991

PREFACE

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Legal Editing Division
Legislative Service Bureau

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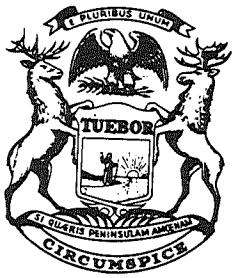

Prepared by the
Legislative Service Bureau
for the
DEPARTMENT OF LABOR
BUREAU OF WORKER'S DISABILITY COMPENSATION

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

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

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

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 and pertaining to workmen's compensation, were repealed by Act 317 of 1969.

Cited in other sections: Section 418.101 et seq. is cited in §§15.263, 15.505, 24.315, 37.1211, 37.1606, 124.352, 124.405, 125.1510, 208.38b, 339.1003, 400.55a, 400.106, 408.1055, 409.308, 418.1, 419.203, 421.12a, 421.15, 431.71, 500.440a, 500.2006, 500.2303, 500.2400, 500.2400a, 500.2409a, 500.3106, 500.7911, 500.7921, 550.701, 600.2421b, and 600.6419.

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).

Cited in other sections: Section 418.115 is cited in §431.71.

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, a service agent to a self-insured employer, and the accident fund 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.

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. (1) 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, as amended, 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, 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(4) comprise all of the employees of the person, firm, 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.

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. 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. 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. Members of a volunteer fire department of a city, village, or township shall be considered to be employees of the city, village, or township, and entitled to all the benefits of this act when personally injured in the performance of duties as members of the volunteer fire department. Members of a volunteer fire

department of a 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 village, city, or township for the purpose of calculating the weekly rate of compensation provided under this act. 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 volunteer fire fighters, 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 shall be considered to include all persons who volunteer and are registered with a school and assigned to patrol a public thoroughfare used by students of a school. 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. A volunteer ambulance driver or attendant 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 a volunteer ambulance driver or attendant 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 county, city, village, or township for purposes of calculating the weekly rate of compensation provided under this act. 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, as amended, being sections 419.101 to 419.104 of the Michigan Compiled Laws.

(b) 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.

(c) 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.

(d) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, provided 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 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.

(4) If the persons to be excluded from coverage under this act pursuant to subsection (2) or (3) comprise all of the employees of the emplo er, those persons may elect to be excluded from being considered employees under his act by submitting written notice of that election to the director upon a form pres ribed 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.

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 workmen's compensation; creation, director.

Sec. 201. The bureau of workmen's compensation, herein referred to as the bureau, is created within the department of labor. The position of director of the bureau is created; he 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 duly authorized representative.

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

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; personal interviews of successful applicants; forwarding names of most qualified applicants to governor; appointment of recommended applicants.

Sec. 210. (1) The qualifications advisory committee 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) shall be interviewed by the qualifications advisory committee for the position of worker's compensation magistrate. An applicant who does not

successfully complete the examination shall not be considered for the position of worker's compensation magistrate.

(3) The qualifications advisory committee, after completing personal interviews of the successful applicants, shall rank the applicants as to their qualifications for the position of worker's compensation magistrate. The personal interviews shall be used to determine the applicant's suitability for the position, especially with regard to his or her objectivity.

(4) If 2 or more positions are available, the qualifications advisory committee shall forward to the governor the names of the most qualified applicants, as determined by the advisory committee, equal to at least 1-1/2 times but not more than 3 times the number of positions available. If only 1 position is available, the qualifications advisory committee shall submit the names of the 2 most qualified applicants to the governor. The governor shall appoint 1 of these recommended applicants as a worker's compensation magistrate for each available position pursuant to section 213.

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.

418.211 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 appoint the initial members of the board not later than March 31, 1986 and 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 except that of the members first appointed, 10 shall serve for 2 years, 10 shall serve for 3 years, and 10 shall serve for 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. 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.

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.

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 employer to the bureau in support of its application for self-insured status.

(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 or the state accident fund concerning the injury of or benefits paid to a worker.

(c) Financial information submitted to the state accident fund by an applicant for insurance or a policyholder pursuant to section 735 and reports, except audit reports, created by the state accident fund from this information, and reimbursement or settlement procedures, tables, manuals, or schedules maintained by the state accident fund.

(2) The bureau or the state accident fund 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 or the state accident fund 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 or the state accident fund 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 or the state accident fund may release information to another governmental agency if the governmental agency provides the bureau or the state accident fund 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, the state accident fund, or another agency may disclose the information if it determines that the individual is receiving benefits to which he or she is not entitled as the result of receiving more than 1 benefit at the same time.

(c) Except as otherwise provided, information disclosed in accordance with subdivision (a) or (b) shall continue to be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976.

(d) In the case of subsection (1)(b), the bureau or the state accident fund 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 or the state accident fund concerning himself or herself. Any employer shall be entitled to inspect and obtain a copy of any record maintained by the bureau or the state accident fund 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) 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.

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 Worker's compensation appeal board; creation; appointment, qualifications, and terms of members; vacancy; designation of chairperson; removal of member; productivity standards; effect of illness or disability; certification; repeal of section.

Sec. 252. (1) Beginning July 1, 1989, a worker's compensation appeal board is created, referred to in this act as the board. The board shall consist of 45 members, a majority of whom shall be attorneys at law who are members in good standing with the state bar of Michigan. Of the board members, 5 shall be representative of employee interests in the state, 5 members shall be representative of employer interests of the state, and 35 members shall be representative of the general public. A member of the board shall devote his or her entire time to and personally perform the duties of the office and shall not engage in other business or professional activity. The governor, with the advice and consent of the senate, shall appoint the members for a term ending June 30, 1991. A vacancy shall be filled for an unexpired term in the same manner as the original appointment. A person appointed to fill a vacancy who has not previously served as a member of an appeal board under this act before July 1, 1989 shall not be subject to the productivity standards of this section until the first full period of the standards occurring after his or her appointment. The governor shall designate the chairperson of the board from among the members to serve at the pleasure of the governor. A member of the appeal board may be removed by the governor for good cause. However, except as otherwise provided in this subsection, a member shall no longer be qualified to serve as a member of the board created by this section if the chairperson certifies that the member has not met the standards provided in this section. Beginning July 1, 1989, each member of the board, with the exception of the chair, shall be required to produce 36 written opinions, decisions, or dissents each 6-month period, and shall be required to participate as a second or third panel member on additional cases during each respective period as directed by the chairperson. The minimum productivity standard requirement shall be reduced proportionately for any member who is absent from work for 2 weeks or more due to illness or disability resulting from pregnancy, childbirth, or any other medical conditions. The chairperson shall, at the end of each 6-month period, certify whether or not each member has met the productivity standards provided in this section.

(2) This section is repealed as provided for in section 266.

History: Add. 1989, Act 114, Imd. Eff. June 23, 1989.

418.253 Worker's compensation appeal board; creation; appointment and qualifications of permanent members; restriction; vacancy; designation of chairperson; list of qualified adjunct members; requirements; adjunct members as employer representative or employee representative; employment of chief administrative officer; powers and duties of chairperson; rules; assignment of pending cases to panel; review; disqualification of adjunct member; decisions; fee; repeal of §§418.253, 418.255, 418.265, 418.851a, and 418.859; remand of cases; review and decision by appellate commission; effective date.

Sec. 253. (1) Beginning July 1, 1991, if any cases remain to be decided by the board on the date that section 252 is repealed as provided for in section 266, a worker's compensation appeal board is created, referred to in this act as the board, which shall consist of 5 permanent members appointed by the governor with the advice and consent of the senate representing the general public and qualified adjunct members

as determined pursuant to subsections (2) and (3). A permanent member of the board shall devote his or her entire time to and personally perform the duties of the office and shall not engage in other business or professional activity. A vacancy shall be filled for an unexpired term in the same manner as the original appointment.

(2) The chairperson of the appeal board shall be designated by the governor and shall establish and maintain a list of qualified adjunct members. Each member of the appeal board under former section 252 as of June 30, 1991 who had met the productivity standards established for the previous 2 years under that section shall be qualified as an adjunct member.

(3) In addition, the chairperson shall select additional persons to the list of qualified adjunct members who meet 1 or more of the following requirements:

(a) Be an attorney licensed to practice in the state of Michigan.

(b) Be a former or retired worker's disability compensation magistrate.

(c) Be a former or retired worker's disability compensation administrative law judge.

(4) Upon application for qualification as an adjunct member of the appeal board, an individual shall indicate a designation as an employer representative or an employee representative. Any questions concerning the qualifications of adjunct members or whether the designation taken by an adjunct member is appropriate shall be resolved by the department of labor.

(5) The chairperson of the board shall employ a chief administrative officer for the board. The chairperson shall have general supervisory control of and be in charge of the assignment and reassignment of the work of the board and the board's employees, including the scheduling of the docket; establishing office hours and procedures; setting productivity standards; and encouraging the use of arbitration, if appropriate. The board may promulgate rules on administrative appellate procedure.

(6) In addition to other duties of the chairperson prescribed in this section, he or she shall preliminarily review matters before the appeal board to determine if those matters may be disposed of by arbitration or in some expeditious manner by the appeal board.

(7) Beginning July 1, 1991, all cases pending before the appeal board shall be assigned to a panel of 2 adjunct members of the board for disposition. Except as otherwise provided in this section, all assignments shall be on a random basis. At least 1 member of each panel shall be an attorney. Each panel shall be composed of 1 member designated as an employee representative and 1 member designated as an employer representative. The chairperson may refuse to assign cases to an adjunct member if he or she determines that the member has too many undecided cases already assigned.

(8) In assigning cases to panels, the chairperson shall pass over an adjunct member if there is any indication of a potential conflict of interest. Upon being assigned a case, each member of a panel shall immediately review the case to determine if there is any potential conflict of interest and if one is discovered, he or she shall notify the chairperson immediately. The chairperson shall disqualify an adjunct member if the member cannot impartially hear a case, including a case in which the member:

(a) Is interested as a party.

(b) Is personally biased or prejudiced for or against a party or attorney.

(c) Has been consulted or employed as an attorney in the matter in controversy.

(d) Was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding 2 years.

If a conflict of interest is discovered or a member is disqualified, the chairperson shall immediately reassign the case. Cases shall be assigned to a 2-member panel of adjunct members in pairs of 2 cases with 1 member of the panel having primary responsibility for each case. The adjunct members may consult with each other with respect to cases assigned to them.

(9) The decision reached by the assigned members of a panel shall be the final decision of the board. If the members of a panel cannot reach a decision, the chairperson of the board shall assign 1 of the general public permanent members of the board as the third panel member to review the matter. The third panel member shall choose between the 2 decisions of the assigned panel members. The decision of the third panel member shall be the decision of the board. If 1 panel member has decided the case for which he or she has primary responsibility, the second panel member shall have 30 additional days to decide his or her assigned case. If the case is not decided within the 30 additional days, the chairperson of the board shall assign 1 of the permanent members as the second panel member to review and decide the case. If the new panel cannot reach a decision on the case within 30 additional days, the chairperson of the board shall assign 1 of the other permanent members of the board as a third panel member in the same manner as otherwise provided in this subsection.

(10) When the board has issued a final decision in both cases of a pair of cases assigned to a panel of adjunct members, each member of the panel shall be paid a fee of $1,000.00. The chairperson of the board may increase the fee paid to panel members for an individual pair of cases if, after written application by the panel members, the chair finds that 1 or both of the cases in the pair were unusual and required an exceptional amount of time and effort by the panel members.

(11) This section and sections 255, 265, 851a, and 859 are repealed as of October 1, 1993 or when the governor advises the secretary of state in writing that there are no more cases to be decided by the appeal board, whichever occurs first.

(12) If any cases are to be remanded to the appeal board by a court after October 1, 1993, those cases shall be remanded to and decided by the appellate commission established under section 274.

(13) If any cases remain to be decided by the board on the date that this section is repealed as provided for in subsection (11), those cases shall be reviewed and decided by the appellate commission.

(14) Any review of cases by the appellate commission pursuant to subsection (12) or (13) shall be according to the law applicable to reviews conducted by the appeal board.

(15) This section shall take effect July 1, 1991.

History: Add. 1989, Act 117, Eff. July 1, 1991.

418.255 Worker's compensation appeal board as independent body; powers and duties; repeal of section.

Sec. 255. (1) The appeal board is an independent body with power and authority to hear and decide all appeals from the orders of the hearing referees and director, except as otherwise provided in this act.

(2) The appeal board shall have the independent right to organize and manage the board's work and authority over the selection, assignment, classification, and tenure of the board's employees and supervision over the board's office space.

(3) This section is repealed as provided for in section 266.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1978, Act 456, Imd. Eff. Oct. 16, 1978;—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.

418.261 Worker's compensation appeal board; employment of chief administrative officer; powers and duties of chairperson; rules on administrative appellate procedure; disposition of matters pending on review; composition and decisions of panel; preliminary review of matters before appeal board; deadline for disposition of cases; report; repeal of section.

Sec. 261. (1) The chairperson of the board shall employ a chief administrative officer for the board. The chairperson shall have general supervisory control of and be in charge of the assignment and reassignment of the work of the board and the board's employees, including the scheduling of the docket; establishing office hours and procedures; setting productivity standards; and encouraging the use of arbitration, if appropriate. The board may promulgate rules on administrative appellate procedure.

(2) Except as otherwise provided for in this act, a matter pending review before the appeal board shall be assigned to a panel of 2 members of the board for disposition, with each panel comprised of 1 member each from the employee and employer representatives, the employee and general public representatives, the employer and general public representatives, or 2 members representative of the general public. The decision reached by the assigned members of a panel shall be the final decision of the board. If the members of a panel cannot reach a decision, the chairperson of the board shall assign a third panel member to review the matter. The third member shall be from a designated representative group that is not already represented on the panel, except for a panel of 2 members representative of the general public in which case the third member shall be a representative of the general public. The decision of the third member shall be controlling and shall be considered to be the final decision of the board.

(3) In addition to other duties of the chairperson prescribed in this section, he or she shall preliminarily review matters before the appeal board to determine if those matters may be disposed of by arbitration or in some expeditious manner by the appeal board.

(4) The chairperson shall exercise his or her powers and duties under this section for the purpose of disposing of the cases to be heard by the appeal board as constituted pursuant to section 252 not later than June 30, 1991 and shall annually report to the governor and the legislature regarding the disposition or lack thereof of these cases.

(5) This section is repealed as provided for in section 266.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1973, Act 73, Imd. Eff. July 23, 1973;—Am. 1978, Act 456, Imd. Eff. Oct. 16, 1978;—Am. 1980, Act 357, Eff. Jan. 1, 1981;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1989, Act 116, Eff. July 1, 1989.

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

Constitutionality: Use of two-member interest-designated panels in appeals before the Workers' Compensation Appeal Board does not violate the procedural due process rights of the litigants. Williams v. Hofley Mfg. Co., 430 Mich. 603, 424 N.W.2d 278 (1988).

In an appeal before the Workers' Compensation Appeal Board, to the extent the procedures involved affect a party's ability to present a legitimate defense, a property right to which due process guarantees are applicable is impaired. Williams v. Hofley Mfg. Co., 430 Mich. 603, 424 N.W.2d 278 (1988).

418.265 Worker's compensation appeal board; salary and expenses; offices; office hours; personal case conferences; repeal of section.

Sec. 265. (1) Each member of the board shall receive an annual salary as appropriated by the legislature and shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(2) The department of management and budget shall provide suitable offices for the appeal board in Lansing and in other places in the state as, in the discretion of the chairperson, is necessary. A full-time 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.

(3) In an attempt to expedite the review of matters pending before the appeal board, personal case conferences should be utilized by the appeal board to facilitate discussion of the facts and an exchange of views.

(4) This section is repealed as provided for in section 266.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1978, Act 456, Imd. Eff. Oct. 16, 1978;—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.

418.266 Repeal of §§418.251, 418.252, and 418.261; remand of cases; review and decisions by appeal board.

Sec. 266. (1) Section 251 is repealed as of July 1, 1989. Sections 252 and 261 are repealed June 30, 1991, or when there are no more cases to be decided by the appeal board, whichever occurs first.

(2) If any cases are to be remanded to the appeal board by a court after the board created pursuant to section 251 no longer exists, those cases shall be remanded to and decided by the appeal board created under section 252.

(3) The cases that remain to be decided by the board on the date that section 251 is repealed as provided for in subsection (1) shall be reviewed and decided by the appeal board created pursuant to section 252.

(4) If any cases are to be remanded to the appeal board by a court after the board created pursuant to section 252 no longer exists, those cases shall be remanded to and decided by the appeal board created under section 253.

(5) The cases that remain to be decided by the board on the date that section 252 is repealed as provided for in subsection (1) shall be reviewed and decided by the appeal board created pursuant to section 253.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1989, Act 115, Imd. Eff. June 23, 1989.

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

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; written opinions; 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. A person shall not be appointed to the commission who has not been recommended by the qualifications advisory committee under section 209. The qualifications advisory committee shall recommend a number of candidates equal to at least 1-1/2 times but not more than 3 times the number of positions available. 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 except that of the members first appointed, 2 shall serve for 2 years, 2 shall serve for 3 years, and 3 shall serve for 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.

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; 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. Attendant or nursing care shall not be ordered in excess of 56 hours per week if such 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 herein provided, 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 hearing referee or worker's compensation magistrate, as applicable, the hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable. The hearing referee or worker's compensation magistrate, as applicable, may prorate attorney fees at the contingent fee rate paid by the employee.

(2) All fees and other charges for any treatment or attendance, service, devices, apparatus, or medicine under subsection (1), shall be subject to rules promulgated by

the department of management and budget pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The rules promulgated shall establish schedules of maximum charges for such 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 any of the above, or the maximum charge established under the rules, whichever is less. The rules under this subsection shall be promulgated not later than March 31, 1983, and sent to the respective labor committees of the legislature for review.

(3) The director of the department of management and budget shall provide for an advisory committee to aid and assist in establishing the schedules of maximum charges under subsection (2) for any 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 shall be liable to return to the carrier any such fees or charges already collected. The department of management and budget may review the records and medical bills of any 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. This review shall be accomplished by a carrier pursuant to a system established by the department of management and budget which identifies the utilization of health care and health services above the usual range of utilization for such services based on medically accepted standards and provides for acquiring necessary records, medical bills, and other information concerning any 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 any health care or health services provided for utilization review pursuant to this section. Such health facilities and health care providers shall be considered to have agreed to comply with any decision of the department of management and budget pursuant to subsection (7). Any health facility or health care provider that submits false or misleading records or other information to a carrier or the department of management and budget 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 care or services was inappropriate, the health facility or health care provider may appeal to the department of management and budget 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 department of management and budget. A

carrier that complies with the criteria or standards as determined by the department of management and budget 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.

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

Transfer of powers: See §§418.315 and 418.991.

Cited in other sections: Section 418.315 is cited in §§18.24, 418.1, and 418.2.

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 hearing referee or worker's compensation magistrate, as applicable, 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 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 such 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.

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 hearing referee or worker's compensation magistrate, as applicable, 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 such parent. In the event of the death of an employee who has at the time of such 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 hearing referee or worker's compensation magistrate, as applicable shall find that the surviving spouse is not properly caring for such children, the hearing referee or worker's compensation magistrate, as applicable, 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.

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 in no event 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 subdivision (b) of section 331. A hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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 the effective date of this subsection and who have not attained the age of 18 years on the effective date of this subsection.

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.

418.341 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 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 and burial. The cost of burial shall not exceed $1,500.00. Any person who performed such service or incurred such liability is authorized to file an application with the bureau. A hearing referee or worker's compensation magistrate, as applicable, 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.

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.

Cited in other sections: Section 418.352 is cited in §§208.38b and 500.440a.

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.

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 hearing referee or 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.

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 prior to the expiration of the period within which he or she would receive such weekly payments shall be deemed 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 hearing referee, 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.

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.

Cited in other sections: Section 418.391 is cited in §§208.38b and 500.440a.

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, and silicosis, dust disease, and logging industry compensation 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) 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.

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.

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

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), (4), and (5) 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.

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 hearing referee or worker's compensation magistrate, as applicable, 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.

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-insured employer 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-insured employer 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.

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. After a carrier including a self-insurer has paid an employee $12,500.00 for disability or death due to silicosis or other dust disease or for disability or death arising out of and in the course of employment in the logging industry for personal injury dates before July 1, 1985; or after a carrier including a self-insurer has paid an employee $25,000.00 or 104 weeks of benefits, whichever is greater, for disability or death due to silicosis or other dust disease or for disability or death arising out of and in the course of employment in the logging industry for personal injury dates after June 30, 1985, 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 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.

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-insured employer an amount based on the total compensation the self-insured employer 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-insured employers, 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.

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 Security for compensation; definitions.

Sec. 601. Whenever used in this act:

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

(b) "Self-insurer" means an employer authorized to carry its own risk.

(c) "Carrier" means a self-insurer, an insurer and the accident fund.

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

418.611 Methods of securing payment of compensation; agreement between employers to pool liabilities; purpose; "public employer" defined; employer's liability insurance; employers in same industry; determination; nonpublic, nonprofit health care facility employer as member of self-insurers' group; 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 1 of the following methods:

(a) By receiving authorization from the director to be a self-insurer. 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. 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.

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

(c) By insuring against liability with the accident fund.

(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 bond, reinsurance, or other security in a reasonable form and amount. 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, nonprofit 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, nonprofit health care facility employer is the same type of service rendered by the public employers. If a nonpublic, nonprofit 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, nonprofit 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, nonprofit 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, nonprofit health care facility employer under subsection (2) as to any member of a group involving a combination of public and nonpublic, nonprofit 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, 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.

(6) 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.

Cited in other sections: Section 418.611 is cited in §§124.352, 124.405, 500.1910, and 550.902.

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 deemed subject to act; single policy; separate policy for certain employees; required provisions; form.

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

(2) The accident fund and every 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 one and the same insurance policy, all the businesses, employees, enterprises, and activities of the employer. 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 employees would at all times be fully secured and the cost of construction at the site will exceed $100,000,000.00 and the contemplated completion period for the construction will be 10 years or less. Except as modified by the director as provided for herein, each policy of insurance covering workmen's compensation in this state shall contain the following provisions:

"Notwithstanding any language elsewhere contained in this contract or policy of insurance, the accident fund or 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 workmen's compensation for which the insured employer may become liable under the provisions of the Michigan workmen's compensation act for all compensable injuries or compensable occupational diseases happening to his 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 employees under the provisions of the Michigan workmen's 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 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 workmen's compensation act for all compensable injuries or compensable occupational diseases happening to his 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 workmen's 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 thereof, and all employees the employer may employ in any of his businesses during the period covered by this policy;

Obligations assumed. (f) That it hereby assumes all obligations imposed upon the employer by his acceptance of the Michigan workmen's 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."

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

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1973, Act 117, Imd. Eff. Aug. 21, 1973.

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

Sec. 625. The accident fund and every insurer mentioned in section 611 issuing an insurance policy covering workmen's compensation in this state shall file with the director, within 10 days after the effective date thereof, a notice of the issuance of such 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 the accident fund or any insurer where the policy issued is a renewal of the preceding policy. The accident fund or insurer, if it refuses to accept any coverage under this act, shall do so in writing.

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

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; collection of fines; 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 shall be fined $1,000.00, or imprisoned for not less than 30 days nor more than 6 months, or both. Each day's failure is a separate offense. Upon complaint of the director, the fines specified in this section may be collected by the state in a civil action.

(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 fines collected pursuant to this section 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 the effective date of this subsection.

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.

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

418.645 Order to show cause; injunction.

Sec. 645. If it appears by a complaint filed by the director in the circuit court for the county in which the employer is located or in the circuit court for Ingham county that the employer's liability is uninsured, there shall forthwith 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 3 days after its issuance. If 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 protect all of the liability of the employer under this act, then an injunction shall not issue. Every final decree against an employer under this section shall perpetually enjoin him from employing any person in his or her business at any time when the employer is not complying with section 171 or 611.

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.

418.647 Exemption of employer; corporations.

Sec. 647. If compensation is awarded under the provisions of this act against any employer who at the time of the injury has not complied with the provisions of 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. If the employer is a corporation, the officers and directors thereof shall be individually and jointly and severally liable for any portion of any such judgment as is returned unsatisfied after execution against the corporation.

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

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 and 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 thereto the right to enforce in his own name in the manner provided in this act the liability of any insurance company, or the accident fund, 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, the insurance company carrying such risk or the accident fund, shall be a bar, to the extent thereof, to recovery against the other of the amount so paid.

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

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

418.701 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.

Sec. 701. (1) The state accident fund is created to provide only worker's compensation insurance and employer's liability insurance for employers. 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.

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

Cited in other sections: Sections 418.701 to 418.755 are cited in §§38.13 and 500.7911.

418.702 Cessation of operation or dissolution of southeastern Michigan transportation authority or authority created pursuant to §124.351 et seq.; state guaranteed payment of claims for benefits; determination of amount; processing of claims; lien of state.

Sec. 702. (1) If the southeastern Michigan transportation authority created pursuant to Act No. 204 of the Public Acts of 1967, as amended, being sections 124.401 to 124.425 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.

(2) 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.

(3) 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.

History: Add. 1978, Act 480, Eff. Mar. 30, 1979;—Am. 1980, Act 387, Imd. Eff. Jan. 6, 1981.

418.705 Payment of losses and expenses; purchase and sale of securities.

Sec. 705. There shall be maintained in the accident fund a sufficient amount of cash to pay losses and expenses and the balance may be invested by the executive director of the state accident fund and the state treasurer acting together, in such securities as are specified by law for investment by casualty insurance companies. All securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed by the joint action of the executive director and the state treasurer.

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

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 Premiums and assessments; level; revisions to underwriting standards; rules; applicability of subsection (2).

Sec. 711a. (1) The premiums and assessments filed pursuant to chapter 24 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2400 to 500.2484 of the Michigan Compiled Laws, by the state accident fund shall be at the lowest level possible, consistent with sound insurance actuarial standards. Premiums shall not be excessive, inadequate, or unfairly discriminatory.

(2) Revisions to the underwriting standards existing on June 1, 1990 shall only be made through the rules promulgated pursuant to this section. The state accident fund shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to establish its underwriting standards. The rules shall ensure that the premiums and assessments to be filed by the fund shall not be excessive, inadequate, or unfairly discriminatory. However, this subsection 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.

418.712 Surplus; escrow account; advance; allocation.

Sec. 712. (1) The insurance commissioner shall make a determination of the amount of surplus of the accident fund existing at the end of the calendar quarter in which the effective date of the amendatory act that added this section occurs. After the determination is made, the commissioner shall require a reduction in surplus not later than 60 days after the date of this determination so that the state accident fund will have a net written premium to surplus ratio of 3.5 to 1. The amount of premium shall be determined at the end of the first quarter of 1990 based on the previous 12 months.

(2) The amount of surplus in excess of that determined pursuant to subsection (1) shall be deposited in a separate account to be held in escrow for a period of 5 years after the date of the determination or 18 months after the last court action is settled, whichever is earlier. Except as otherwise provided in this subsection, this escrow account shall be used only for the purpose of covering the liability of the accident fund arising from claims or obligations against the state accident fund either pending on the effective date of this section or filed within the period described in this section. The state accident fund shall advance the sum of $5,000,000.00 from the escrow account to the uninsured employer's security account of the workplace health and safety fund to fund the initial start-up costs of the fund. This advance shall be repaid to the escrow account by the time the escrow account is closed. The amounts contained in this escrow account shall not be considered an asset of the state accident fund.

(3) At the end of the period provided for in subsection (2), the surplus remaining in the escrow account shall be allocated as follows:

(a) That portion that represents the nonpayment of federal taxes as determined by the insurance commissioner for tax years 1986 to 1989 shall be allocated by the legislature for the purpose of providing a supplement to worker's compensation benefits for injured workers whose benefits have been diluted by inflation in a manner to be determined by the legislature.

(b) The balance, with interest, shall be refunded to employers holding policies issued by the accident fund during calendar years 1986 to 1989 as determined and declared by the insurance commissioner. Interest shall be calculated from the time the escrow account was established at a rate equal to the rate earned on the common cash investments during the same time period.

History: Add. 1990, Act 157, Imd. Eff. June 29, 1990.

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 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.

(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.

(4) Except for the fee 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.

418.714 Provision of membership and coverage to applicants at rates not excessive, inadequate, or unfairly discriminatory; applicability of section.

Sec. 714. (1) If the state accident fund's portion of the worker's compensation insurance net direct written premium in this state exceeds 25% as determined by the insurance commissioner, excluding placement facility business, membership and coverage with the state accident fund shall be provided to all applicants at rates that are not excessive, inadequate, or unfairly discriminatory filed pursuant to chapter 24 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2400 to 500.2484 of the Michigan Compiled Laws, for the types of insurance it is permitted to write in this state until its portion, excluding business written that would not have been permitted under its underwriting standards, has been reduced to 25% or less.

(2) 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.

418.715 Classification of plants, establishments, or places of work in respect to safety; manner of paying premiums and assessments; changing amount of premiums and assessments.

Sec. 715. Subject to chapter 24 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2400 to 500.2484 of the Michigan Compiled Laws, the executive director may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk of injury to their employees under existing conditions. He or she may prescribe when and in what manner the premiums and assessments shall be paid, may change the amount thereof in respect to any or all of such employers as circumstances may require and the condition of the respective plants, establishments, or places of work in respect to the safety of their employees may justify. However, premiums or assessments shall be levied on a basis that shall not be excessive, inadequate, or unfairly discriminatory.

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

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

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

418.722 Creation and administration of workplace health and safety fund; creation, purpose, and membership of workplace health and safety board; staff support; expenses; collection and analysis of data; authorized expenditure; project list; investments; applicability of section.

Sec. 722. (1) The workplace health and safety fund is created as a separate revolving fund in the state treasury. The fund shall be administered by the workplace health and safety board created in subsection (2).

(2) The workplace health and safety board is created to administer the workplace health and safety fund. The board shall consist of the following 9 members:

(a) The chief of the division of occupational health in the department of public health.

(b) The director of the bureau of safety and regulation in the department of labor.

(c) The director of the bureau of worker's disability compensation.

(d) The executive director of the accident fund.

(e) One person with experience in risk management to be appointed by the governor with the advice and consent of the senate for a term of 4 years.

(f) Two members representing business to be appointed by the governor with the advice and consent of the senate for terms of 4 years.

(g) Two members representing labor to be appointed by the governor with the advice and consent of the senate for terms of 4 years.

(3) The state accident fund shall provide staff support for the board.

(4) Members of the board shall not receive a salary but shall be entitled to their actual and necessary expenses for attendance at meetings of the board.

(5) The board shall collect and analyze data with respect to both of the following:

(a) Employers that have failed to secure the payment of compensation by 1 of the methods required under section 611, and employees who are unable to receive benefits under this act as a result of that failure.

(b) Needed improvements in health and safety in the Michigan workplace.

(6) Fifty percent of the money deposited in the workplace health and safety fund pursuant to this act and appropriated each year by the legislature shall be authorized for expenditure by the board for the payment of benefits that 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 by 1 of the methods required under section 611 for personal injuries or death related to injuries occurring on or after the effective date of this section in the manner provided in section 723 and for the payment of the expenses of the state accident fund in defending or administering claims under section 723, and 50% shall be authorized for expenditure by the board for workplace safety improvement programs that will stimulate and fund research, development, testing, and implementation of workplace safety and worker health initiatives that will reduce the incidence of injuries and the exposure to occupational diseases in the workplace in the manner provided in this section. Money in the workplace health and safety fund shall not be used for enforcement or regulatory purposes except as expressly authorized by section 723.

(7) The 50% of the fund authorized for expenditure by the board for workplace safety improvement shall be in the form of a project list recommended by the board each year that shall be included in the governor's budget request for the department of commerce submitted to the legislature. Each proposed project shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the project; the area of the state in which the project will be conducted; an estimate of the total cost of the project; and other information considered pertinent by the board. The legislature shall either approve or reject the list. If the list is rejected, the board may resubmit a modified list during the budget process.

(8) Money in the workplace health and safety fund may be invested in the same manner as surplus funds in the state treasury in the manner provided in Act No. 105 of the Public Acts of 1855, being sections 21.141 to 21.147 of the Michigan Compiled Laws.

(9) 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.

418.723 Uninsured employer's security account; creation; purpose; use of money; "uninsured employer" defined; notice of claim and employer's liability; dispute; application; failure to pay or dispute claim; surrender of rights; notice to state accident fund; redemption of claim; information, inspection, and penalty; reimbursement; payment of benefits; liability to uninsured employer's security account; request for relief; determination of benefits; reduction in liability; offset; costs, attorney fees, and interest; liability for payment of claims.

Sec. 723. (1) An uninsured employer's security account is created within the workplace health and safety fund established in section 722. The uninsured employer's security account is the account from which benefits shall be paid by the board that 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.

(2) Money in the uninsured employer's security account shall only be used with respect to injuries that occur on or after the effective date of this section.

(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 of this act.

(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 employer's liability under this act. If the employer disputes this determination by the director, it shall file an application in accordance with the provisions of section 847 of this act within 30 days of the date the director's notification was mailed.

(5) An uninsured employer shall either 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.

(6) If an employer surrenders its rights as provided in subsection (5), the director shall notify the state accident fund. The state accident fund shall then exercise all the rights and obligations of the employer and carrier provided by this act, and the executive director of the state accident fund shall have the rights and authority of an employer to redeem a claim as provided in section 836. An uninsured employer shall provide such information as is necessary to assist the executive director of the state accident fund and shall be subject to the inspection and penalty provisions of section 735. The executive director of the state accident fund shall be reimbursed from the account for the actual and reasonable costs of defending or administering a claim under this section.

(7) If an uninsured employer is found to be liable to pay benefits and fails to pay those benefits, the uninsured employer's security account shall pay the benefits pursuant to subsection (11).

(8) For injuries occurring on or after the effective date of this section, an uninsured employer shall be liable to the uninsured employer's security account for the following:

(a) An amount equal to 3 times the benefits paid or to be paid to an employee by the account.

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

(9) 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.

(10) To the extent that funds are available in the account, the workplace health and safety board shall annually determine the benefits to be paid from the account. If this determination is less than the benefits to which the 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.

(11) The liability of an uninsured employer provided for in subsection (8) shall not be reduced as the result of any reduction in benefits paid as provided in subsection (10). If reimbursement is obtained from an uninsured employer for a period in which

less than 100% of the benefits were paid by the account to an employee or dependents of a deceased employee, the account 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.

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

(13) The state, the state accident fund, or the workplace health and safety fund shall not be liable for the payment of claims under this act, except to the extent that funds are available in the uninsured employer's security account for this purpose.

History: Add. 1990, Act 157, Imd. Eff. June 29, 1990.

418.725 Policy; effective date; contents.

Sec. 725. Every employer provided insurance coverage by the state accident fund, upon complying with the underwriting standards adopted by the state accident fund, shall be furnished with a policy showing the date on which the insurance becomes effective. The policy shall include on the first page in a separate paragraph in 10-point type a statement that the Michigan state accident fund is an agency of state government and is not a member of the property and casualty guaranty association, and that neither the state nor the association is liable if the state accident fund is declared insolvent during the effective period of the policy.

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

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 Books, records, and payrolls; inspection; purpose; refusal to submit; false statement; penalties.

Sec. 735. The books, records, and payrolls of each employer insured by the state accident fund shall always be open to inspection by the executive director or his or her duly authorized agent or representative for the purpose of ascertaining the correctness of the amount of the payroll reported, the number of employees on the employer's payroll, and such other information as the executive director may require in the administration of the state accident fund. Refusal on the part of any employer to submit books, records, and payrolls for inspection shall subject the offending employer to a penalty of $100.00 for each offense, to be collected by civil action in the name of the state and paid into the state accident fund, and the individual who personally gives the refusal is guilty of a misdemeanor. Any employer who knowingly submits to the executive director a false statement of payroll for the

purpose of securing a lower premium charge is guilty of a misdemeanor and shall be fined not less than $500.00 or imprisoned for not more than 30 days, or both.

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

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

Sec. 741. (1) 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.

(2) The executive director shall make an annual report 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.

418.742 Authority of licensed agents to market products, place business, or handle claims; compensation of agents; grounds for suspension, limitation, or termination of authority; discrimination prohibited.

Sec. 742. (1) All agents licensed by the state of Michigan to sell property and casualty insurance are authorized to market the products of, and place business with, the state accident fund. These agents shall receive reasonable compensation from the state accident fund for business placed with and services rendered in connection with that business.

(2) The authority granted in this section shall not be suspended, limited, or terminated by the executive director of the state accident fund, except for the following reasons:

(a) Malfeasance.

(b) Breach of fiduciary duty or trust.

(c) A persistent tendency to violate the procedures outlined in the state accident fund's basic manual for Michigan worker's compensation and employer's liability insurance.

(3) The authority granted pursuant to this section shall not be suspended, limited, or terminated for a period exceeding 6 months. However, if following a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, it is found that the agent has demonstrated a persistent tendency to commit those acts listed in subsection (2)(a) or (b), the executive director may suspend, limit, or terminate the agent's authority for a term in excess of 6 months.

(4) Except pursuant to a pilot or test program of not exceeding 6 months, the state accident fund shall not unfairly discriminate against any agent in providing

assistance in marketing, payment, or settlement of claims, or any other matters related to marketing, placing business, or handling claims.

History: Add. 1990, Act 157, Imd. Eff. June 29, 1990.

418.745 Payments from fund.

Sec. 745. All payments on account of injuries to employees from the accident fund shall be made in accordance with the provisions of this act and the rules of the bureau governing payment of compensation by carriers.

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

418.746 Revolving fund; purposes; quarterly and annual reports; operating budget.

Sec. 746. (1) The executive director shall maintain a revolving fund derived from premiums collected from members of the fund. The revolving fund shall be used exclusively for the following purposes:

(a) Payment, handling, and servicing of claims.

(b) Payment of fees imposed by this act or as otherwise provided by law.

(c) Insurance expenses, including agent's commissions.

(d) The operating budget of the fund.

(e) Investments.

(f) Transactions with the Michigan workers compensation placement facility.

(g) Reinsurance.

(h) Refunds of premiums or applicant's funds.

(i) Dividends and similar payments to policyholders.

(2) The state accident fund shall file with the senate and house fiscal agencies all quarterly and annual reports that are required by the insurance bureau and the department of management and budget.

(3) The governor's annual budget request to the legislature shall include the operating budget of the state accident fund.

History: Add. 1990, Act 157, Imd. Eff. June 29, 1990.

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 Annual meeting; notice; advisory board nomination; board duties.

Sec. 755. An annual meeting of the employer-members of the accident fund shall be called by the commissioner in Lansing in October, which may be attended by the members in person or by a representative. Notice of the annual meeting shall be made by mail at least 10 days prior to the date of the meeting. At the annual meeting

there shall be nominated by the members present 15 employer-members to constitute an advisory board, who, when certified to the governor, shall receive an appointment to serve for the term of 1 year. In case of vacancy in the advisory board, a nomination may be made by the remaining members to the governor for the purpose of filling the vacancy. The advisory board shall elect 1 of its members chairman and 4 other members who, together with the chairman, shall constitute an executive committee, which shall meet quarterly on the call of the chairman in Lansing. The advisory board shall advise the commissioner regarding the means and methods of administering the affairs of the accident fund.

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

418.756 Advisory board; meetings; notice.

Sec. 756. The advisory board shall hold any meeting in compliance with Act No. 267 of the Public Acts of 1976, 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.

History: Add. 1990, Act 157, Imd. Eff. June 29, 1990.

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 hearing referee or worker's compensation magistrate, as applicable, 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.

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.

Cited in other sections: Section 418.823 is cited in §722.53.

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 dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with the provisions of this section. If the injured employee or his 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 his death, his known

dependents or personal representative or his known next of kin, his 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 his 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 dependents or personal representative settle their claim for injury or death or commence proceedings thereon against the third party before the payment of workmen'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 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 forthwith be paid to the employee or his 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 workmen'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, self-insured service organization or the accident fund, 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.

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 hearing referee or worker's compensation magistrate, as applicable. If special circumstances are found which in the judgment of the hearing referee or worker's compensation magistrate, as applicable, require the payment of a lump sum, the hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable. The filing of a proposed redemption agreement or lump sum application shall not be considered an admission of liability and if the hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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) 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, the appeal board, 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.

(5) The fees collected pursuant to subsection (4) shall be placed in the worker's compensation administrative revolving fund under section 835a and shall only be used to supplement and not replace appropriations for financing the bureau, the worker's compensation board of magistrates, the appeal board, and the worker's compensation appellate commission. 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, the appeal board, 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.

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 hearing referee or worker's compensation magistrate, as applicable, if the hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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.

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 the hearing referees or worker's compensation magistrates, as applicable.

(2) The director may, or upon the request of any of the parties to the action shall, review the order of the hearing referee 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 deems just and proper. Any order of the director under this subsection may be appealed to the board or appellate commission, as applicable, within 15 days after the order is mailed to the parties.

(3) Unless review is ordered or requested within 15 days of the date the order of the hearing referee or worker's compensation magistrate, as applicable, 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.

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 or hearing referee, as applicable, 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 or hearing referee, as applicable, 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 hearing referee, as applicable, 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 or hearing referee'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 or hearing referee's decision in the small claims division.

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.

Cited in other sections: Section 418.841 is cited in §418.1.

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 hearing referee or worker's compensation magistrate, as applicable, 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.

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

Cited in other sections: Section 418.847 is cited in §418.1.

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 hearing referee or worker's compensation magistrate, as applicable, at the hearing of the claim shall make such inquiries and investigations as he or she shall deem 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 hearing referee or worker's compensation magistrate, as applicable, 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.

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

418.851a Granting further time to claim review under §418.851; repeal of section.

Sec. 851a. (1) For sufficient cause shown, the appeal board, for a matter that is to be before the board, may grant further time in which to claim a review under section 851.

(2) This section is repealed as provided for in section 266.

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.

418.852 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, hearing referees, 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; for this purpose an application 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.

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 director and paid by the state as other expenses of the state are paid. The fees and payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of a hearing referee or worker's compensation magistrate, as applicable. 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 hearing referee or worker's compensation magistrate, as applicable, 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 appeal board or the appellate commission, as applicable, on request of an interested party, if a request is filed within 15 days.

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

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

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

418.859 Review by appeal board; procedure; appeal; repeal of section.

Sec. 859. (1) If a claim for review of a matter to be reviewed by the appeal board is filed, the board shall promptly review the order, together with the records of the hearing. The board may hear the parties, together with such additional evidence as it may allow and shall file its order with the records of the proceedings. It shall be the duty of the board to announce in writing its findings of fact and conclusions of law. The issuance of written opinions giving reasons therefor shall be at the discretion of the board and individual members thereof. The review and hearing may be held at its offices in Lansing, or elsewhere, as the board considers advisable. If the employer or carrier files a claim for review to the board, 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.

(2) This section is repealed as provided for in section 266.

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.

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 Filing claim for review of case pending review by appeal board for 3 or more years.

Sec. 860. For any case that has been pending review by the appeal board for 3 or more years, the parties may file a claim for review with the appellate commission. The appellate commission may accept or deny a claim for review filed pursuant to this section. Any review of a claim pursuant to this section shall be according to the law applicable to reviews conducted by the appeal board.

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.

418.861 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.

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 and ensure a full, thorough, and fair review thereof.

(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.

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.

418.861b 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 sections 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 hearing referee, worker's compensation magistrate, or arbitrator, as applicable. Payment shall commence as of the date of the hearing referee's, worker's compensation magistrate's, or arbitrator's award, as applicable, 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 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.

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 hearing referee, worker's compensation magistrate, an arbitrator, the director, the appeal board, 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.

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 hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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 hearing referee or worker's compensation magistrate, as applicable, 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.

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.

DEPARTMENT OF LABOR

BUREAU OF WORKERS' DISABILITY COMPENSATION

GENERAL RULES

(By authority conferred on the director of the bureau of workers' disability compensation by section 205 of Act No. 317 of the Public Acts of 1969, as amended, being §418.205 of the Michigan Compiled Laws)

PART 1. RECORDS

R 408.31 Report of injury; claim for compensation, additional reports; weekly rate of compensation.

Rule 1. (1) An employer shall report immediately to the bureau on form 100 all injuries, including diseases, which arise out of and in the course of the employment, or on which a claim is made and result in any of the following:

(a) Disability extending beyond 7 consecutive days, not including the date of injury.

(b) Death.

(c) Specific losses.

(2) Any report of injury filed with the bureau by an employer which fails to meet the requirements of subrule (1) shall not be maintained as a record of the bureau unless filed with a form 107.

(3) The employer shall give a copy of the report of injury (form 100) to the injured employee immediately, and in the case of death, to the dependent. Form 100 shall indicate compliance with this requirement. A delay in reporting shall not occur because of this requirement. In case of death, an employer shall also immediately file an additional report on form 106.

(4) A claim for compensation made by the employee to the bureau shall be made on form 117. A copy of this form shall be mailed to the employer by the bureau.

(5) After an employee has given the employer the name of the physician and his intention to treat with that physician and in fact has commenced treatment with that physician pursuant to section 315 of the act, the employee shall obtain and promptly furnish a report to the employer, insurance carriers, state accident fund, or self-insurers' security fund, setting forth the history obtained, the diagnosis, the prognosis, and other information reasonably necessary to properly evaluate the injury, the disability, and the necessity for further rehabilitation or treatment. Thereafter, at reasonable intervals of not more than 60 days, the employee shall obtain and furnish a current medical report, paid for by the carrier, containing the same information, together with an itemized statement of charges for services rendered to date. A self-insured employer, insurance carrier, the state accident fund, or self-insurers' security fund is not required to make payment to the physician until such reports and itemized charges have been furnished to it. Medical fees shall not exceed those considered usual and reasonable for the service performed.

(6) A carrier, the second injury fund, the self-insurers' security fund, and the silicosis, dust disease and logging industry compensation fund, in all cases that require payment of compensation, shall file all of the following reports as required by the bureau:

(a) Report to the bureau on form 101 on the day after the first payment of compensation. A copy of the form 101 shall be furnished to the employee by the carrier or the fund.

(b) Report to the bureau on form 102 on the day after the stopping of payment of compensation showing the amount of compensation paid in every case. Subject to the provisions of R 408.40, when compensation is stopped on the basis that the employee has recovered from disability or that the employee is able to return to work, but has not done so, the medical report supporting this position shall be attached to form 102, or filed within 30 days thereafter. When a supplemental form 102 is filed, only that amount not previously reported shall be shown. In a case that requires the filing of form 102, the carrier and the funds shall, in writing, advise the injured employee whose benefits have stopped of the reasons for the action taken at the same time by furnishing a copy of the form 102 to the employee.

(c) The director may require a report showing the amount of compensation actually paid in cases where payment of compensation has not been previously stopped as of December 31 by the filing of form 102, for that calendar year, regardless of the length of time the case was open. If during the calendar year a form 102 had been previously filed, only those payments made during the calendar year after the filing of form 102 shall be reported. Such a report shall be furnished to the bureau at such a time and in such manner as the director may reasonably require.

(d) Notify the bureau immediately of any change in rate of compensation, stating the reason therefor on form 101 with a copy to the employee.

(e) File a statement of the attending physician in every specific loss, giving the date and extent of the loss.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.32 Compensation supplement fund; "maximum benefit" defined.

Rule 2. (1) A carrier, second injury fund, or self-insurers' security fund shall claim reimbursement from the compensation supplement fund for payments made in accordance with section 352 of the act. Claims shall be made on bureau form 114, application for reimbursement.

(2) Initial application for reimbursement shall be made not later than 3 months after the end of the quarter for which the right to reimbursement first accrues. The right to reimbursement first accrues on the first day of the quarter following any quarter for which supplemental benefits are first paid or ordered to be paid.

(3) Subsequent applications for reimbursement may be made quarterly, but not later than 1 year after the closing date of the quarter for which reimbursement is being requested.

(4) A separate form 114 shall be submitted for each quarter for which reimbursement is requested. A quarter, as used in this rule, shall be based on a calendar year as identified by the bureau on an annual basis.

(5) Upon proper showing of a claim for reimbursement, payment shall be made by the compensation supplement fund within a reasonable time following the receipt of the claim. Reimbursement shall normally be made within 3 months after the receipt of form 114, unless a dispute arises.

(6) For the purpose of these rules, "maximum benefit" means the statutory maximum for the year of injury upon which benefits are based; 2/3 of the employee's average weekly wage on the date of injury; the minimum compensation rate in effect on the date of injury; or a maximum compensation rate established by bureau order. Where an employee, or his or her dependents, is receiving maximum benefits as defined in this subrule, there will be a presumption that benefits are being paid pursuant to section 351 or 321 of the act.

(7) A compensation supplement shall not be paid for any of the following received by an eligible employee or dependent:

(a) Benefits received for any period of disability prior to January 1, 1982.

(b) Benefits received pursuant to an agreement to redeem the liability of the carrier.

(c) A lump sum payment for remarriage pursuant to section 335 of the act.

(d) Interest paid on benefits awarded by an administrative law judge.

(e) Partial compensation paid pursuant to section 361(1) of the act.

(8) In all cases involving a lump sum advance payment, supplemental benefits shall not be part of the advance payment, but shall continue to be paid weekly.

(9) In cases involving the carrier's right to subrogation in a third-party recovery, the amount of supplemental benefits shall be based on the weekly compensation rate that the employee would have been receiving on January 1, 1982.

(10) Where compensation supplement benefits have been paid and the employee is later found to be entitled to total and permanent disability benefits, the second injury fund shall reimburse the compensation supplement fund for the appropriate amount of benefits paid by the compensation supplement fund, and the second injury fund shall reimburse the carrier for the balance of benefits that would have otherwise been paid by the compensation supplement fund.

(11) Where the second injury fund is making payment of differential benefits directly to the injured employee and the amount of differential benefits increases, the second injury fund either shall reimburse the compensation supplement fund for any overpayment of monies that the compensation supplement fund has already reimbursed the carrier or shall reimburse the carrier directly in cases where the compensation supplement fund has not yet reimbursed the carrier.

(12) Where a case is on appeal over the issue of whether the injured employee is totally and permanently disabled and where the claimant is receiving 70% of the amount of differential benefits that would be owed if total and permanent disability is found to apply, the amount of supplement that is due may be reduced or offset by the 70% amount that is being paid.

(13) Where the compensation supplement fund has reimbursed a carrier for the supplemental benefits paid, and it is later found that the amount reimbursed included an overpayment, the compensation supplement fund shall be entitled to recoupment of such overpayment from the carrier. The carrier shall be entitled to recoup such overpayment from the employee.

(14) The provisions of section 357 of the act shall not be applied when the amount of supplemental benefit, as provided for in section 352 of the act, is calculated for eligible employees whose date of personal injury is before July 1, 1968.

(15) After the supplemental benefit has been computed in accordance with section 352(1) of the act, based on the weekly compensation rate which the employee or 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, the supplemental benefit shall not be reduced or increased by changes to that weekly compensation rate which occur after January 1, 1982, except as provided in section 352 and in this rule.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 48, Eff. Nov. 14, 1966; 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984; 1986 MR 9, Eff. Oct. 14, 1986.

R 408.32a Medical benefit fund; reimbursement application.

Rule 2a. (1) Reimbursement for payments made in accordance with the provisions of section 862(2) of the act shall be made from the medical benefit fund.

(2) To be reimbursed from the medical benefit fund, medical benefits shall have been required by the terms of an award and shall have been paid in accordance with the provisions of section 315 of the act and the rules published pursuant to that section. In providing benefits as required by section 862(2) of the act, the carrier shall require that the employee and the provider comply with the requirements of section 315 of the act and the rules promulgated pursuant thereto.

(3) Reimbursement shall apply only to cases for which an initial application for mediation or hearing is filed after March 31, 1986, pursuant to the provisions of section 847 of the act. Claims shall be made on forms provided by the bureau and sent to the bureau of workers' disability compensation.

(4) Applications for reimbursement from the medical benefit fund shall be made not less than 30 days after the benefit amount is reduced or rescinded by a final determination. An application for reimbursement shall be made not later than 1 year after a final determination is entered which reduces or rescinds benefits.

(5) Reimbursement from the medical benefit fund shall be consistent with benefits awarded in the magistrate's decision. Reimbursement will only be made for medical benefits which were provided between the bureau's mailing date of the magistrate's award and the date of the final determination of the appeal, or for a shorter period as specified in the award. A copy of the magistrate's order and all subsequent appellate decisions shall accompany each request for reimbursement.

(6) A copy of the medical bills, proof of payment, and a medical report with sufficient documentation to demonstrate that the medical services provided fall within the provision of the magistrate's decision shall accompany each request for reimbursement. Proof of payment shall include certification from the carrier that it has paid the medical bills or, if requested by the bureau, shall include a receipt from the provider which shows that payment has been made.

(7) A medical benefit fund reimbursement shall not be paid if the claim was redeemed before the final determination or if the carrier has not provided proper documentation.

(8) The medical benefit fund shall not pay interest on reimbursable amounts.

(9) If the medical benefit fund determines that all or part of the request for reimbursement is not proper, the medical benefit fund shall notify the carrier in writing. If the carrier disputes such a determination, it may file an application for mediation or hearing.

History: 1989 MR 10, Eff. Nov. 4, 1989.

R 408.33 Disputed claims; late payment penalty.

Rule 3. (1) A carrier and the self-insurers' security fund shall notify the bureau on form 107, on or before the fourteenth day after the employer has notice or knowledge of the alleged injury or death, in all cases where the right of the injured or dependent to compensation is disputed. If compensation thereafter is paid, report it on form 101. A copy of form 107, notice of dispute, shall be mailed or given to the injured employee.

(2) The following subdivisions shall govern the administration and enforcement of the penalty provisions provided under section 801 of the act:

(a) Pursuant to section 801(1) of the act, compensation shall be paid promptly and directly to the person entitled to such compensation. Weekly benefits become due and payable on the fourteenth day after the employer has notice or knowledge of the disability or death. On that date, all compensation which has accrued shall be paid. If benefits are not paid within 30 days of becoming due and payable, then the carrier

shall pay to the employee $50.00 per day for each day after 30 days that the benefits remain unpaid, not to exceed $1,500.00.

(b) When a case is in litigation and the defendant agrees to pay benefits on a voluntary basis, the administrative law judge shall specify the weekly compensation rate, the period of time for which accrued benefits have become due, and which medical bills shall be paid by the carrier as a result of the injury or disability. If the benefits agreed to are not paid within 30 days of the date the agreement is formalized by the administrative law judge, then the carrier shall pay to the employee $50.00 per day for each day after 30 days that the benefits remain unpaid, not to exceed $1,500.00.

(c) Medical bills become due and payable on the day the carrier receives the bill. If there is a dispute resulting in a delay in paying the medical bills, then the carrier shall advise the employee and doctor of the reasons for the delay in writing. If there is no dispute and the bill remains unpaid after 30 days, then the carrier shall pay to the employee $50.00 for each day after 30 days that the bill remains unpaid, not to exceed $1,500.00.

(d) The travel allowance for medical examination, treatment, or rehabilitation is provided in R 408.45. The employee shall be notified, in writing, of any dispute resulting in a delay in paying travel allowance payments. If the expenses are not paid within 30 days of the date of the carrier's notification, and the expenses are not disputed, the carrier shall then pay the employee $50.00 for each day after 30 days that the expenses remain unpaid, not to exceed $1,500.00.

(e) Pursuant to section 801(4) of the act, an employer may be liable for all or a portion of the penalty provided in section 801(2) of the act. If there is a dispute between an employer and insurance carrier as to who is liable for the payment of the penalty, the carrier shall be liable for paying such penalties but may be entitled to reimbursement from the employer.

(f) Any employee who may be entitled to penalty payments under section 801 of the act and who has not received such payments may apply by notifying the bureau in writing. A copy of the request shall be forwarded to the carrier. In all cases, the bureau of workers' disability compensation shall respond within a reasonable period of time and shall act, as it deems appropriate, to resolve any disputes involving the penalty provisions of section 801 of the act. If a dispute continues beyond a determination by the bureau or if the director believes there is a question of compliance with the act, then the dispute may be set for a hearing pursuant to R 408.35. Any party to a dispute may request a formal hearing before an administrative law judge.

(g) Any penalty amounts due an injured employee as a result of these penalty provisions shall be paid by the carrier in a separate check and shall not be considered a part of the basic benefits to which an employee is entitled for the purpose of loss or assessment.

(h) Benefits, allowance, or bills are presumed paid within 30 days if a check is mailed within 27 days of becoming due and payable pursuant to these rules.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

PART 2. HEARINGS

R 408.34 Petitions for hearing; small disputes.

Rule 4. (1) In cases of dispute coming under the jurisdiction of the bureau, any party may petition the bureau for relief. The complaining party shall file his petition

(form 104) in triplicate with the bureau at its Lansing office. The bureau shall thereupon serve the adverse party with a copy of the petition and, at the same time, notify the parties of the time and place of the initial hearing. The adverse party shall file his answer thereto with the bureau within 15 days after service and serve a copy of the answer on the complaining party.

(2) In any case where the compensable disability of a injured employee is undisputed and involves 1 or more disputed injury dates during the course of employment with 1 or more employers, or during the course of employment with 1 employer who is insured by 1 or more insurance carriers, the bureau may direct compensation benefits to be paid at the maximum rate as determined in section 351 of the act, with no dependents as provided in the schedule of benefits on the earliest or initial date of injury alleged. Payments are to be made by that self-insured employer or insurance carrier having the risk on that date. Payments shall continue through the mailing date of the decision of the administrative law judge and shall be adjusted in accordance with the decision unless an appeal is taken, in which case the provisions of section 862 of the act shall apply. The administrative law judge shall order reimbursement where appropriate.

(3) In apportionment cases which are tried involving a date of injury prior to January 1, 1981, the primary action is between the last employer and the injured employee. All other joined employers may appear, cross-examine witnesses, give evidence, and defend on the issue of liability. In setting trial dates for such cases, only the convenience of the plaintiff and the last employer, or their attorney, shall be considered.

(4) After attempting to resolve the dispute without bureau involvement, either party may request the director to schedule a conference or the director, on his or her own motion, may schedule a conference to resolve small disputes. Parties involved in such disputes shall be required to attend.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.35 Bureau compliance hearings.

Rule 5. (1) If the director believes that there has not been compliance with the act, he may on his own motion give notice to the parties and schedule a hearing for the purpose of determining such compliance. The notice shall contain a statement of the matter to be considered.

(2) When a matter that is alleged to be grounds for a hearing in accordance with this rule is brought to the attention of the bureau, the director or his authorized representative shall review such evidence of noncompliance with the act that is presented and, after making such inquiries or investigations as he deems appropriate, determine if a hearing in accordance with this rule is necessary. The parties involved shall be notified within 30 days of the receipt of the request as to the time and date of hearing or the reasons for denial.

(3) Hearings shall be scheduled within a reasonable time, subject to the availability and schedules of hearing personnel and the parties involved. A request for a hearing pursuant to this rule shall, as a minimum, contain sufficient information to warrant investigation or inquiry into a matter. This shall include, but is not limited to, all of the following:

(a) Facts and law involved in the alleged failure to comply, including names, dates, amounts, or other pertinent information.

(b) A description of the redress or other specific action requested with specific references to sections of the act allegedly not complied with.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 65, Eff. Nov. 30, 1970; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.36 Service of papers.

Rule 6. Service of all petitions, papers, notices, and orders shall be in accordance with the following:

(a) Service of all original petitions for hearing under R 408.34(1) shall be by the bureau on each named party to the case at the time service is made.

(b) Service of any subsequent petitions or motions filed on a pending contested case which may alter the parties to a case shall be by the bureau. The bureau shall serve all new parties but may serve only the attorney for each previously named party. Parties not represented by legal counsel shall be served directly. The bureau may request the necessary papers, notices, and postage to be provided by the moving party.

(c) Service of any subsequent petitions or motions filed on a pending contested case which do not alter the parties to a case may be made by the moving party upon the adverse party. The moving party shall only be required to serve the attorney for each previously named party. Any party not represented by legal counsel shall be served directly. The original petition or motion and proof of service shall be filed with the bureau.

(d) Notices mailed by the bureau after service of the original petition for hearing shall be served upon the attorney for each named party. Any party not represented by legal counsel shall be served directly. If the notice requests or requires the appearance or action of a specific party, that party shall also be served.

(e) Decisions or orders issued by the bureau shall be mailed to all parties or may be served personally on the date of hearing. All mailed decisions shall be served from the Lansing office or from such other bureau offices as designated by the director. Upon mailing or personal service, the original order and copies shall show a mailed date or acknowledgement of personal service on their face, from which date the appropriate appeal period shall run. The mailed or personal service date shall be considered the filed date for the order.

(f) Service of all other papers, unless otherwise directed by law, may be made by mail by the moving party upon the adverse party and proof of such mailing shall be prima facie evidence of such service. Proof of such service shall be filed with the bureau.

(g) Service of all papers under this rule upon employers whose liability under the act is not insured according to the records of the bureau, or who have not been granted the privilege of self-insurance, shall be by certified mail with a return receipt requested. Filing of the return receipt shall be prima facie proof of service.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.37 Subpoenas; subpoenas duces tecum; production of records; attendance at trial.

Rule 7. At the hearing in any case, the administrative law judge may call witnesses, issue subpoenas, including subpoenas duces tecum, and order the production of books, records, including hospital records, accounts, and papers which he deems necessary for the purpose of making a decision.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.38 Lump sum.

Rule 8. An application for advance payment of compensation shall be submitted in duplicate on form 108. If the carrier, second injury fund, self-insurers' security fund, or silicosis and dust disease fund refuses to approve the application, the matter shall be set for hearing to determine whether the application should be approved. An advance payment of compensation to a minor dependent shall not be approved or ordered until a legal guardian has been appointed.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.39 Redemptions.

Rule 9. An agreement to redeem the liability of the carrier, second injury fund, self-insurers' security fund, or silicosis and dust disease fund shall be submitted on form 18, agreement to redeem liability. The agreement shall be accompanied by a report, approved by the employee, from a licensed physician stating in detail the findings of a recent examination.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.40 Stoppage, reduction, or suspension of compensation.

Rule 10. (1) When compensation is being paid under an order or award of the administrative law judge or appeal board, compensation shall not be discontinued or reduced without a further order or award, except as provided in subrules (3) and (4) of this rule. A petition to stop compensation shall include both of the following:

(a) Proof of payment of compensation to within 15 days of the date of the filing of a petition to stop compensation.

(b) An affidavit which sets forth the fact that the employee has returned to gainful employment and which substantially describes the nature of the employment, or a signed statement from a physician stating that the employee is able to return to his former employment.

(2) A hearing shall be scheduled by the bureau within 30 days of receiving a petition to stop compensation, and an order shall be entered pursuant to R 408.36.

(3) If a letter that carries a compensation check is returned by the United States post office unopened, and if a diligent search has been made for the party to whom compensation payment is due under the terms of an order or award, the party liable for payment may suspend payment upon filing an affidavit of the foregoing. Such suspension shall not prejudice the reinstatement of suspended payments.

(4) Compensation benefits may be reduced in accordance with the act for changes in dependency and age 65 reductions, upon filing of the report required by R 408.32(d) and notification to the employee.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.40a Hearing district.

Rule 10a. (1) A hearing district is an area of the state served by 1 or more administrative law judges.

(2) The basis for assignment of administrative law judges, establishing disposition deadline dates, and implementing alternative hearings procedures shall be as required by the caseload.

History: 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979.

Editor's note: Former R 408.40a, pertaining to pre-trial procedure, was rescinded by 1954 ACS 65. For history of the rescinded rule, see 1970-71 AACS.

R 408.40b Appearances at conferences and hearings.

Rule 10b. (1) In a contested case, in a hearing district designated by the director, the parties or their attorneys shall appear personally before the bureau at a date and place scheduled by the director for such conferences as may be scheduled. Failure of the petitioner or his attorney to appear timely and participate in a conference may subject the petition for hearing to dismissal for lack of prosecution pursuant to section 205 of the act. Failure of defendant or its attorney to appear timely and participate in a conference may subject defendant to being charged immediately under R 408.35 for noncompliance with the act. Any party that fails to appear and participate in a scheduled conference shall be responsible for obtaining the dates for any future conferences or hearings scheduled.

(2) The bureau may require such information from the parties as may be necessary to monitor the progress of the case, assist in the voluntary exchange of information between parties, and facilitate the scheduling of cases.

History: 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.40c Trial completion times.

Rule 10c. The trial completion time shall be at the discretion of the administrative law judge, but it shall be not more than 6 weeks after the date the trial commenced. The administrative law judge may allow an extension beyond this time for good cause.

History: 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.40d Deadline procedures.

Rule 10d. After reasonable notice, the director may apply 1 of the following deadline procedures:

(a) A case may be given a disposition deadline date of 6 months after the original date set for pretrial. If the case is not disposed of on or before the disposition deadline, or the trial has not been started on or before the disposition deadline, or if the redemption hearing has not been concluded, the case may be dismissed for lack of progress the day after the disposition deadline. A case in which additional defendants are added shall be given a disposition deadline date 6 months after the date of the first pretrial after the additional defendants have been added.

(b) A case may be given a disposition deadline date of 9 months after the original date set for pretrial. If the case is not disposed of on or before the disposition deadline, or the trial has not been started on or before the disposition deadline, or if the redemption hearing has not been concluded, the case may be dismissed for lack of progress the day after the disposition deadline. A case in which additional defendants are added shall be given a disposition deadline date 6 months after the date of the first pretrial after the additional defendants have been added.

(c) The director may designate such other disposition deadline date as is reasonably required by the caseload, not to exceed 18 months after the original date set for pretrial. If the case is not disposed of on or before the designated disposition deadline or the trial has not been started on or before the disposition deadline, or if the redemption hearing has not been concluded, the case may be dismissed for lack of progress on the day after the disposition deadline. A case in which additional defendants are added shall be given a disposition deadline date 6 months after the date of the first pretrial after the additional defendants have been added.

History: 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.40e Deadline extensions.

Rule 10e. (1) Before expiration of a disposition deadline date, the administrative law judge to whom a case is assigned shall hear and determine requests for extensions of time only on filing of a written motion for extension, supported by an affidavit showing facts constituting good cause therefor. A motion shall be personally presented to the administrative law judge. Proof of service of notice of hearing on the opposite party shall accompany the motion unless consent of the opposite party is endorsed thereon.

(2) If the disposition deadline date falls on a day when the bureau is closed or on a pre-trial date, the deadline shall be the next nonpre-trial day the bureau is open.

(3) The disposition deadline date does not constitute a trial date. The trial date may be set by the administrative law judge, but the trial or redemption hearing shall begin on or before the deadline. The administrative law judge may change the disposition deadline date for a case to a date earlier than that provided pursuant to R 408.40d upon reasonable notice to the parties.

History: 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.40f Deposition of expert witnesses.

Rule 10f. After reasonable notice, the director may apply 1 of the following procedures in a hearing district:

(a) The testimony of all expert witnesses, including medical experts, to be offered at trial shall be by deposition by the parties seeking to offer such witnesses' testimony in advance of the trial date in accordance with the following:

(i) Plaintiff shall schedule and take such depositions not less than 20 days before the trial date.

(ii) Defendants shall schedule and take such depositions not less than 10 days before the trial date.

(iii) All depositions taken in advance of the trial date shall be in the possession of the administrative law judge on the trial date.

(iv) Either party may produce such witnesses in person on the trial date provided 10 days' notice is given to the administrative law judge and all parties. In such event, the opposing party may depose said witnesses within 15 days after the trial date. An adjournment shall not be granted if a medical witness is unable to appear personally on the trial date.

(b) The testimony of all expert witnesses, including medical experts, not presented at the scheduled trial date may be taken by deposition after the conclusion of the lay testimony in accordance with the following:

(i) The plaintiff shall take such depositions within 10 days after the trial date.

(ii) The defendants shall take such depositions within 20 days after the trial date.

(iii) When depositions are taken after the trial date, such depositions shall be completed and filed with the administrative law judge within 6 weeks of completion of lay testimony.

(iv) All depositions taken in advance of the trial date shall be filed with the administrative law judge on the trial date.

(c) The parties shall be prepared for the taking of all testimony on the trial date. The testimony of all expert witnesses, including medical experts, may be taken live or presented by deposition, or both, as agreed upon at a pre-trial conference. If it is agreed that depositions are to be taken in advance, the procedure in subdivision (a) shall apply for such depositions. If it is agreed that depositions are to be submitted at

the conclusion of lay testimony, the procedures in subdivision (b) shall apply for such depositions.

History: 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.40g Final disposition of cases.

Rule 10g. (1) All cases assigned to the administrative law judge shall be resolved by decision. Such decisions shall be written within 30 days of trial completion and shall be prepared for mailing with dispatch by the bureau.

(2) All redemption hearings shall be either approved or denied by the issuance of a redemption order.

(3) All lump sum advance hearings shall be either approved or denied by the issuance of a lump sum application order.

(4) In cases that are voluntarily paid, there shall be a decision issued outlining the agreement with respect to the voluntary payment.

(5) Cases that do not progress as required by these rules may be dismissed for lack of prosecution and the decision shall so state. Cases where the carrier, the second injury fund, silicosis, dust disease and logging industry compensation fund, or the self-insurers' security fund fails to comply with these rules may subject that party to a hearing in accordance with R 408.35 for noncompliance with the act.

(6) Any stipulated order presented for entry which may affect the amount or duration of benefits or which involves a potential liability on any state fund created under chapter 5 of the act shall be presented to the administrative law judge for entry only upon 10 days' notice of the date of hearing by a party to all parties affected or potentially affected. Proof of service upon such parties shall be filed prior to the hearing date. The administrative law judge may, at his or her discretion, require the presentment of proofs in support of the stipulation.

History: 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.40h Disqualification of an administrative law judge.

Rule 10h. (1) A party may raise the issue of an administrative law judge's disqualification by motion, or an administrative law judge may raise it himself.

(2) An administrative law judge is disqualified when he cannot impartially hear a case, including a proceeding in which the administrative law judge is involved in any of the following ways:

(a) Is interested as a party.

(b) Is personally biased or prejudiced for or against a party or attorney.

(c) Has been consulted or employed as counsel.

(d) Was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding 2 years.

(e) Is within the third degree (civil law) of consanguinity or affinity to a person acting as an attorney or within the sixth degree (civil law) to a party.

(f) Owns, or his spouse or minor child owns, a stock, bond, security, or other legal or equitable interest of a corporation which is a party. This does not apply to any of the following:

(i) Investments in securities traded on a securities exchange registered as a national securities exchange under the securities exchange act of 1934, 15 U.S.C. §78a et seq.

(ii) Shares in an investment company registered under the investment company act of 1940, 15 U.S.C. §80a-1 et seq.

(iii) Securities of a public utility holding company registered under the public utility holding company act of 1934, 15 U.S.C. §79 et seq.

(g) For any other reason is disqualified by law.

(3) To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify shall be filed within 10 days after a case has been assigned to an administrative law judge for trial or not less than 10 days before the trial date, whichever is earlier. Timeliness shall be a factor in deciding whether the motion should be granted.

(4) A party may file only 1 motion as to any 1 administrative law judge. The motion of disqualification shall be stated positively and shall set forth with particularity such facts as would be admissible as evidence to establish the grounds stated in the motion. An affidavit shall accompany a motion.

(5) The challenged administrative law judge shall decide the motion. If the challenged administrative law judge denies the motion, the challenging party may ask that the motion be referred for decision to another administrative law judge assigned by the director, except as stated in subrule (6) of this rule.

(6) If the motion is made after the trial has commenced, the challenged administrative law judge shall rule upon the motion. If the motion is denied, the trial shall be continued by the trial administrative law judge. The administrative law judge's ruling on the motion may be retained on the record and included as part of any appeal or subsequent determination of the entire action.

(7) When an administrative law judge is disqualified, the director shall assign another administrative law judge to hear the case.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

PART 3. INSURANCE

R 408.41 Notice of insurance.

Rule 11. Every notice of issuance of a workers' disability compensation insurance policy shall be reported to the bureau on form 400, insurer's notice of issuance of policy. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and each Michigan location covered. If the employer is a corporation doing business through a number of divisions, the notice shall state the names of all the divisions of the corporation. The bureau shall be notified when any insurance company receives a change of address of an insured.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.41a Termination of insurance.

Rule 11a. A notice of termination of the liability of an insurance company on a policy covering the risk of an employer under the act shall be reported to the bureau on form 401, notice of termination of liability. A copy of the notice shall be mailed to the employer. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and the names of all parties doing business under the assumed name. If the employer is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation. If a business changes names notice shall be given stating both the new

and former names. Notice of termination of a policy which has expired shall not be reported when the insurance carrier has accepted responsibility under a further or renewal policy, except for an assured's name change.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.41b Notice of election to be excluded as employees under act.

Rule 11b. A notice of election to be excluded under section 161(4) of the act shall be reported to the bureau on form MDL 337, notice of exclusion. The notice shall be notarized. If the employer is a partnership or corporation, the notice shall state the names of all the partners or corporate officers. If the employer is doing business under an assumed name, the notice shall state the assumed name and each Michigan location covered. The employer shall certify that the employees signing the exclusion comprise all of the employees of the employer. The employer shall further certify that all employees are eligible to be excluded under section 161(2) or (3) of the act. Each employee shall furnish his or her social security number and certify that the employee voluntarily signed the election to be excluded. The employer shall furnish its federal identification number. The employer shall furnish each employee with a copy of the completed exclusion form before filing the form with the bureau. The exclusion shall become effective upon receipt of the notice of exclusion by the bureau.

History: 1987 MR 10, Eff. Nov. 4, 1987.

R 408.41c Notice of election to terminate exclusion as employees under act.

Rule 11c. Every notice of election to terminate an exclusion from coverage previously filed under section 161(4) of the act shall be reported in duplicate to the bureau on form MDL 338, notice to terminate exclusion. The notice shall be notarized. The notice shall state the reason for terminating the exclusion. The notice to terminate exclusion shall certify that all employees and the employer signing the notice to terminate exclusion have received a copy of the completed notice to terminate exclusion before filing the notice with the bureau. The employer shall furnish its federal identification number. The termination of exclusion shall become effective not later than 20 days after the notice to terminate exclusion is received by the bureau. If a carrier is providing coverage at the time the notice to terminate exclusion is filed, or assumes coverage during the 20-day period, the notice to terminate exclusion shall become effective on the date the carrier assumes coverage.

History: 1987 MR 10, Eff. Nov. 4, 1987.

R 408.42 Application for specific risk insurance policy; specified construction site insurance policy.

Rule 12. An application in writing may be made to the bureau of workers' disability compensation for permission to obtain a specific risk insurance policy to cover all employers on a specified construction site where the cost of construction will be more than $100,000,000.00 and the contemplated completion period will be less than 10 years. The application shall give sufficient detail to specify the location of the proposed construction site, a breakdown of the total cost, and the contemplated completion period for the construction. After considering the application and all supportive data, the bureau shall either grant approval or advise the owner of the requirements to be met before approval is granted. The applicant shall be given 30 days from the receipt of the bureau's notice in which to comply with the requirements

of the bureau. The approval for a specific risk policy shall not become effective until the bureau has received proof that all requirements of the bureau for issuance of a specific risk policy to cover a specified construction site have been met. The applicant, at the discretion of the director, may be granted additional time to meet the requirements for approval of a specific risk policy. A request for an extension of time shall be made in writing within the 30-day compliance period. If the bureau does not receive proof that all requirements for the approval of a specific risk policy for a specified construction site have been met within the time prescribed, the application shall be considered withdrawn.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.42a Notice of insurance; specified construction site insurance policy.

Rule 12 a. When an insurance policy is issued to cover a specified construction site where the cost of the construction will be more than $100,000,000.00 and the contemplated completion period will be less than 10 years, the bureau shall be notified on a form 400a, insurer's notice of issuance of specific risk policy, of the date upon which the employer became subject to the specific insurance policy. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and the names of the parties doing business under the assumed name. If the employer is a corporation doing business through a number of divisions, the notice shall state the name of the employer and the divisions that are covered under the specific risk policy. The bureau shall be notified when the specific risk carrier receives a change of address for the employer.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.42b Termination of insurance; specified construction site insurance policy.

Rule 12b. A notice of termination for coverage of an employer under an insurance policy covering the specified construction where the cost of construction will be more than $100,000,000.00 and the contemplated completion period will be less than 10 years, shall be reported to the bureau on form 401a, notice of termination of liability for employer under specific risk policy. A copy of the notice shall be mailed to the employer. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and the names of all parties doing business under the assumed name. If the employer is a corporation doing business under a number of divisions, the notice shall state the name of the employer and the divisions of the corporation covered by the termination. If the business changes names, notice shall be given stating both the new and former names. Notice of termination of a policy which has expired shall not be reported when the specific risk carrier has accepted responsibility under a further or renewal policy, except for an assured's name change. The termination notice shall be filed with the bureau of workers' disability compensation at Lansing, Michigan, not less than 20 days before the effective date of any termination or cancellation of the policy with respect to that employer. The notice shall given the date of termination or cancellation of the contract or policy with respect to that employer. Any termination or cancellation of the specific risk policy shall not take effect, with respect to the employees of the

insured employer, until 20 days after notice of a proposed termination or cancellation is received by the bureau of workers' disability compensation.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43 Employer self-insurance; application.

Rule 13. (1) An employer who seeks exemption from insuring its risk under the act by obtaining the privilege of becoming an individual self-insurer shall apply to the bureau on form 402, application for self-insurance.

(2) The initial and renewal application shall contain answers to all questions as directed and shall be sworn to.

(3) Separate legal entities may be self-insured under 1 approval only if they are majority-owned subsidiaries or if the same person or group of persons owns a majority interest in such entities. "Majority interest" means a majority of voting stock or a majority of directors, if there is no voting stock.

(4) The application shall be accompanied by an indemnity agreement jointly and severally binding each entity for the liability created under the approval. The language and form of the agreement shall be as required and prescribed by the director.

(5) In all other respects, the rules applicable to individual self-insurers apply.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 65, Eff. Nov. 30, 1970; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43a Employer individual self-insurance; additional requirements.

Rule 13a. In addition to the application, compliance with all of the following subdivisions shall be required:

(a) The applicant shall forward to the bureau a current, certified financial statement. In the absence of a certified statement, the director may require a surety bond or other security acceptable to the bureau. Public employers may furnish a copy of current year budget or audit report in lieu of a certified financial statement.

(b) An employer shall be in business for a period of not less than 5 years and shall demonstrate sufficient financial strength and liquidity of the business to assure that all obligations under the act shall be promptly met. An employer in business less than 5 years may be considered if its liability is guaranteed by a parent corporation.

(c) Specific excess insurance, with policy limits and retention amounts acceptable to the bureau, shall be required in each self-insured program, unless the bureau, at its discretion, shall waive such requirement. Aggregate excess insurance may be required as a condition of approval of any self-insured program.

(d) If required, a surety bond or other security acceptable to the bureau shall be obtained as part of an individual self-insured program. A corporate surety shall not be eligible to write self-insurers' surety bonds in this state, unless authorized to transact such business in this state. A surety bond shall be issued on a form prescribed by the bureau and may be exchanged or replaced with another surety bond if 60 days' notice of termination of liability is given to the bureau and if the replacement is issued on a form prescribed by the bureau.

(e) All subsidiary companies shall have the parent company guarantee their liability for payment of benefits under the act, unless the bureau, at its discretion, waives such requirement. The form and substance of such guarantees shall be approved by the bureau.

(f) Each individual self-insurer shall satisfy the bureau that either it has, within its own organization, ample facilities and competent personnel to service its own program with respect to claims administration, or shall contract with a service company, approved by the bureau, to provide these services.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43b Employer individual self-insurance; compliance with bureau requirements; notice; additional time; certification; renewal application.

Rule 13b. (1) After considering the application and all supportive data, the bureau shall either grant approval or advise the employer of the requirements to be met before approval is granted. The employer shall be given 30 days from the receipt of the bureau's notice in which to comply with the requirements of the bureau. The self-insured authority shall not become effective until the bureau has received proof that all requirements of the bureau for self-insured approval have been met.

(2) The employer may, at the discretion of the director, be granted additional time to meet the requirements for the self-insured program. A request for an extension of time shall be made in writing by the employer within the 30-day compliance period. If the bureau does not receive proof that all requirements for the self-insured program have been met within the time prescribed, the application shall be considered withdrawn.

(3) Upon meeting the requirements of the bureau, an employer shall receive a formal certificate approving his status as a self-insured employer. The certificate shall expire 12 months from the effective date of approval. The employer shall submit a renewal application to the bureau 30 days before expiration of the self-insured privilege, together with a current financial statement that meets the requirements of the bureau. Upon receipt of a renewal application, the privilege shall be extended until denied by the bureau.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43c Evaluating employer: factors for approval or termination; notice of denial or termination.

Rule 13c. (1) The director may decline to approve an application for self-insurance or terminate the self-insurance privilege if the employer is unable to demonstrate that the employer will be able to meet all obligations under the act. The following factors shall be used in determining if a nonpublic employer can meet those obligations:

(a) Ratio of tangible net worth to annual self-insurance retention.
(b) Ratio of current assets to current liabilities.
(c) Ratio of debt to tangible net worth.
(d) Profit and loss history.
(e) Organizational structure and management background.
(f) Compensation loss history and proposed excess insurance coverage.
(g) Source of reliability of financial information.
(h) Ratio of net worth to annual compensation premium.
(i) Number of employees.
(j) Excess insurance.
(k) Guarantee by parent company.
(*l*) Surety bond or other security.

(m) Claims administration.

(2) Notice of a denial or termination of self-insured status shall be mailed to the employer. The notice shall include the grounds for denial or termination. The employer may request a hearing in accordance with R 408.43n.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43d Group self-insurers; application.

Rule 13d. Application for group coverage, as contemplated in section 611 of the act for the express purpose of establishing a group self-insurers' fund, to be administered under the direction of an elected board of trustees and to provide workers' compensation coverage for a group of private employers in the same industry or for public employers of the same type of unit, shall be made to the bureau. The application shall be made on a form prescribed by the bureau and shall contain answers to all questions. Answers shall be given under oath.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43e Group self-insurers; additional requirements.

Rule 13e. The application, as submitted by the initial board of trustees of the self-insurers' fund, shall be accompanied by all of the following:

(a) A copy of the bylaws of the proposed group self-insurers' fund.

(b) An individual application of each member of the group applying for coverage in the fund.

(c) A current financial statement of each member of a private self-insurers' group which, taken collectively, shows all of the following:

(i) The combined net assets of all members applying for coverage on the inception date of the fund, which shall not be less than $1,000,000.00.

(ii) Working capital in an amount that establishes the financial strength and liquidity of the business.

(d) Evidence of the financial ability of the group to meet its obligations under the act.

(e) A composite listing of the estimated standard premium to be developed by each member of the group individually and in total as a group.

(f) Proof of payment by each member of not less than 25% of the estimated annual standard premium into a designated depository.

(g) A confirmation of excess insurance by an authorized carrier in an amount acceptable to the bureau and which complies with the requirements set forth in R 408.43k.

(h) Designation of an approved service company with a copy of the signed service agreement.

(i) Designation of the initial board of trustees and administrator.

(j) Proof of a fidelity bond in a form and amount acceptable to the bureau.

(k) If required, a surety bond written by an authorized carrier in an amount acceptable to the bureau or other security acceptable to the bureau.

(*l*) In the case of a private employer's group, an indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the act. The indemnity agreement shall conform to an indemnity agreement as approved by the bureau.

(m) A breakdown of all rates per code classification that will be used by the group fund to develop collected premium, including an exhibit that shows administrative

expenses as a percentage of collected premium and loss fund developed under the aggregate excess contract as a percentage of collected premium.

(n) The trustees shall provide proof, satisfactory to the bureau, that the annual gross premiums of the fund will be not less than $250,000.00. The premium collected from each member shall be based upon applying the appropriate manual rates per payroll code classification as approved by the bureau. The premium collected from each participant in a group self-insurance program shall be adjusted by an experience modification formula approved by the bureau. The total premium collected from all participants shall be sufficient to fund the loss fund developed under the excess insurance contract and the total administrative expenses of the group fund. A written quotation from the excess insurance carrier shall confirm that the rate structure proposed by the group fund will be used by the excess carrier to develop the loss fund under the aggregate excess contract. The loss fund shall be 75% of collected premium or as approved by the bureau.

(o) Proof, satisfactory to the bureau, shall be provided to provide that the fund has, within its own organization, ample facilities and competent personnel to service its own program with respect to underwriting matters and industrial safety engineering or the fund shall contract with an approved service company to provide these services. An approved service company shall be used to handle claims adjusting and reporting of loss data to the bureau.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43f Group self-insurance; same industry; approval; review; certificate.

Rule 13f. (1) After considering the application and all supportive data, the bureau shall either grant approval or advise the trustees of the self-insurers' group of the requirements to be met before approval is granted. In determining whether private employers are in the same industry, the bureau may use the standard industrial classification codes assigned to each employer applying for membership in the group. The bureau shall also consider all information available on the nature of the business of each private employer and may require the group fund to present additional evidence, either oral or written, to verify that all employers applying for membership in the group fund meet the statutory requirement of "same industry." The group shall be given 30 days from the receipt of the bureau's notice in which to comply with the requirements of the bureau. The self-insured authority shall not become effective until the bureau has received proof that all requirements of the bureau for self-insured approval have been met.

(2) The group may, at the discretion of the director, be granted additional time to meet the requirements for the self-insured program. A request for an extension of time shall be made in writing by the group within the 30-day compliance period. If the bureau does not receive proof that all requirements for the self-insured program have been met within the time prescribed, the application shall be considered withdrawn.

(3) On new and renewal applications, the bureau may require evidence that the proposed rate for each payroll classification is adequate to cover expected losses for that payroll classification and evidence that the experience rating formula will be actuarially sound. The bureau shall take into account past and anticipated losses, proper reserves for reported and unreported losses, past surplus and expected increase in benefit levels, and administrative costs before granting approval for a group self-insurance program. The bureau may contract with a consulting actuary at

the expense of the group fund to determine if the proposed group self-insurance program will be actuarially sound.

(4) Upon meeting the requirements of the bureau, the group shall receive a formal certificate approving its status as a self-insurer. The certificate shall expire 12 months after the effective date of approval. The group shall submit a renewal application to the bureau 30 days before expiration of the self-insured privilege. Upon receipt of a renewal application, the privilege shall be extended until denied by the director.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43g Group self-insurers' admission of new members; termination of individual members; notice.

Rule 13g. (1) After the inception date of the fund, prospective new members of the fund shall submit an application for membership to the board of trustees, or its administrator, on a form approved by the bureau. The trustees or administrator may approve the application for membership pursuant to the bylaws of the group self-insurers' fund. The application for membership shall then be filed with the bureau in Lansing. Membership shall take effect after approval by the bureau.

(2) After a group fund has completed 1 year of operation, application may be made to the director to authorize the group fund to accept new members without prior bureau approval. The application shall be submitted on forms provided by the bureau and shall include a list of all businesses that will be accepted in the "same industry" within the group. The application shall define the financial standards that will be applied by the group in accepting new members.

(3) If approved, the group shall submit confirmation of membership to the bureau on form 650, group self-insurance fund notice of acceptance of membership. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and each Michigan location covered. If the employer is a corporation doing business through a number of divisions, the notice shall state the names of all the divisions of the corporation. The bureau shall be notified when any group fund receives a change of address of a member.

(4) Individual members may elect to terminate their participation in a group self-insurers' program or be subject to cancellation by the group fund pursuant to the bylaws of the group fund. However, such termination or cancellation shall take place not less than 20 days after the bureau has received notice of the termination or cancellation from the group fund reported to the bureau on form 651, group self-insurance fund notice of termination of membership. If the employer is a partnership, the notice shall state the names and addresses of all the partners. If the employer is doing business under an assumed name, the notice shall state the assumed name and the names of all parties doing business under the assumed name. If the employer is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation. If a business changes names, notice shall be given stating both the new and former names.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43h Group self-insurance; reports and filings.

Rule 13h. (1) All reports and filings required of carriers in this act shall be made by the group fund. In addition to the above, the group fund shall report and make filings as prescribed below:

(a) The financial position of the group fund shall be reported on a quarterly basis for each open fund year. The reports are due within 30 days after the quarter ends. The format for this report shall be prescribed by the bureau. A fund year shall be considered open as long as there are unsettled claims. The annual financial statements shall be audited by a certified public accountant and filed with the bureau within 120 days after the fund year ends.

(b) Summary loss data shall be filed with the bureau on each fund year within 30 days after the evaluation date, in a manner as prescribed by the bureau. Losses shall be evaluated on a monthly basis.

(c) A copy of the minutes of all trustee meetings shall be filed with the bureau within 30 days after the meeting.

(d) Reports or filings on payroll audits, investments, experience rating, or any other information concerning the group fund shall be provided upon specific request of the bureau.

(e) All financial reports and minutes submitted shall be signed by an authorized representative of the fund.

(2) A fund that fails or refuses to file the above reports within the time limits prescribed may be notified that its authority to be self-insured shall be terminated. If a fund's authority is terminated, the fund shall be notified of the grounds for termination. The fund may request a hearing in accordance with R 408.43n.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43i Group self-insurers' fund; board of trustees' powers and duties; trustee responsibilities.

Rule 13i. (1) To ensure the financial stability of the operations of each group self-insurers' fund, the board of trustees of each fund shall be responsible for all operations of the fund. Trustees shall be a group of members elected by a self-insurers' group for stated terms of office to direct the administration of a self-insurers' fund. The duties of the trustees include the responsibility of approving applications for new members of the fund. The majority of the trustees shall be members of the self-insurers' group, but a trustee shall not be an owner, officer, or employee of the service agent. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate a group fund administrator to administer the financial affairs of the fund. The trustees shall furnish a fidelity bond in an amount sufficient to assure the integrity of the funds handled. The bond shall cover the trustees, group fund's administrator, employees of the fund, and the employees of the service company who handle the fund's monies and/or securities, or both. Evidence of such bond shall be filed with the bureau. The bond is 1 of the conditions required for approval of the establishment and continued operation of a group self-insurers' fund. The group fund's administrator shall not be an owner, officer, or employee of the service company.

(b) Restrict disbursements to payment and expenses of handling claims, administrative, and other expenses necessary for operating the fund. The board of trustees shall also establish necessary bank accounts and accounting procedures for control and accurate financial reporting. Established accounting procedures shall provide accurate financial information for each open year individually with respect to revenue and expense until the year is closed out.

(c) Audit the accounts and records of the fund annually or at any time required by the bureau. Audits shall be made by certified public accountants or by authorized representatives of the bureau. The bureau reserves the right to prescribe the type of audits to be made and the uniform accounting system to be used by self-insurers' funds and service companies to enable the bureau to determine the solvency of the group self-insurers' fund. Copies of audits prepared by other than bureau personnel shall be filed with the bureau in Lansing within 120 days after the close of the fund year.

(d) The trustees shall not extend credit to individual members for payment of premium.

(e) The board of trustees or its fiscal agent or administrator shall not utilize any of the monies collected as premiums for any purpose unrelated to workers' compensation. Further, it shall not borrow any monies from the fund or in the name of the fund without advising the bureau of the nature and purpose of the loan and obtaining bureau approval. The board of trustees may, at its discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to U.S. government bonds, U.S. treasury notes, U.S. government agency issues, investment share accounts in any savings and loan association and credit unions whose deposits are insured by a federal agency, and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations, credit unions, and commercial banks shall be limited to institutions in this state and shall not exceed the federally insured amount in any 1 account, except that the federally insured amount in any 1 account in a commercial bank may be exceeded if the amount involved in such an account does not exceed either of the following factors:

(i) Five percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in the state in the banking division annual report of the financial institutions bureau of the department of commerce.

(ii) Five hundred thousand dollars per institution.

(f) The trustees of any group fund may apply a penalty rate in excess of the normal premium to any risk with unfavorable loss experience, if the member and the bureau are notified in writing before the effective date of the change in rates.

(2) The board of trustees may delegate specific functions to the administrator of the group self-insurers' fund. The functions that may be delegated include, but are not limited to, contracting with a service agent; determining the premium charged; investing surplus monies subject to the restrictions set forth in subrule (1)(e) of this rule; and accepting applications for membership. All delegated functions shall be specifically defined in the written minutes of the trustees' meetings.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43j Group self-insurers' funds; advance premium discounts; surplus monies; surplus investment income and premiums; unfunded claims.

Rule 13j. (1) The trustees of any group self-insurers' fund shall not authorize advance premium discounts to any member in excess of those authorized by the excess insurance underwriter. The excess carrier shall agree to base the loss fund on the premium collected after discount.

(2) Any surplus monies for a fund year in excess of the amount necessary to fulfill all obligations under the act for that fund year, including a provision for claims incurred but not reported, may be declared to be refundable by the trustees at any

time, and the amount of such declaration shall be a fixed liability of the fund at the time of the declaration. The date of payment shall be as agreed to by the trustees and the bureau, except that monies not needed to satisfy the loss fund requirements, as established by the aggregate excess contract, may be refunded immediately after the end of the fund year with the approval of the bureau. The intent of this rule is to assure that sufficient monies are retained so that total assets are greater than total liabilities for each fund year.

(3) In the event premiums collected and investment income associated with any fund year are insufficient to completely fund all reported claims and expenses for that year, unfunded amounts, by fund year, shall be reported immediately to the bureau with the proposed plan to achieve 100% funding. The plan to achieve 100% funding for all claims is subject to bureau approval. A plan may include, but is not limited to, all of the following:

(a) Use of premiums collected in other fund years, but not necessary for payment of claims or expenses in the year collected.

(b) Use of investment earnings associated with other fund years, but not necessary for payment of claims or expenses in the year in which associated.

(c) Assessment of members by order of the bureau.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43k Aggregate excess insurance; individual self-insurance; group self-insurance.

Rule 13k. A contract or policy of aggregate excess insurance shall not be recognized by the bureau in considering the ability of an applicant to fulfill its financial obligations under the act, unless such contract or policy is in compliance with all of the following:

(a) Is issued by a casualty insurance company authorized, as defined in section 108 of Act No. 218 of the Public Acts of 1956, as amended, being §500.108 of the Michigan Compiled Laws, to transact such business in this state or is issued by the accident fund. Acceptance of a policy of excess insurance from the accident fund is subject to approval of policy forms by the insurance commissioner.

(b) Is not cancellable or nonrenewable unless written notice, sent by registered or certified mail, is given to the other party to the policy and to the bureau not less than 60 days before termination by the party desiring to cancel or not renew the policy.

(c) States that any type of commutation clause shall provide that any commutation effected thereunder shall not relieve the casualty insurance company or the accident fund of further liability with respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by or through a competent authority. If the casualty insurance company or the accident fund proposes to settle its liability for future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to the employer, to be fixed as provided in the commutation clause of the policy, then not less than 30 days' prior notice of such commutation shall be given to the bureau by the casualty insurance company, the accident fund, or the company's or fund's agent by registered or certified mail. If any commutation is effected, then the bureau shall have the right to direct that such sum be placed in trust for the benefit of the injured employee or employees entitled to such future payments of compensation.

(d) States that if a private self-insured employer becomes insolvent and is unable to make compensation payments and the self-insurers' security fund may have

responsibility for making payment pursuant to section 537 of the act, the excess insurance carrier shall make, directly to the claimants or their authorized representatives, such payments as would have been made by the excess insurance carrier to the employer after it has been determined that the retention level has been reached on the excess insurance contract.

(e) States that all of the following payments shall be applied toward reaching the retention level in the aggregate excess contract:

(i) Payments made by the employer.

(ii) Payments due and owing to claimants of the employer.

(iii) Payments made on behalf of the employer by a surety under a bond or through the use of other security required by the director.

(iv) Payments made by the self-insurers' security fund.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984; 1989 MR 10, Eff. Nov. 4, 1989.

R 408.43m Servicing self-insured employers or groups; application; requirements; noncompliance.

Rule 13m. (1) An individual, copartnership, or corporation that desires to engage in the business of providing 1 or more services for an approved workers' disability compensation program for an individual self-insurer or a self-insurers' group shall apply to the bureau before entering into a contract with the individual or group self-insurer and shall satisfy the bureau that it has adequate facilities and competent staff within the state to service a self-insurance program in such a manner as to fulfill the employers' obligations under the act and the rules of the bureau. Service may include claims adjusting, industrial safety engineering, underwriting, and the capacity to provide required reporting. Any individual, copartnership, or corporation that provides claims adjusting or industrial safety engineering to an approved self-insured employer, where the self-insured employer has designated within its own organization an individual to be responsible to the bureau for its claims program or safety program, or both, shall not be considered a service company for purposes of this rule.

(2) Application to the bureau for approval to act as a servicing company for self-insured employers or group funds shall be made on a form prescribed by the bureau. The application shall contain answers to all questions. The answers shall be given under oath and shall be approved by the bureau before the service company enters into a contract with an approved self-insurer. Applications for approval to act as a service company for self-insurers shall be granted for a period of 1 year and shall be subject to renewal annually.

(3) If the service company seeks approval to service claims for self-insurers, then proof shall be required that it has within its organization, or has contracted on a full-time basis with, at least 1 person who has the knowledge and experience necessary to handle claims involving the act. A resume covering each person's background shall be attached to the application of the service company.

(4) If the service company seeks approval to provide underwriting service to self-insurers, then proof shall be required that it has within its organization or has contracted on a full-time basis with, at least 1 person who has the knowledge and experience necessary to provide underwriting services for workers' compensation excess insurance coverage. A resume covering each person's background shall be attached to the application of the service company.

(5) If the service company seeks approval to furnish safety engineering services to self-insurers, then proof shall be required that it has within its organization, or has contracted on a full-time basis with, at least 1 person who has the knowledge and background necessary to adequately provide industrial safety and health engineering services.

(6) The service company shall maintain adequate staff in the state, and that staff shall be authorized to act for the service company on all matters covered by the act and the rules of the bureau.

(7) The service company shall attach to the application a copy of its standard service agreement entered into with self-insured employers or group funds. The service company shall certify in writing the service agreement complies with the act and the Michigan administrative code. The service company shall further certify that the agreement provides for the handling of all claims with dates of injury or disease within the contract until their conclusion unless the service company is relieved of that responsibility in writing by the bureau. The service company shall further certify that if it deviates from the standard service agreement or contract, it will advise and request approval from the bureau before entering into such an agreement.

(8) Failure to comply with the provisions of the act shall be considered good cause for withdrawal of the approval to act as a service company for self-insurers. The bureau shall give 30 days' notice of such withdrawal. The notice shall be served by certified or registered mail upon all interested parties.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

R 408.43n Appeal to director; self-insurance status.

Rule 13n. (1) Upon notice of denial or termination of self-insurance status under section 611 of the act, a party may request a hearing before the director within 15 days of the mailing of the notice by the bureau. Upon notice of denial for a request by a group fund on deviation of manual rates, denials on individual membership applications or security requirements, or denials on requests for a refund of surplus, the group fund may request a hearing before the director within 15 days of the mailing of the notice by the bureau.

(2) The director shall, by registered mail, notify the appealing party of the date, time, place, and reasons for holding the hearing. Such notice shall be mailed not less than 15 days before the hearing.

(3) When an appearance is made at a hearing, it shall be made in person by a duly authorized representative or by counsel.

(4) A person who has been served with a notice of hearing may, at his option, file a written statement before the date set for hearing or may appear at the hearing and present an oral statement and other evidence on the issues contained in the notice of hearing. When written briefs or arguments are presented, a copy shall be served upon the director and other interested parties not less than 5 days before the date set for the hearing.

(5) If the person or persons who have requested a hearing fail to appear at a noticed hearing, the director may consider the request for a hearing as having been abandoned or, in his discretion, he may proceed with a hearing of the case brought before him and may, on the evidence presented, make his decision.

(6) A hearing shall not be adjourned or continued, except upon an order of the director.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43o Appeal from director's order.

Rule 13o. (1) A final order or decision of the director following a hearing under chapter 6 of the act shall be subject to review, after hearing had before the director or an authorized representative, by the worker's compensation appellate commission. The decision of the bureau shall stand on all matters, excluding termination of self-insured status, pending final outcome of the appeal process.

(2) A claim for review of such order or decision shall be filed within 15 days of the mailing date of the director's order or decision. If a claim for review is not filed within 15 days, the aggrieved party shall be deemed 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 director 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.

(3) 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 director'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 of 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 of the date of the oral argument or, if no oral argument, within 30 days of the date that the director's brief is required to be filed.

(4) The appellate commission may order the taking of additional testimony pursuant to R 408.50. The commencement of proceedings under this subrule shall not operate as a stay of the director's order or decision unless ordered by the appellate commission. A 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.

(5) An appeal from a final order entered by the appellate commission may be made pursuant to R 408.52.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1988 MR 10, Eff. Oct. 27, 1988.

R 408.43p Enforcement by director of order of denial or termination of self-insured status; circuit court relief.

Rule 13p. If the director has probable cause to believe that an order denying or terminating self-insured status is being violated, or that an employer who is approved or has been previously approved as a self-insured is liquidating or may be about to liquidate and distribute its assets to its stockholders or to its members without providing for its obligation as a self-insured employer to pay or arrange for the payment of compensation and benefits as directed by chapter 6 of the act, the director may, through the attorney general of the state, cause a petition to be filed in the circuit court of Ingham County or the county in which such person does business to enjoin and restrain such person from engaging in such method, act, or practice.

History: 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.43q Irrevocable letter of credit; acceptance; requirements; payment of surety bond or letter of credit.

Rule 13q. (1) An irrevocable letter of credit may be accepted by the bureau as other security for a self-insurance program as provided by section 611(1)(a) of the act. The bureau will retain discretion in each particular case to determine if the letter of credit is acceptable and if its language and format are satisfactory.

(2) Irrevocable letters of credit shall be issued by or confirmed by a state-chartered Michigan bank or a federally chartered bank with a Michigan branch office. Funds from either type of bank shall be immediately payable on demand. If confirmed, the cover guarantee letter submitted by the confirming bank shall state that the confirming bank is primarily obligated on the letter of credit.

(3) An employer who furnishes an irrevocable letter of credit as other security for a self-insurance program shall furnish a memorandum of understanding with the letter of credit, on a form provided by the bureau, which affirms the employer's acceptance of all of the following requirements:

(a) A letter of credit is furnished to the bureau instead of a surety bond as one of the requirements for approval of a self-insurance program.

(b) The employer understands that the letter of credit shall be deemed automatically extended without amendment for 1 year from the expiry date or any future expiry date unless, 60 days before any expiry date, the bureau is notified, by registered mail, that the letter of credit shall not be renewed for any additional period.

(c) A policy of insurance or a surety bond of equal amount may be furnished at a later date as a substitute for the letter of credit if the policy of insurance or surety bond covers all claims that would have been covered by the letter of credit. All policies of insurance and surety bonds furnished as substitutes for letters of credit shall be subject to prior bureau approval.

(d) The employer shall affirm that the irrevocable letter of credit in the amount requested by the bureau is being offered with the understanding that if the bureau receives notice that the letter of credit will not be renewed, the bureau, in its discretion, may, after 30 days from the date of receipt of the notice, call the proceeds of the letter of credit and deposit those proceeds in the state treasury. And further, if, in the judgment of the bureau, the letter of credit is needed to cover any worker's disability compensation claims, the proceeds of the letter of credit shall be called immediately and deposited in the state treasury for such purpose.

(e) If legal proceedings are initiated by any party with respect to payment of any letter of credit, it is agreed that such proceedings shall be subject to Michigan courts and law.

(4) An effective date for a self-insurance program will not be granted until such time as a completed letter of credit and the memorandum of understanding have been reviewed and accepted by the bureau.

(5) If it is necessary for the director, pursuant to statute and bureau rules, to call the bond or other security, a trust shall be established with those funds, unless the provider of the bond or other security elects to handle the claims directly and the bureau approves. If a trust is established, the funds shall be deposited in the state treasury and the state treasurer, as provided by section 551(7) of the act shall be the custodian of the trust. The trustees of the trust shall be the trustees of the funds denominated in chapter 5 of the act and also those who are appointed as trustees under the provisions of section 511 of the act. The service company of the self-insured

employer, if any, shall continue to perform in accordance with the terms of that employer's contract with the service company.

History: 1988 MR 10, Eff. Oct. 27, 1988.

R 408.43r Public employer group funds; waiver of requirement for excess insurance.

Rule 13r. A public employer group fund may request a waiver of the requirement for excess insurance. The director shall waive the requirement for excess insurance for a public employer group fund if the fund demonstrates that it has sufficient financial strength and liquidity to assure that all obligations under the act shall be promptly met without the protection of an excess insurance policy.

History: 1987 MR 10, Eff. Nov. 4, 1987.

PART 4. MISCELLANEOUS

R 408.44 Attorney fees.

Rule 14. (1) The limitation in this rule as to fees applies to plaintiff's attorneys, including combined charges of attorneys who combine their efforts toward the enforcement or collection of any compensation claim.

(2) In a case tried to completion with proofs closed or compensation voluntarily paid, an attorney, before computing the fee, shall deduct from the accrued compensation the reasonable expenses incurred on plaintiff's behalf. The fee that the administrative law judge may approve shall not be more than 30% of the balance.

(3) In a case involving a redemption of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement. The fee that the administrative law judge may approve shall be as follows:

(a) Of the first $25,000.00, a fee of not more than 15%.

(b) Of any amount more than $25,000.00, a fee of not more than 10%.

(4) In a case tried to completion with proofs closed but before a final order, after which there is a redemption of liability, the attorney, before computing the fee, shall deduct the reasonable expenses incurred on plaintiff's behalf from the total settlement. The total settlement in such redemptions shall be deemed to include the gross amounts of any partial payments made pursuant to section 862 of the act, if such redemption specifically includes a waiver of the right of reimbursement of such amounts from either the plaintiff or the second injury fund. The fee that the administrative law judge may approve shall not be more than 20% of the balance.

(5) Reasonable expenses, as used in this rule, include all of the following:

(a) Medical examination fee and witness fee.

(b) Any other medical witness fee, including cost of subpoena.

(c) Cost of court reporter service.

(d) Appeal costs.

(6) Subrules (2) to (4) of this rule apply to a case with an injury date on or after September 1, 1965. The rule as to attorney fees in effect before September 1, 1965, applies to a case with an injury date before September 1, 1965.

(7) In a case dismissed for lack of progress or prosecution or in which the petition for hearing is withdrawn for reasons other than voluntary payment or other meritorious reasons and further action is taken by the same attorney or law firm, the fee that the administrative law judge may approve in cases specified in subrule (2) of

this rule shall be not more than 25% of the balance; in subrule (3) of this rule, of the first $25,000.00, not more than 12½%, and of any amount more than $25,000.00, 10%; in subrule (4) of this rule, the fee shall be not more than 15% of the balance.

(8) A group disability or hospitalization insurance company that enforces an assignment given to it as provided in the act shall pay a part of the fee of the attorney who secured the compensation recovery in the same proportion that the group insurance company payments bear to the total compensation recovery upon which the attorney's fee is based.

(9) In the computation of attorney fees in a case decided by the workers' compensation appeal board, the fee shall be assessed on not more than 52 weeks of the period the matter was pending before the board. All other weekly benefits due and owing for the period of appeal shall be fully paid to the plaintiff. The limitation of fee applies only to weekly compensation.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 65, Eff. Nov. 30, 1970; 1954 ACS 73, Eff. Dec. 2, 1972; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.45 Medical examination and rehabilitation.

Rule 15. (1) A carrier and the self-insurers' security fund shall report to the bureau on form 110, report on rehabilitation, 3 months after the date of injury and after each subsequent 4 months and shall show what evaluation and what provision has been made for rehabilitation on all cases for which a final form 102, notice of stopping of compensation payments, has not been filed. All reports shall be accompanied by a current medical report. In case of a specific loss where the injured employee has returned to work without rehabilitation before expiration of the specific loss period, a notation of the return to work shall be made on form 110, report on rehabilitation, and thereafter further reports shall not be necessary. Where rehabilitation has been undertaken in the form of favored work or on-the-job training by the employer, the rehabilitation shall be so identified in all reports.

(2) When an employee consents or is ordered by the bureau to submit to a medical examination or rehabilitation or undergoes any medical treatment related to the disability, the carrier shall pay the traveling expenses incidental to such examination, medical treatment, or rehabilitation. The employee shall notify the carrier, in writing, of the mileage involved and other expenses.

When an employee is examined at the request of the carrier under the provisions of section 385 of the act, the expenses incidental to such examination shall be paid in advance.

The traveling expenses shall be those authorized in the state standardized travel regulations, except that when special transportation is medically required, payments shall be made at actual cost. The allowance for other expenses, if any, shall be those allowed by this state.

The provisions of this rule do not apply to the first examination requested by the employer or insurer when all of the following conditions exist:

(a) An application for hearing is filed upon which no payment of compensation or medical expense has been made for 1 year before the date of filing.

(b) The employee's home at the time of filing the application for hearing is outside of this state.

(c) The citation to appear for examination is at a time reasonably close to the date of hearing so as to obviate the necessity of an additional trip on the part of the employee to attend the hearing.

(3) Pursuant to section 319 of the act, the director may, on his own motion or upon receipt of an application from the employee or employer, refer the employee for an evaluation of the need for a rehabilitation program and the kind of rehabilitation program necessary to return the employee to work. If a hearing is requested, it shall be provided pursuant to all of the following:

(a) When a request for rehabilitation service is made by the employee or employer, the director or his authorized representative may schedule a hearing.

(b) If the director, on his own motion, orders a rehabilitation program, he shall notify both parties and, if requested by either party within 15 days, shall schedule a hearing.

(c) Hearings shall be scheduled within a reasonable time, subject to the availability of the director or his representative and the parties involved. A request for a hearing shall, at a minimum, contain all of the following:

(i) A brief statement of the question concerning rehabilitation.

(ii) If requested by the employer, a citation of the specific instances of failure to cooperate in the rehabilitation program.

(iii) If requested by the employee, the type of program requested and the reason for it.

(d) Unless a request for review by an administrative law judge is filed by a party within 15 days, the order of the director or his authorized representative shall stand as the order of the bureau. For sufficient cause shown, the administrative law judge may grant additional time in which to claim such review.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 48, Eff. Nov. 14, 1966; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1979 ACS 3, Eff. Sept. 3, 1980.

R 408.46 Application for silicosis, dust disease and logging industry compensation fund and second injury fund benefits.

Rule 16. (1) An application for reimbursement of benefits from the silicosis, dust disease and logging industry compensation fund and second injury fund shall be made on form 112 and sent to the principal office of the funds administrator.

(2) A carrier believing that reimbursement may be due from the second injury fund under section 372 of the act shall immediately notify the fund of such potential claim. Thereafter the fund may conduct an investigation of the personal injury and shall have reasonable time to schedule medical examinations. If a petition is filed with the bureau, the carrier shall add the second injury fund and the fund shall have the same rights as any other party defendant. The administrative law judge shall enter an order determining the liability of the carrier and the fund.

(3) If an employee petitions for a hearing under section 356(1) of the act, the second injury fund shall be deemed a party in interest and shall be named on the petition filed by the employee or added by the carrier when it has knowledge that a claim is being filed under section 356(1) of the act. The fund shall have the same rights as a carrier in the proceedings.

(4) Reimbursement shall be made on a quarterly basis for the second injury fund's portion of the benefits due the employee.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 65, Eff. Nov. 30, 1970; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1984 MR 7, Eff. July 19, 1984.

R 408.47 Extensions of time granted by the director.

Rule 17. The director or his authorized representative may grant extensions of time in which to comply with any rule as the director deems reasonable.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 57, Eff. Feb. 14, 1969; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.48 Compensation payments; calculation; payment.

Rule 18. (1) Pursuant to section 313(1) of the act, the calculation of federal income tax, federal insurance contribution act tax, and state income tax shall be based on the federal income tax schedule, federal insurance contribution act tax, and state income tax rate in effect on the applicable July 1 for which the after-tax weekly wage is determined. The state law in effect on the applicable July 1 shall be conclusive in the determination of the after-tax weekly wage for that calendar year.

(2) Weekly payments shall be made payable and mailed directly to the injured employee or his or her dependent. When the claimant is represented by counsel, the accrued compensation shall be made payable to the person or persons entitled thereto and mailed to the attorney representing such person or persons.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979; 1979 AC; 1985 MR 7, Eff. July 23, 1985.

PART 5. REVIEW AND APPEAL

R 408.49 Claim for review.

Rule 19. (1) If a claim for review from an award of the administrative law judge is filed, the party making such claim for review shall, at his expense, file with the appeal board a complete transcript of all the testimony taken and the proceedings had before the administrative law judge within 30 days from the date the claim for review is filed. In all cases where the employer files a claim for review, a copy of the testimony, depositions, and other documents necessary for such appeal shall be furnished by the employer to the employee or his attorney.

(2) The appealing party's brief shall be filed within 15 days after the filing of the transcript and a copy served upon the opposite party. The opposite party's reply brief shall be filed within 10 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 board within 30 days of the filing of the transcript of proceedings, and shall contain good cause why such oral argument should be granted. The board shall act on motions within 30 days of the filing of said motions, and notify the parties in interest of its decision. Otherwise, and subsequent to the expiration of said 30 days, the appeal board shall hear the case upon the record and such briefs as have been filed and make a decision upon the appeal.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.50 Additional testimony.

Rule 20. The appeal board may order the taking of additional testimony, either on its own motion or on the application of 1 or both of the parties, when it considers that such action shall be taken in the furtherance of justice. If the opposite party desires to contest such application, an answer shall be filed within 10 days. The appeal board shall consider the application and answer, if any, without oral argument of the parties and enter an order either granting or denying the application. If the application is granted, the opposite party may present rebuttal testimony.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.51 Extensions of time granted by appeal board.

Rule 21. The appeal board may grant extensions of time in which to comply with any rule when it shall deem such extensions of time reasonable.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 98, Eff. Jan. 3, 1979.

R 408.52 Certiorari.

Rule 22. When any party makes an application for leave to appeal for the review by the court of appeals of a final order of the appeal board, the appeal board shall make the certification in accordance with section 232 of Act No. 236 of the Public Acts of 1961, being §600.232 of the Michigan Compiled Laws, and General Court Rule 806.6.

History: 1954 ACS 21, Eff. Feb. 13, 1960; 1954 ACS 45, Eff. Feb. 14, 1966; 1954 ACS 98, Eff. Jan. 3, 1979.

PART 6. DEFINITIONS

R 408.59 "Act" defined.

Rule 29. (1) As used in these rules:

(a) "Act" means Act No. 317 of the Public Acts of 1969, as amended, being §418.101 et seq. of the Michigan Compiled Laws.

(b) Unless the context indicates otherwise, the terms "bureau" and "director" shall have equivalent meaning.

(2) Terms defined in the act have the same meanings when used in these rules.

History: 1979 ACS 3, Eff. Sept. 3, 1980; 1984 MR 7, Eff. July 19, 1984.

WORKERS' DISABILITY COMPENSATION TABLES

TABLES OF COMPENSATION BENEFITS SINCE 1973

I. TOTAL DISABILITY

Prior to Jan. 1, 1982, compensation payable equal to 66 2/3% of average weekly wage from date of injury, subject to the following maximums and minimums:

(Prior to 9-1-65 500 week limit on duration of benefits)

Weekly Compensation Rates

Number of Dependents	1973 Min.	1973 Max.	1974 Min.	1974 Max.	1975 Min.	1975 Max.	1976 Min.	1976 Max.	1977 Min.	1977 Max.	1978 Min.	1978 Max.	1979 Min.	1979 Max.	1980 Min.	1980 Max.	1981 Min.	1981 Max.
0	$27	$94	$27	$101	$27	$107	$27	$115	$27	$127	$27	$142	$27	$156	$27	$171	$27	$181
1	$30	$99	$30	$106	$30	$112	$30	$120	$30	$132	$30	$147	$30	$161	$30	$176	$30	$186
2	$33	$105	$33	$112	$33	$118	$33	$126	$33	$138	$33	$153	$33	$167	$33	$182	$33	$192
3	$36	$111	$36	$118	$36	$124	$36	$132	$36	$144	$36	$159	$36	$173	$36	$188	$36	$198
4	$39	$117	$39	$124	$39	$130	$39	$138	$39	$150	$39	$165	$39	$179	$39	$194	$39	$204
5 or more	$42	$123	$42	$130	$42	$136	$42	$144	$42	$156	$42	$171	$42	$185	$42	$200	$42	$210

After Jan. 1, 1982 rate of compensation is based on 80% after-tax gross average weekly wage.

Year	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Maximum	$307	$324	$334	$358	$374	$391	$397	$409	$427	$430

II. PERMANENT AND TOTAL DISABILITY

Same rate as for total disability but for a period of 800 weeks. At the end of 800 weeks, payments may be continued under certain circumstances.

III. DEATH

Prior to Jan. 1, 1982, dependents will receive weekly compensation of 66 2/3% of the average weekly wage for 500 weeks (450 weeks prior to 9-1-65) from the date of death. At the expiration of the 500 week period if any dependent is less than 21 years of age the department may order further payments to the age of 21.

Weekly Death Compensation Rates

Number of Dependents	1973 Min.	1973 Max.	1974 Min.	1974 Max.	1975 Min.	1975 Max.	1976 Min.	1976 Max.	1977 Min.	1977 Max.	1978 Min.	1978 Max.	1979 Min.	1979 Max.	1980 Min.	1980 Max.	1981 Min.	1981 Max.
1	$27	$94	$27	$101	$27	$107	$27	$115	$27	$127	$27	$142	$27	$156	$27	$171	$27	$181
2	$30	$99	$30	$106	$30	$112	$30	$120	$30	$132	$30	$147	$30	$161	$30	$176	$30	$186
3	$33	$105	$33	$112	$33	$118	$33	$126	$33	$138	$33	$153	$33	$167	$33	$182	$33	$192
4	$36	$111	$36	$118	$36	$124	$36	$132	$36	$144	$36	$159	$36	$173	$36	$188	$36	$198
5 or more	$39	$117	$39	$124	$39	$130	$36	$138	$39	$150	$39	$165	$39	$179	$39	$194	$39	$204

After Jan. 1, 1982 rate of compensation is based on 80% after-tax gross average weekly wage.

Year	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Maximum	$307	$324	$334	$358	$374	$391	$397	$409	$427	$430

Burial Expenses

From 10-2-53 to 8-31-65	From 9-1-65 to 12-19-71	From 12-20-71
$500	$750	$1500

IV. SPECIFIC LOSS

Prior to Jan. 1, 1982 66⅔% of average weekly wage subject to the same maximums as for total disability and for the number of weeks indicated in the following schedule of losses:

After Jan. 1, 1982 until Dec. 31, 1982 rate of compensation is based on 80% after tax wage gross average weekly wage with maximum weekly rate as indicated under total disability.

EFFECTIVE DATES OF SCHEDULES

	From 7-30-43 To 10-1-53	From 10-2-53 To
	weeks	weeks
Thumb	60	65
1st Finger	35	38
2nd Finger	30	33
3rd Finger	20	22
4th Finger	15	16
Great Toe	30	33
Other Toes	10	11
Hand	200	215
Arm	250	269
Foot	150	162
Leg	200	215
Eye	150	162

DATA FOR DETERMINING WORKERS' COMPENSATION PERIODS

The following page contains an accumulative table of days showing the number of days from January 1, 1965 to December 1, 2010. Each day is represented by a figure which can be ascertained by adding the day of the month to the number designated for that month; thus, December 31, 1982 is represented by 6,543 + 31, or 6,574.

To determine the date when a given period will expire, add to corresponding number of date selected, the number of days in said period; by subtracting from the number thus obtained, the next lowest number shown on the table, you will have the day of the month to which said period extends (but not inclusive).

Thus: 215 weeks from August 1, 1968 =

August 1, 1968 (1308 + 1)	=	1309
215 weeks (215 × 7)	=	1505
		2814
Next lowest number —		2800 (September 1972)

September 14, 1972

The inclusive dates of the 215 week period are August 2, 1968 through September 14, 1972.

To determine the number of weeks between two dates, ascertain the respective numbers for said dates and subtract, dividing the difference by 7; for example:

From: August 13, 1966 through June 25, 1967 =

June 25, 1967 (881 + 25)	=	906
August 13, 1966 (577 + 13)	=	590

$7\overline{)316}$ (45 weeks 1 day)

Note: This period includes June 25 but not August 13.
If the first day is to be included, add one day.

WORKERS' DISABILITY COMPENSATION TABLE

ACCUMULATIVE TABLE OF DAYS

YEAR	JAN.	FEB.	MAR.	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
1965	0	31	59	90	120	151	181	212	243	273	304	334
1966	365	396	424	455	485	516	546	577	608	638	669	699
1967	730	761	789	820	850	881	911	942	973	1003	1034	1064
1968	1095	1126	1155	1186	1216	1247	1277	1308	1339	1369	1400	1430
1969	1461	1492	1520	1551	1581	1612	1642	1673	1704	1734	1765	1795
1970	1826	1857	1885	1916	1946	1977	2007	2038	2069	2099	2130	2160
1971	2191	2222	2250	2281	2311	2342	2372	2403	2434	2464	2495	2525
1972	2556	2587	2616	2647	2677	2708	2738	2769	2800	2830	2861	2891
1973	2922	2953	2981	3012	3042	3073	3103	3134	3165	3195	3226	3256
1974	3287	3318	3346	3377	3407	3438	3468	3499	3530	3560	3591	3621
1975	3652	3683	3711	3742	3772	3803	3833	3864	3895	3925	3956	3986
1976	4017	4048	4077	4108	4138	4169	4199	4230	4261	4291	4322	4352
1977	4383	4414	4442	4473	4503	4534	4564	4595	4626	4656	4687	4717
1978	4748	4779	4807	4838	4868	4899	4929	4960	4991	5021	5052	5082
1979	5113	5144	5172	5203	5233	5264	5294	5325	5356	5386	5417	5447
1980	5478	5509	5538	5569	5599	5630	5660	5691	5722	5752	5783	5813
1981	5844	5875	5903	5934	5964	5995	6025	6056	6087	6117	6148	6178
1982	6209	6240	6268	6299	6329	6360	6390	6421	6452	6482	6513	6543
1983	6574	6605	6633	6664	6694	6725	6755	6786	6817	6847	6878	6908
1984	6939	6970	6999	7030	7060	7091	7121	7152	7183	7213	7244	7274
1985	7305	7336	7364	7395	7425	7456	7486	7517	7548	7578	7609	7639
1986	7670	7701	7729	7760	7790	7821	7851	7882	7913	7943	7974	8004
1987	8035	8066	8094	8125	8155	8186	8216	8247	8278	8308	8339	8369
1988	8400	8431	8460	8491	8521	8552	8582	8613	8644	8674	8705	8735
1989	8766	8797	8825	8856	8886	8917	8947	8978	9009	9039	9070	9100
1990	9131	9162	9190	9221	9251	9282	9312	9343	9374	9404	9435	9465
1991	9496	9527	9555	9586	9616	9647	9677	9708	9739	9769	9800	9830
1992	9861	9892	9921	9952	9982	10013	10043	10074	10105	10135	10166	10196
1993	10227	10258	10236	10317	10347	10378	10408	10439	10470	10500	10531	10561
1994	10592	10623	10651	10682	10712	10743	10773	10804	10835	10865	10896	10926
1995	10957	10988	11016	11047	11077	11108	11138	11169	11200	11230	11261	11291
1996	11322	11353	11382	11413	11443	11474	11504	11535	11566	11596	11627	11657
1997	11688	11719	11747	11778	11808	11839	11869	11900	11931	11961	11992	12022
1998	12053	12084	12112	12143	12173	12204	12234	12265	12296	12326	12357	12387
1999	12418	12449	12477	12508	12538	12569	12599	12630	12661	12691	12722	12752
2000	12783	12814	12843	12874	12904	12935	12965	12996	13027	13057	13088	13118
2001	13149	13180	13208	13239	13269	13300	13330	13361	13392	13422	13453	13483
2002	13514	13545	13573	13604	13634	13665	13695	13726	13757	13787	13818	13848
2003	13879	13910	13938	13969	13999	14030	14060	14091	14122	14152	14183	14213
2004	14244	14275	14304	14335	14365	14396	14426	14457	14486	14518	14549	14579
2005	14610	14641	14669	14700	14730	14761	14791	14522	14853	14883	14914	14944
2006	14975	15006	15034	15065	15095	15126	15156	15187	15218	15248	15279	15309
2007	15340	15371	15399	15430	15460	15491	15521	15552	15583	15613	15644	15674
2008	15705	15736	15765	15796	15826	15857	15887	15918	15949	15979	16010	16040
2009	16071	16102	16130	16161	16191	16222	16252	16283	16314	16344	16375	16405
2010	16436	16457	16495	16526	16556	16587	16617	16648	16679	16709	16740	16770

COMMISSIONERS 1958 STANDARD ORDINARY MORTALITY TABLE

Age	Number Living	Deaths Each Year	Deaths Per 1,000	Average Future Lifetime	Age	Number Living	Deaths Each Year	Deaths Per 1,000	Average Future Lifetime
0	10,000,000	70,800	7.08	68.30	50	8,762,306	72,902	8.32	23.63
1	9,929,200	17,475	1.76	67.78	51	8,689,404	79,160	9.11	22.82
2	9,911,725	15,066	1.52	66.90	52	8,610,244	85,758	9.96	22.03
3	9,896,659	14,449	1.46	66.00	53	8,524,486	92,832	10.89	21.25
4	9,882,210	13,835	1.40	65.10	54	8,431,654	100,337	11.90	20.47
5	8,868,375	13,322	1.35	64.19	55	8,331,317	108,307	13.00	19.71
6	9,855,053	12,812	1.30	63.27	56	8,223,010	116,849	14.21	18.97
7	9,842,241	12,401	1.26	62.35	57	8,106,161	125,907	15.54	18.23
8	9,829,840	12,091	1.23	61.43	58	7,980,191	135,663	17.00	17.51
9	9,817,749	11,879	1.21	60.51	59	7,844,528	145,830	18.59	16.81
10	9,805,870	11,865	1.21	59.58	60	7,698,698	156,592	20.34	16.12
11	9,794,006	12,047	1.23	58.65	61	7,542,106	167,736	22.24	15.44
12	9,781,958	12,325	1.26	57.72	62	7,374,370	179,271	24.31	14.78
13	9,769,633	12,896	1.32	56.80	63	7,195,099	191,174	26.57	14.14
14	9,756,737	13,562	1.39	55.87	64	7,003,925	203,394	29.04	13.51
15	9,743,175	14,225	1.46	54.95	65	6,800,531	215,917	31.75	12.90
16	9,728,950	14,983	1.54	54.03	66	6,584,614	228,749	34.74	12.31
17	9,713,967	15,737	1.62	53.11	67	6,355,865	241,777	38.04	11.73
18	9,698,230	16,390	1.69	52.19	68	6,114,088	254,835	41.68	11.17
19	9,681,840	16,846	1.74	51.28	69	5,859,253	267,241	45.61	10.64
20	9,664,994	17,300	1.79	50.37	70	5,592,012	278,426	49.79	10.12
21	9,647,694	17,655	1.83	49.46	71	5,313,586	287,731	54.15	9.63
22	9,630,039	17,912	1.86	48.55	72	5,025,855	294,766	58.65	9.15
23	9,612,127	18,167	1.89	47.64	73	4,731,089	299,289	63.26	8.69
24	9,593,960	18,324	1.91	46.73	74	4,431,800	301,894	68.12	8.24
25	9,575,636	18,481	1.93	45.82	75	4,129,906	303,011	73.37	7.81
26	9,557,155	18,732	1.96	44.90	76	3,826,895	303,014	79.18	7.39
27	9,538,423	18,981	1.99	43.99	77	3,523,881	301,997	85.70	6.98
28	9,519,442	19,324	2.03	43.08	78	3,221,884	299,829	93.06	6.59
29	9,500,118	19,760	2.08	42.16	79	2,922,055	295,683	101.19	6.21
30	9,480,358	20,193	2.13	41.25	80	2,626,372	288,848	109.98	5.85
31	9,460,165	20,718	2.19	40.34	81	2,337,524	278,983	119.35	5.51
32	9,439,447	21,239	2.25	39.43	82	2,058,541	265,902	129.17	5.19
33	9,418,208	21,850	2.32	38.51	83	1,792,639	249,858	139.38	4.89
34	9,396,358	22,551	2.40	37.60	84	1,542,781	231,433	150.01	4.60
35	9,373,807	23,528	2.51	36.69	85	1,311,348	211,311	161.14	4.32
36	9,350,279	24,685	2.64	35.78	86	1,100,037	190,108	172.82	4.06
37	9,325,594	26,112	2.80	34.88	87	909,929	168,455	185.13	3.80
38	9,299,482	27,991	3.01	33.97	88	741,474	146,997	198.25	3.55
39	9,271,491	30,132	3.25	33.07	89	594,477	126,303	212.46	3.31
40	9,241,359	32,622	3.53	32.18	90	468,174	106,809	228.14	3.06
41	9,208,737	35,362	3.84	31.29	91	361,365	88,813	245.77	2.82
42	9,173,375	38,253	4.17	30.41	92	275,552	72,480	265.93	2.58
43	9,135,122	41,382	4.53	29.54	93	200,072	57,881	289.30	2.33
44	9,093,740	44,741	4.92	28.67	94	142,191	45,026	316.66	2.07
45	9,048,999	48,412	5.35	27.81	95	97,165	34,128	351.24	1.80
46	9,000,587	52,473	5.83	26.96	96	63,037	25,250	400.56	1.51
47	8,948,114	56,910	6.36	26.11	97	37,787	18,456	488.42	1.18
48	8,891,204	61,794	6.95	25.27	98	19,331	12,916	668.15	.83
49	8,829,410	67,104	7.60	24.45	99	6,415	6,415	1,000.00	.50

SIMPLE INTEREST — 10 % PER ANNUM
PRESENT VALUE OF $1.00 PER WEEK DUE IN ANY NUMBER OF WEEKS FROM ONE TO EIGHT HUNDRED

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
1	0.998086	56	53.143746	111	100.545392
2	1.994265	57	54.045203	112	101.368576
3	2.988544	58	54.945104	113	102.190463
4	3.980931	59	55.843455	114	103.011057
5	4.971433	60	56.740261	115	103.830361
6	5.960057	61	57.635527	116	104.848380
7	6.946810	62	58.529259	117	105.465118
8	7.931699	63	59.421461	118	106.280578
9	8.914732	64	60.312139	119	107.094765
10	9.895915	65	61.201299	120	107.907683
11	10.875255	66	62.088945	121	108.719335
12	11.852759	67	62.975082	122	109.529726
13	12.828434	68	63.859716	123	110.338859
14	13.802287	69	64.742852	124	111.146739
15	14.774324	70	65.624495	125	111.953369
16	15.744553	71	66.504649	126	112.758753
17	16.712980	72	67.383320	127	113.562895
18	17.679611	73	68.260513	128	114.365799
19	18.644454	74	69.136233	129	115.167468
20	19.607515	75	70.010484	130	115.967907
21	20.568800	76	70.883272	131	116.767119
22	21.528316	77	71.754602	132	117.565108
23	22.486070	78	72.624478	133	118.361877
24	23.442068	79	73.492905	134	119.157431
25	24.396316	80	74.359888	135	119.951773
26	25.348821	81	75.225432	136	120.744906
27	26.299589	82	76.089542	137	121.536835
28	27.248627	83	76.952222	138	122.327563
29	28.195941	84	77.813477	139	123.117094
30	29.141537	85	78.673312	140	123.905431
31	30.085421	86	79.531732	141	124.692578
32	31.027600	87	80.388741	142	125.478538
33	31.968079	88	81.244343	143	126.263315
34	32.906865	89	82.098544	144	127.046913
35	33.843964	90	82.951348	145	127.829335
36	34.779382	91	83.803759	146	128.610585
37	35.713125	92	84.652782	147	129.390666
38	36.645199	93	85.501422	148	130.169582
39	37.575609	94	86.348683	149	130.947336
40	38.504362	95	87.194569	150	131.723932
41	39.431464	96	88.039085	151	132.499373
42	40.356920	97	88.882236	152	133.273662
43	41.280737	98	89.724026	153	134.046803
44	42.202920	99	90.564459	154	134.818800
45	43.123475	100	91.403539	155	135.589655
46	44.042408	101	92.241271	156	136.359372
47	44.959724	102	93.077660	157	137.127955
48	45.875429	103	93.912709	158	137.895407
49	46.789529	104	94.746423	159	138.661731
50	47.702029	105	95.578806	160	139.426930
51	48.612935	106	96.409862	161	140.191008
52	49.522252	107	97.239596	162	140.953968
53	50.429986	108	98.068012	163	141.715813
54	51.336143	109	98.895114	164	142.476547
55	52.240723	110	99.720906	165	143.236172

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
166	143.994692	226	187.597832	286	227.834475
167	144.752111	227	188.294530	287	228.479465
168	145.508431	228	188.990298	288	229.123658
169	146.263656	229	189.685139	289	229.767057
170	147.017788	230	190.379055	290	230.409663
171	147.770831	231	191.072049	291	231.051478
172	148.522788	232	191.764123	292	231.692504
173	149.273662	233	192.455280	293	232.332743
174	150.023457	234	193.145522	294	232.972196
175	150.772175	235	193.834852	295	233.610866
176	151.519819	236	194.523271	296	234.248755
177	152.266393	237	195.210783	297	234.885864
178	153.011900	238	195.897389	298	235.522196
179	153.756342	239	196.583093	299	236.157752
180	154.499723	240	197.267896	300	236.792535
181	155.242046	241	197.951801	301	237.426546
182	155.983313	242	198.634810	302	238.059787
183	156.723528	243	199.316925	303	238.692260
184	157.462694	244	199.998149	304	239.323966
185	158.200813	245	200.678485	305	239.954908
186	158.937889	246	201.357934	306	240.585088
187	159.673924	247	202.036499	307	241.214507
188	160.408922	248	202.714182	308	241.843167
189	161.142885	249	203.390985	309	242.471070
190	161.875817	250	204.066911	310	243.098218
191	162.607720	251	204.741962	311	243.724612
192	163.338597	252	205.416140	312	244.350255
193	164.068451	253	206.089448	313	244.975148
194	164.797285	254	206.761887	314	245.599293
195	165.525102	255	207.433460	315	246.222692
196	166.251904	256	208.104169	316	246.845346
197	166.977694	257	208.774017	317	247.467258
198	167.702476	258	209.443005	318	248.088429
199	168.426252	259	210.111136	319	248.708861
200	169.149024	260	210.778412	320	249.328555
201	169.870796	261	211.444835	321	249.947514
202	170.591570	262	212.110408	322	250.565739
203	171.311349	263	212.775132	323	251.183232
204	172.030136	264	213.439010	324	251.799994
205	172.747933	265	214.102044	325	252.416028
206	173.464744	266	214.764236	326	253.031335
207	174.180571	267	215.425588	327	253.645917
208	174.895416	268	216.086102	328	254.259775
209	175.609283	269	216.745780	329	254.872911
210	176.322174	270	217.404625	330	255.485327
211	177.034091	271	218.062638	331	256.097025
212	177.745038	272	218.719822	332	256.708006
213	178.455017	273	219.376179	333	257.318272
214	179.164030	274	220.031711	334	257.927824
215	179.872080	275	220.686420	335	258.536665
216	180.579170	276	221.340307	336	259.144796
217	181.285303	277	221.993376	337	259.752218
218	181.990481	278	222.645628	338	260.358933
219	182.694706	279	223.297065	339	260.964943
220	183.397982	280	223.947689	340	261.570250
221	184.100310	281	224.597502	341	262.174855
222	184.801694	282	225.246506	342	262.778760
223	185.502135	283	225.894703	343	263.381966
224	186.201637	284	226.542096	344	263.984475
225	186.900202	285	227.188686	345	264.586289

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
346	265.187409	406	300.042472	466	332.712912
347	265.787837	407	300.604097	467	333.240445
348	266.387574	408	301.165118	468	333.767445
349	266.986622	409	301.725536	469	334.293913
350	267.584983	410	302.285352	470	334.819850
351	268.182658	411	302.844568	471	335.345257
352	268.779649	412	303.403184	472	335.870135
353	269.375957	413	303.961203	473	336.394485
354	269.971584	414	304.518625	474	336.918308
355	270.566531	415	305.075452	475	337.441605
356	271.160800	416	305.631685	476	337.964378
357	271.754392	417	306.187325	477	338.486627
358	272.347309	418	306.742374	478	339.008354
359	272.939553	419	307.296832	479	339.529559
360	273.531125	420	307.850702	480	340.050244
361	274.122027	421	308.403984	481	340.570409
362	274.712260	422	308.956679	482	341.090056
363	275.301826	423	309.508789	483	341.609186
364	275.890726	424	310.060315	484	342.127799
365	276.478961	425	310.611258	485	342.645897
366	277.066533	426	311.161620	486	343.163481
367	277.653444	427	311.711402	487	343.680551
368	278.239695	428	312.260605	488	344.197109
369	278.825388	429	312.809230	489	344.713156
370	279.410224	430	313.357278	490	345.228693
371	279.994504	431	313.904751	491	345.743721
372	280.578130	432	314.451649	492	346.258240
373	281.161104	433	314.997974	493	346.772252
374	281.743427	434	315.543728	494	347.285758
375	282.325100	435	316.088911	495	347.798759
376	282.906125	436	316.633525	496	348.311255
377	283.286503	437	317.177570	497	348.823248
378	284.066236	438	317.721048	498	349.334739
379	284.645325	439	318.263960	499	349.845729
380	285.223772	440	318.806308	500	350.356219
381	285.801578	441	319.348092	501	350.866209
382	286.378744	442	319.889314	502	351.375701
383	286.955272	443	320.429975	503	351.884696
384	287.531163	444	320.970076	504	352.393194
385	288.106419	445	321.509618	505	352.901197
386	288.681041	446	322.048602	506	353.408705
387	289.255031	447	322.587029	507	353.915720
388	289.828389	448	323.124901	508	354.422242
389	290.401118	449	323.662219	509	354.928273
390	290.973218	450	324.198984	510	355.433813
391	291.544691	451	324.735197	511	355.938864
392	292.115539	452	325.270859	512	356.443426
393	292.685762	453	325.805971	513	356.947500
394	293.255363	454	326.340535	514	357.451087
395	293.824342	455	326.874551	515	357.554188
396	294.392701	456	327.408021	516	358.456804
397	294.960441	457	327.940946	517	358.958936
398	295.527563	458	328.473326	518	359.460585
399	296.094069	459	329.005163	519	359.961752
400	296.659960	460	329.536458	520	360.462438
401	297.225238	461	330.067213	521	360.962644
402	297.789904	462	330.597428	522	361.462370
403	298.353959	463	331.127104	523	361.961618
404	298.917405	464	331.656243	524	362.460388
405	299.480242	465	332.184845	525	362.958682

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
526	363.456500	586	392.487916	646	419.987857
527	363.953843	587	392.958337	647	420.434122
528	364.450712	588	393.428334	648	420.880005
529	364.947108	589	393.897908	649	421.325507
530	365.443032	590	394.367060	650	421.770629
531	365.938485	591	394.835790	651	422.215371
532	366.433467	592	395.304099	652	422.659734
533	366.927980	593	395.771988	653	423.103719
534	367.422024	594	396.239457	654	423.547326
535	367.915601	595	396.706508	655	423.990556
536	368.408711	596	397.173141	656	424.433410
537	368.901355	597	397.639356	657	424.875888
538	369.393534	598	398.105155	658	425.317991
539	369.885249	599	398.570538	659	425.759719
540	370.376501	600	399.035506	660	426.201073
541	370.867290	601	399.500060	661	426.642054
542	371.357618	602	399.964200	662	427.082662
543	371.847485	603	400.427928	663	427.522898
544	372.336892	604	400.891244	664	427.962763
545	372.825840	605	401.354148	665	428.402257
546	373.314330	606	401.816642	666	428.841381
547	373.802363	607	402.278726	667	429.280136
548	374.289940	608	402.740401	668	429.718522
549	374.777061	609	403.201667	669	430.156540
550	375.263728	610	403.662526	670	430.594190
551	375.749941	611	404.122978	671	431.031473
552	376.235701	612	404.583023	672	431.468389
553	376.721009	613	405.042663	673	431.904940
554	377.205866	614	405.501898	674	432.341125
555	377.690272	615	405.960729	675	432.776946
556	378.174229	616	406.419157	676	433.212403
557	378.657737	617	406.877182	677	433.647497
558	379.140797	618	407.334805	678	434.082228
559	379.623410	619	407.792027	679	434.516597
560	380.105576	620	408.248848	680	434.950604
561	380.587297	621	408.705269	681	435.384250
562	381.068573	622	409.161291	682	435.817536
563	381.549406	623	409.616915	683	436.250462
564	382.029796	624	410.072141	684	436.683029
565	382.509743	625	410.526970	685	437.115237
566	382.989249	626	410.981402	686	437.547087
567	383.468314	627	411.435439	687	437.978580
568	383.946940	628	411.889081	688	438.409716
569	384.425127	629	412.342328	689	438.840496
570	384.902876	630	412.795182	690	439.270921
571	385.380187	631	413.247643	691	439.700991
572	385.857062	632	413.699711	692	440.130706
573	386.333501	633	414.151388	693	440.560067
574	386.809505	634	414.602674	694	440.989075
575	387.285075	635	415.053570	695	441.417730
576	387.760212	636	415.504076	696	441.846033
577	388.234916	637	415.954193	697	442.273985
578	388.709188	638	416.403922	698	442.701586
579	389.183029	639	416.853263	699	443.128836
580	389.656440	640	417.302217	700	443.555737
581	390.129422	641	417.750785	701	443.982288
582	390.601975	642	418.198968	702	444.408491
583	391.074100	643	418.646766	703	444.834346
584	391.545798	644	419.094180	704	445.259853
585	392.017070	645	419.541210	705	445.685013

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
706	446.109827	738	459.524291	770	472.602287
707	446.534295	739	459.937982	771	473.005736
708	446.958418	740	460.351346	772	473.408873
709	447.382196	741	460.764382	773	473.811698
710	447.805630	742	461.177091	774	474.214212
711	448.228720	743	461.589474	775	474.616416
712	448.651467	744	462.001531	776	475.018310
713	449.073872	745	462.413263	777	475.419894
714	449.495935	746	462.824670	778	475.821169
715	449.917657	747	463.235752	779	476.222136
716	450.339038	748	463.646510	780	476.622795
717	450.760078	749	464.056945	781	477.023146
718	451.180779	750	464.467057	782	477.423190
719	451.601141	751	464.876847	783	477.822927
720	452.021164	752	465.286315	784	478.222358
721	452.440849	753	465.695462	785	478.621483
722	452.860196	754	466.104288	786	479.020303
723	453.279206	755	466.512794	787	479.418818
724	453.697880	756	466.920980	788	479.817029
725	454.116218	757	467.328847	789	480.214936
726	454.534221	758	467.736395	790	480.612539
727	454.951889	759	468.143625	791	481.009840
728	455.369223	760	468.550537	792	481.406838
729	455.786223	761	468.957132	793	481.803534
730	456.202890	762	469.363410	794	482.199928
731	456.619224	763	469.769372	795	482.596021
732	457.035226	764	470.175018	796	482.991814
733	457.450896	765	470.580348	797	483.387306
734	457.866235	766	470.985364	798	483.782499
735	458.281244	767	471.390065	799	484.177392
736	458.695922	768	471.794452	800	484.571987
737	459.110271	769	472.198526		

SIMPLE INTEREST — FOR $1.00 PER PERIOD AT 0.0019178082 PER CENT PER PERIOD FOR NUMBER OF PERIODS

The following table is to be used in determining the amounts of compensation due an individual plus interest accrued on delayed compensation payments.

Amount indicates the dollar amount due, including interest for the corresponding number of periods, for each dollar of weekly compensation.

To illustrate:

Suppose that today we are to pay John Jones, a claimant, a check in payment of his claim for weekly compensation of $167.00 a week, the first weekly payment of which should have been made one hundred and twenty weeks ago. The check we are to issue is to include the weekly compensation payment due for the current week.

To calculate the size of the check to be drawn, refer to the table and find the figure 120 in the column headed "no. of wks," choose the corresponding figure in the column headed "Amount" which in this case is 133.693150. Multiply $167.00 by this figure. The amount of the check to be drawn is thus $22,326.75.

Further instructions for the figuring of interest may be found in Mays vs. Three Rivers Rubber Corporation, WCABO-1980 476.

MICHIGAN DEPARTMENT OF LABOR

SIMPLE INTEREST — 10 % PER ANNUM FOR $1.00 PER WEEK AT 0.0019178082% PER WEEK FOR ANY NUMBER OF WEEKS FROM ONE TO EIGHT HUNDRED

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
1	1.000000	26	26.623287	51	53.445205
2	2.001917	27	27.673150	52	54.543013
3	3.005753	28	28.724931	53	55.642739
4	4.011506	29	29.778630	54	56.744383
5	5.019178	30	30.834246	55	57.847945
6	6.028767	31	31.891780	56	58.953424
7	7.040273	32	32.951232	57	60.060821
8	8.053698	33	34.012602	58	61.170136
9	9.069041	34	35.075890	59	62.281369
10	10.086301	35	36.141095	60	63.394520
11	11.105479	36	37.208219	61	64.509589
12	12.126575	37	38.277260	62	65.626575
13	13.149589	38	39.348219	63	66.745479
14	14.174520	39	40.421095	64	67.866301
15	15.201369	40	41.495890	65	68.989041
16	16.230136	41	42.572602	66	70.113698
17	17.260821	42	43.651232	67	71.240273
18	18.293424	43	44.731780	68	72.368767
19	19.327945	44	45.814246	69	73.499178
20	20.364383	45	46.898630	70	74.631506
21	21.402739	46	47.984931	71	75.765753
22	22.443013	47	49.073150	72	76.901917
23	23.485205	48	50.163287	73	78.039999
24	24.529315	49	51.255342	74	79.179999
25	25.575342	50	52.349315	75	80.321917

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
76	81.465753	136	153.605479	196	232.649314
77	82.611506	137	154.866301	197	234.025205
78	83.759178	138	156.129040	198	235.403013
79	84.908767	139	157.393698	199	236.782739
80	86.060273	140	158.660273	200	238.164383
81	87.213698	141	159.928766	201	239.547944
82	88.369041	142	161.199177	202	240.933424
83	89.526301	143	162.471506	203	242.320821
84	90.685479	144	163.745753	204	243.710136
85	91.846575	145	165.021917	205	245.101369
86	93.009588	146	166.299999	206	246.494520
87	94.174520	147	167.579999	207	247.889588
88	95.341369	148	168.861917	208	249.286574
89	96.510136	149	170.145753	209	250.685479
90	97.680821	150	171.431506	210	252.086300
91	98.853424	151	172.719177	211	253.489040
92	100.027945	152	174.008766	212	254.893698
93	101.204383	153	175.300273	213	256.300273
94	102.382739	154	176.593698	214	257.708766
95	103.563013	155	177.889040	215	259.119177
96	104.745205	156	179.186301	216	260.531506
97	105.929314	157	180.485479	217	261.945752
98	107.115342	158	181.786575	218	263.361917
99	108.303287	159	183.089588	219	264.779999
100	109.493150	160	184.394520	220	266.199999
101	110.684931	161	185.701369	221	267.621917
102	111.878630	162	187.010136	222	269.045752
103	113.074246	163	188.320821	223	270.471506
104	114.271780	164	189.633424	224	271.899177
105	115.471232	165	190.947944	225	273.328766
106	116.672602	166	192.264383	226	274.760273
107	117.875890	167	193.582739	227	276.193698
108	119.081095	168	194.903013	228	277.629040
109	120.288219	169	196.225205	229	279.066300
110	121.497260	170	197.549314	230	280.505478
111	122.708219	171	198.875342	231	281.946574
112	123.921095	172	200.203287	232	283.389588
113	125.135890	173	201.533150	233	284.834520
114	126.352602	174	202.864931	234	286.281369
115	127.571232	175	204.198629	235	287.730136
116	128.791780	176	205.534246	236	289.180821
117	130.014246	177	206.871780	237	290.633424
118	131.238630	178	208.211232	238	292.087944
119	132.464931	179	209.552602	239	293.544383
120	133.693150	180	210.895890	240	295.002739
121	134.923287	181	212.241095	241	296.463013
122	136.155342	182	213.588218	242	297.925204
123	137.389314	183	214.937259	243	299.389314
124	138.625205	184	216.288218	244	300.855341
125	139.863013	185	217.641095	245	302.323287
126	141.102739	186	218.995890	246	303.793150
127	142.344383	187	220.352602	247	305.264930
128	143.587945	188	221.711232	248	306.738629
129	144.833424	189	223.071780	249	308.214245
130	146.080821	190	224.434246	250	309.691780
131	147.330136	191	225.798629	251	311.171232
132	148.581369	192	227.164931	252	312.652602
133	149.834520	193	228.533150	253	314.135889
134	151.089588	194	229.903287	254	315.621095
135	152.346575	195	231.275342	255	317.108218

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
256	318.597259	316	411.449314	376	511.205478
257	320.088218	317	413.055341	377	512.926573
258	321.581095	318	414.663286	378	514.649587
259	323.075889	319	416.273149	379	516.374519
260	324.572602	320	417.884930	380	518.101368
261	326.071232	321	419.498629	381	519.830135
262	327.571780	322	421.114245	382	521.560820
263	329.074245	323	422.731779	383	523.293423
264	330.578629	324	424.351231	384	525.027943
265	332.084930	325	425.972601	385	526.764382
266	333.593150	326	427.595889	386	528.502738
267	335.103286	327	429.221094	387	530.243012
268	336.615341	328	430.848218	388	531.985204
269	338.129314	329	432.477259	389	533.729313
270	339.645204	330	434.108218	390	535.475341
271	341.163012	331	435.741094	391	537.223286
272	342.682739	332	437.375889	392	538.973149
273	344.204382	333	439.012601	393	540.724930
274	345.727944	334	440.651231	394	542.478628
275	347.253423	335	442.291779	395	544.234245
276	348.780821	336	443.934245	396	545.991779
277	350.310136	337	445.578629	397	547.751231
278	351.841369	338	447.224930	398	549.512601
279	353.374519	339	448.873149	399	551.275888
280	354.909588	340	450.523286	400	553.041094
281	356.446574	341	452.175341	401	554.808217
282	357.985478	342	453.829313	402	556.577258
283	359.526300	343	455.485204	403	558.348217
284	361.069040	344	457.143012	404	560.121094
285	362.613697	345	458.802738	405	561.895888
286	364.160273	346	460.464382	406	563.672601
287	365.708766	347	462.127944	407	565.451231
288	367.259177	348	463.793423	408	567.231779
289	368.811506	349	465.460820	409	569.014244
290	370.365752	350	467.130135	410	570.798628
291	371.921916	351	468.801368	411	572.584929
292	373.479999	352	470.474519	412	574.373149
293	375.039999	353	472.149587	413	576.163286
294	376.601916	354	473.826574	414	577.955340
295	378.165752	355	475.505478	415	579.749313
296	379.731506	356	477.186300	416	581.545203
297	381.299177	357	478.869039	417	583.343012
298	382.868766	358	480.553697	418	585.142738
299	384.440273	359	482.240272	419	586.944381
300	386.013697	360	483.928765	420	588.747943
301	387.589040	361	485.619176	421	590.553422
302	389.166300	362	487.311505	422	592.360820
303	390.745478	363	489.005752	423	594.170135
304	392.326574	364	490.701916	424	595.981368
305	393.909588	365	492.399998	425	597.794518
306	395.494519	366	494.099998	426	599.609587
307	397.081368	367	495.801916	427	601.426573
308	398.670136	368	497.505752	428	603.245477
309	400.260821	369	499.211505	429	605.066299
310	401.853423	370	500.919176	430	606.889039
311	403.447944	371	502.628765	431	608.713696
312	405.044382	372	504.340272	432	610.540272
313	406.642738	373	506.053697	433	612.368765
314	408.243012	374	507.769039	434	614.199176
315	409.845204	375	509.486300	435	616.031505

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
436	617.865751	496	731.430134	556	851.898627
437	619.701915	497	733.381367	557	853.964928
438	621.539998	498	735.334518	558	856.033147
439	623.379998	499	737.289586	559	858.103284
440	625.221915	500	739.246572	560	860.175339
441	627.065751	501	741.205477	561	862.249312
442	628.911504	502	743.166298	562	864.325202
443	630.759176	503	745.129038	563	866.403010
444	632.608765	504	747.093696	564	868.482736
445	634.460272	505	749.060271	565	870.564380
446	636.313696	506	751.028764	566	872.647942
447	638.169039	507	752.999175	567	874.733421
448	640.026299	508	754.971504	568	876.820818
449	641.885477	509	756.945750	569	878.910133
450	643.746573	510	758.921915	570	881.001366
451	645.609587	511	760.899997	571	883.094517
452	647.474518	512	762.879997	572	885.189585
453	649.341367	513	764.861915	573	887.286572
454	651.210135	514	766.845750	574	889.385476
455	653.080819	515	768.831504	575	891.486298
456	654.953422	516	770.819175	576	893.589037
457	656.827943	517	772.808764	577	895.693695
458	658.704381	518	774.800271	578	897.800270
459	660.582737	519	776.793696	579	899.908763
460	662.463011	520	778.789038	580	902.019174
461	664.345203	521	780.786298	581	904.131503
462	666.229313	522	782.785476	582	906.245750
463	668.115340	523	784.786572	583	908.361914
464	670.003285	524	786.789586	584	910.479996
465	671.893148	525	788.794517	585	912.599996
466	673.784929	526	790.801367	586	914.721914
467	675.678628	527	792.810134	587	916.845750
468	677.574244	528	794.820819	588	918.971503
469	679.471778	529	796.833421	589	921.099174
470	681.371230	530	798.847942	590	923.228763
471	683.272600	531	800.864380	591	925.360270
472	685.175888	532	802.882737	592	927.493695
473	687.081093	533	804.903010	593	929.629037
474	688.988217	534	806.925202	594	931.766297
475	690.897258	535	808.949312	595	933.905476
476	692.808217	536	810.975339	596	936.046571
477	694.721093	537	813.003284	597	938.189585
478	696.635888	538	815.033147	598	940.334517
479	698.552600	539	817.064928	599	942.481366
480	700.471230	540	819.098627	600	944.630133
481	702.391778	541	821.134243	601	946.780818
482	704.314244	542	823.171778	602	948.933421
483	706.238627	543	825.211230	603	951.087941
484	708.164929	544	827.252599	604	953.244380
485	710.093148	545	829.295887	605	955.402736
486	712.023285	546	831.341093	606	957.563010
487	713.955340	547	833.388216	607	959.725201
488	715.889312	548	835.437257	608	961.889311
489	717.825203	549	837.488216	609	964.055338
490	719.763011	550	839.541092	610	966.223284
491	721.702737	551	841.595887	611	968.393147
492	723.644381	552	843.652599	612	970.564927
493	725.587942	553	845.711229	613	972.738626
494	727.533422	554	847.771777	614	974.914242
495	729.480819	555	849.834243	615	977.091777

No. Wks.	Present Value	No. Wks.	Present Value	No. Wks.	Present Value
616	979.271229	678	1118.142735	740	1264.386296
617	981.452599	679	1120.443009	741	1266.805474
618	983.635886	680	1122.745201	742	1269.226570
619	985.821092	681	1125.049310	743	1271.649583
620	988.008215	682	1127.355338	744	1274.074515
621	990.197256	683	1129.663283	745	1276.501364
622	992.388215	684	1131.973146	746	1278.930131
623	994.581092	685	1134.284927	747	1281.360816
624	996.775886	686	1136.598625	748	1283.793419
625	998.972599	687	1138.914242	749	1286.227939
626	1001.171229	688	1141.231776	750	1288.664378
627	1003.371777	689	1143.551228	751	1291.102734
628	1005.574242	690	1145.872598	752	1293.543008
629	1007.778626	691	1148.195885	753	1295.985200
630	1009.984927	692	1150.521091	754	1298.429309
631	1012.193146	693	1152.848214	755	1300.875337
632	1014.403283	694	1155.177255	756	1303.323282
633	1016.615338	695	1157.508214	757	1305.773145
634	1018.829311	696	1159.841091	758	1308.224926
635	1021.045201	697	1162.175885	759	1310.678624
636	1023.263009	698	1164.512598	760	1313.134241
637	1025.482735	699	1166.851228	761	1315.591775
638	1027.704379	700	1169.191776	762	1318.051227
639	1029.927941	701	1171.534241	763	1320.512597
640	1032.153420	702	1173.878625	764	1322.975884
641	1034.380817	703	1176.224926	765	1325.441090
642	1036.610133	704	1178.573145	766	1327.908213
643	1038.841365	705	1180.923282	767	1330.377254
644	1041.074516	706	1183.275337	768	1332.848213
645	1043.309585	707	1185.629310	769	1335.321090
646	1045.546571	708	1187.985200	770	1337.795884
647	1047.785475	709	1190.343008	771	1340.272597
648	1050.026297	710	1192.702734	772	1342.751227
649	1052.269037	711	1195.064378	773	1345.231775
650	1054.513694	712	1197.427940	774	1347.714240
651	1056.760269	713	1199.793419	775	1350.198624
652	1059.008763	714	1202.160817	776	1352.684925
653	1061.259173	715	1204.530132	777	1355.173144
654	1063.511502	716	1206.901364	778	1357.663281
655	1065.765749	717	1209.274515	779	1360.155336
656	1068.021913	718	1211.649584	780	1362.649309
657	1070.279995	719	1214.026570	781	1365.145199
658	1072.539995	720	1216.405474	782	1367.643007
659	1074.801913	721	1218.786296	783	1370.142733
660	1077.065749	722	1221.169036	784	1372.644377
661	1079.331502	723	1223.553693	785	1375.147939
662	1081.599173	724	1225.940268	786	1377.653418
663	1083.868762	725	1228.328762	787	1380.160815
664	1086.140269	726	1230.719173	788	1382.670131
665	1088.413694	727	1233.111501	789	1385.181363
666	1090.689036	728	1235.505748	790	1387.894514
667	1092.966297	729	1237.901912	791	1390.209583
668	1095.245475	730	1240.299994	792	1392.726569
669	1097.526571	731	1242.699994	793	1395.245473
670	1099.809584	732	1245.101912	794	1397.766295
671	1102.094516	733	1247.505748	795	1400.289035
672	1104.381365	734	1249.911501	796	1402.813692
673	1106.670132	735	1252.319172	797	1405.340267
674	1108.960817	736	1254.728761	798	1407.868761
675	1111.253420	737	1257.140268	799	1410.399171
676	1113.547940	738	1259.553693	800	1412.931500
677	1115.844379	739	1261.969035		

INDEX

Workers' Compensation Group
Box 4024, RFD 3
Brunswick, Maine 04011

May 21, 1992

Hon. William Hathaway
Richard Dalbeck, Co-Chairs
Blue Ribbon Commission on
Workers Compensation
246 Deering Ave.
Portland, ME 04102

Re: Transition Issues

Dear Chairmen Hathaway and Dalbeck:

The Workers Compensation Group would like to formally acknowledge our appreciation for the opportunity to present our research and conclusions to the Blue Ribbon Commission on Workers Compensation recently. Based on our extensive work of the last seven months, we remain convinced that the key element in any successful reform of the workers' compensation system is the total commitment of management and labor to forging collaborative alliances.

Based on your statements to our group that you wish to work closely with us, we would like to elaborate on those issues which we deem of most concern if the adoption of the Michigan system is to be seriously evaluated:

1) State Fund issues-- We understand that many people, including Governor McKernan in his recent testimony, have expressed reservations about Michigan's State Fund. Particular concern has been raised about the "start-up" costs of such a system and the potential need for a state "bail-out" in the event the Fund was unable to become self-sustaining. Others have expressed concern about whether Michigan's State Fund artificially depresses prices, thereby giving it a competitive advantage over the private market.

Rather than addressing these concerns ourselves, we respectfully suggest the Commission may want to solicit testimony from those like Roger Fries who administer the Michigan State Fund and who has indicated his willingness to come to Maine to explain the concept in more specific detail than could we. Ed Welch has again expressed his willingness to answer the Commission's questions about

Michigan.

2) Case Law Issues-- As you know from our report, we had retained Professor David Gregory to analyze this issue for us. When the Commission retained Professor Gregory, we assumed and still do that he will be providing a memorandum on this issue to you. The leading case on this point appears to be Wing v. Morse, 300 A.2d. 491 (Me., 1978).

3) Actuarial Analysis-- There is a clear need for a comprehensive actuarial analysis of the consequences of adoption of the Michigan system. While we have contacted actuaries of substantial reputation and background who have expressed interest in taking on this project, we assume the Commission will desire its own choice of actuaries, and have thus deferred contracting with anyone until the Commission charts its own course.

4) "Change in Attitude"-- Testimony from Governor McKernan and others has criticized the adoption of the Michigan plan because of the fear that the collaborative labor-management underpinnings of that system cannot be reproduced in Maine. We urge you in the strongest possible terms not to yield to that fear. With all respect, we believe that our group demonstrates that such collaboration is possible.

We are not naive, and we know it will take much dedication and will to change what has historically been a poisoned relationship between employers and employees. But to admit defeat today because of past labor-management hostilities will become a self-fulfilling prophecy which dooms any efforts toward fundamental change-- and it is fundamental change which is required.

It must be remembered that employer-employe relations in Michigan were also divisive before they began to work collaboratively on this issue, something which can be easily documented by Michigan participants, should you call them to testify. We would welcome the opportunity to work with the Commission to develop a work plan which we believe will result in a profound change in attitude-- one which will in any event be necessary to make any changes succeed.

5) Personnel Issues-- As noted in our report, there are a number of issues raised by the differing governmental structures Maine and Michigan have evolved to administer workers' compensation. We would be happy to work with your staff to explore those issues, with the goal of adjusting Maine's administrative structures without excessive new spending.

6) Assessments for the Unfunded Liability-- Whatever the Commission ultimately recommends, it seems important to grapple with this question. One of

the most serious obstacles to insurance carriers remaining in Maine, they have told both our group and your Commission, is what they consider these "unjust" assessments. Because of the need for accurate forecasting, it would be helpful to have the actuary hired by the Commission define as precisely as possible the dimensions of this unfunded liability.

We understand from talking to business leaders throughout Maine that the business community is fragmented in its opinions on the best remedy for the ills of Maine's workers' compensation system. Many business leaders, fearful of the piecemeal "reform" efforts which have failed them for the past 12 years, favor adoption of the Michigan system as a whole. Others support the proposal of some self-insurers to expand the availability of self-insurance as a means of addressing cost increases. Still others believe the Commission should focus on reforming the existing system by changing the definition of compensability, setting limits on partial compensation, apportioning between work and non-work related injuries, and otherwise enacting revisions in particular provisions in the current law.

The Workers Compensation Group recognizes that this fragmented business community makes the work of the Blue Ribbon Commission more difficult. We are doing our best to explain our concept fully to those business leaders who may not yet have heard a first-hand presentation. We are willing to work with anyone you designate as staff to strive to reach consensus.

Finally, it is our view that while the Commission is charged by statute with recommending the best workers' compensation system for Maine, it is equally important for the Commission to accompany such a recommendation with a plan to implement the new system (or at a minimum, a plan on how such implementation should be addressed).

Thank you for the opportunity to detail these transition issues, many of which we are sure you have already considered. We look forward to engaging in dialogue with you and your staff on these matters.

Very Truly Yours,

Kenneth Goodwin
Employer Co-Chair

James Mackie
Employee Co-Chair

File

Workers' Compensation Group
Box 4024, RFD 3
Brunswick, Maine 04011

May 21, 1992

Hon. William Hathaway
Richard Dalbeck, Co-Chairs
Blue Ribbon Commission on
Workers Compensation
246 Deering Ave.
Portland, ME 04102

Re: Transition Issues

Dear Chairmen Hathaway and Dalbeck:

The Workers Compensation Group would like to formally acknowledge our appreciation for the opportunity to present our research and conclusions to the Blue Ribbon Commission on Workers Compensation recently. Based on our extensive work of the last seven months, we remain convinced that the key element in any successful reform of the workers' compensation system is the total commitment of management and labor to forging collaborative alliances.

Based on your statements to our group that you wish to work closely with us, we would like to elaborate on those issues which we deem of most concern if the adoption of the Michigan system is to be seriously evaluated:

1) State Fund issues-- We understand that many people, including Governor McKernan in his recent testimony, have expressed reservations about Michigan's State Fund. Particular concern has been raised about the "start-up" costs of such a system and the potential need for a state "bail-out" in the event the Fund was unable to become self-sustaining. Others have expressed concern about whether Michigan's State Fund artificially depresses prices, thereby giving it a competitive advantage over the private market.

Rather than addressing these concerns ourselves, we respectfully suggest the Commission may want to solicit testimony from those like Roger Fries who administer the Michigan State Fund and who has indicated his willingness to come to Maine to explain the concept in more specific detail than could we. Ed Welch has again expressed his willingness to answer the Commission's questions about

Michigan.

2) Case Law Issues-- As you know from our report, we had retained Professor David Gregory to analyze this issue for us. When the Commission retained Professor Gregory, we assumed and still do that he will be providing a memorandum on this issue to you. The leading case on this point appears to be Wing v. Morse, 300 A.2d. 491 (Me., 1978).

3) Actuarial Analysis-- There is a clear need for a comprehensive actuarial analysis of the consequences of adoption of the Michigan system. While we have contacted actuaries of substantial reputation and background who have expressed interest in taking on this project, we assume the Commission will desire its own choice of actuaries, and have thus deferred contracting with anyone until the Commission charts its own course.

4) "Change in Attitude"-- Testimony from Governor McKernan and others has criticized the adoption of the Michigan plan because of the fear that the collaborative labor-management underpinnings of that system cannot be reproduced in Maine. We urge you in the strongest possible terms not to yield to that fear. With all respect, we believe that our group demonstrates that such collaboration is possible.

We are not naive, and we know it will take much dedication and will to change what has historically been a poisoned relationship between employers and employees. But to admit defeat today because of past labor-management hostilities will become a self-fulfilling prophecy which dooms any efforts toward fundamental change-- and it is fundamental change which is required.

It must be remembered that employer-employe relations in Michigan were also divisive before they began to work collaboratively on this issue, something which can be easily documented by Michigan participants, should you call them to testify. We would welcome the opportunity to work with the Commission to develop a work plan which we believe will result in a profound change in attitude-- one which will in any event be necessary to make any changes succeed.

5) Personnel Issues-- As noted in our report, there are a number of issues raised by the differing governmental structures Maine and Michigan have evolved to administer workers' compensation. We would be happy to work with your staff to explore those issues, with the goal of adjusting Maine's administrative structures without excessive new spending.

6) Assessments for the Unfunded Liability-- Whatever the Commission ultimately recommends, it seems important to grapple with this question. One of

the most serious obstacles to insurance carriers remaining in Maine, they have told both our group and your Commission, is what they consider these "unjust" assessments. Because of the need for accurate forecasting, it would be helpful to have the actuary hired by the Commission define as precisely as possible the dimensions of this unfunded liability.

We understand from talking to business leaders throughout Maine that the business community is fragmented in its opinions on the best remedy for the ills of Maine's workers' compensation system. Many business leaders, fearful of the piecemeal "reform" efforts which have failed them for the past 12 years, favor adoption of the Michigan system as a whole. Others support the proposal of some self-insurers to expand the availability of self-insurance as a means of addressing cost increases. Still others believe the Commission should focus on reforming the existing system by changing the definition of compensability, setting limits on partial compensation, apportioning between work and non-work related injuries, and otherwise enacting revisions in particular provisions in the current law.

The Workers Compensation Group recognizes that this fragmented business community makes the work of the Blue Ribbon Commission more difficult. We are doing our best to explain our concept fully to those business leaders who may not yet have heard a first-hand presentation. We are willing to work with anyone you designate as staff to strive to reach consensus.

Finally, it is our view that while the Commission is charged by statute with recommending the best workers' compensation system for Maine, it is equally important for the Commission to accompany such a recommendation with a plan to implement the new system (or at a minimum, a plan on how such implementation should be addressed).

Thank you for the opportunity to detail these transition issues, many of which we are sure you have already considered. We look forward to engaging in dialogue with you and your staff on these matters.

Very Truly Yours,

Ken

Kenneth Goodwin
Employer Co-Chair

Jim

James Mackie
Employee Co-Chair

Jonathan W. Reitman

CONSULTING • COMMUNICATIONS • DISPUTE RESOLUTION

July 17, 1992

WORKERS' COMPENSATION GROUP
NOTICE OF SPECIAL MEETING WITH CARRIERS

After our last meeting in Brunswick, we saw the need to contact carriers to begin a dialogue concerning the issues which would need to be addressed to restore active and voluntary participation by private carriers in the voluntary market.

When contacted, several carriers expressed serious interest in attending such a meeting with us. However, they also are nervous about the potential anti-trust liability they run if they jointly meet with us to discuss these issues. I have been working with the Attorney General's office and private counsel who I feel we need to guide us if these sessions are to even become reality.

For planning purposes I am assuming we will overcome these difficulties, so we have reserved the Portland City Hall conference room from noon to 4 p.m. on Wednesday, August 5, 1992. For those of you who have been in touch with carriers who have said they will come, I suggest you tell them the meeting starts at 1 p.m. It is quite important that we gather at noon (bring lunch) to go over the groundrules under which the meeting must operate to insulate the carriers from anti-trust liability. Obviously, as big a showing as possible will be helpful.

BOX 4024, RFD 3 • BRUNSWICK, ME 04011 • PHONE and FAX (207) 729-1900

Workers' Compensation Group
Box 4024, RFD 3
Brunswick, Maine 04011

July 14, 1992

Hon. William Hathaway
Richard Dalbeck, Co-Chairs
Blue Ribbon Commission on
Workers' Compensation
246 Derring Avenue
Portland, Maine 04102

Dear Chairmen Hathaway and Dalbeck:

As you know from our previous correspondence, the Workers' Compensation Group has continued to meet to review a number of proposals under consideration for reform of Maine's Workers' Compensation system. Before we address some of the substantive proposals which have been presented, we wish to express our sincere admiration for the thoroughgoing and comprehensive approach you have brought to your work thus far. It is clear from our attendance at your sessions that the four members of the Blue Ribbon Commission take quite seriously your charge to create a workers' compensation system that is fair to both employers and employees. It is in the spirit of collaboration with your efforts that we offer the following thoughts:

1) Adherence to nine basic criteria: You will recall in our initial presentation to you in May that we specified nine criteria which we felt that any reform of Maine's workers' compensation system should meet. After reviewing all of the proposals which have been offered to date, we continue to believe that those nine criteria (found on page 32 of our report which we submitted to you on May 4) are important and valid. In evaluating the proposals which have been submitted thus far, we have done so in the light of those criteria.

2) Modifications to Michigan's system: As we have indicated before, our Group is prepared to accept any modifications in the Michigan system which we feel meet the criteria discussed above and on which we can unanimously agree. However, in reviewing such modifications, we are mindful of the testimony of Ed Welch before your

Commission. In that testimony, Professor Welch reminded us that we ought to think carefully before making major modifications in the Michigan system since the system really must be viewed as a whole. To change individual portions of the system may provoke unintended consequences.

3) Permanent Partial Disability: Keeping in mind the principals in the paragraphs above, we have grave reservations concerning the proposal to compensate permanent partial disability on the basis of a "medically determined impairment rating" alone, or even on a "modified impairment basis" such as was discussed in your meeting of July 14. While such a system might appear to have the virtue of simplicity, we are firmly convinced that such a system would continue to foster a high rate of litigation, and would thus violate our criteria in which we sought a system which would promote a "Cooperative Atmosphere." Furthermore, a medical impairment model such as that discussed by Mr. Barth in his testimony and by Mr. Lewis in response to your questions ignores the actual wage loss which an employee might sustain over the course of his/her lifetime.

We fully recognize the cost concerns which promote a consideration of differing models for permanent partial disability. However, we take heart from Ed Welch's comments that in Michigan permanent partial does not represent a substantial cost driver of their system, in large part because of the heavy emphasis on early return to work.

We are similarly disturbed by the proposal that the Michigan permanent partial plan be modified to reflect a limited time duration for the availability of permanent partial disability. One of our original guiding principles was that the workers' compensation system we would support should be one which "does no harm." A seriously injured employee who sustains actual wage loss over the course of his/her lifetime, but is limited to a set number of weeks of permanent partial disability, has clearly suffered "harm." Further, to place a arbitrary cap on permanent partial disability benefits would remove a potential incentive to employers to return injured employees to work more quickly.

It must be remembered that in accepting many of the provisions of the Michigan benefit plan, employee representatives of the Workers' Compensation Group have accepted a number of benefit provisions which are less favorable than those which current exist (e.g., death benefits, compensation rate, maximum compensation rate, less access to attorneys). The Workers' Compensation Group felt that those sacrifices were merited by the cost savings to employers and earlier return to work for employees. To add another and potentially substantial benefit cut to those already accepted by labor representatives risks undoing the delicate balance of compromise which has brought us so far. Simply put, we will lose the support of our labor members if major changes are enacted in the area of permanent partial disability.

4) Definition of Compensability: We understand that there have been some proposals to alter the definition of compensability to provide compensation only in those cases where the work related component on the injury is the "predominant cause" of the resulting disability. Again, we think that such a change from the Michigan system would promote needless litigation as attorneys, insurance adjusters, and physicians debated endlessly over whether a particular injury was the "predominate cause," a "significant cause," or simply "a cause." There is no indication that the definition of compensability contained in the Michigan system has produced any unfortunate consequences which would require an alteration here in Maine.

5) Scope of Work Search: As a Group, we feel it is important to maintain the Michigan plan which requires employees to look for work within their geographical vicinity as opposed to the "statewide" job search which Maine currently imposes. Not only is the statewide job search impractical, there is no evidence to suggest that it does or will result in major cost savings.

6) Administrative Structure: We understand that you have been considering a change in the administrative structure of the Workers' Compensation Commission. As we understand the discussions of the Commission thus far, you are considering a plan which goes substantially beyond the recommendations contained in our letter to you of June 18, 1992. However, after discussing the proposals which are now under consideration amongst ourselves, we find that your proposals as we understand them flow substantially from the criteria which we have previously established and, therefore, we are in agreement that the proposals as we understand them should be part of your ultimate recommendations.

In that regard, you will recall that our recommendation to you in our letter of June 18 was that management representatives in the "Board of Governors" of the Workers' Compensation Commission should be selected by the Maine Chamber of Commerce and Industry in conjunction with local chambers of commerce. To clarify our intentions in this regard, we feel quite strongly that regional chambers of commerce should nominate management representatives and, that those nominees should be funnelled through the statewide Maine Chamber of Commerce and Industry. We understand that you may be considering a proposal that would have those nominees then passed to the Governor for consideration and ultimate nomination. We feel the system you are considering is workable and demonstrates appropriate sensitivity to local business concerns in light of fact that the origin of the nominees will be with the regional chambers of commerce.

7) Triggering of Automatic Benefit Cuts: We understand you have considered a proposal which gives any new provisions two years in which to work. If no substantial cost savings have been realized in that time, automatic benefit cuts would then be triggered. We have concern about this proposal because of the near unanimity that high benefits are not the culprit for Maine's high costs. In our view, cutting benefits after two years will do little to reduce costs. As Ed Welch testified, any new system will not produce great savings overnight. If any "sunset" provision is enacted, we respectfully urge you to consider a four-year period, since it takes approximately three and one-half years to generate policy year figures on losses.

8) Safety Concerns: We urge you to consider a model used by the Maine Waste Management Agency which provides an in-house review for employers coupled with amnesty. We recommend that the newly structured Workers' Compensation Commission be given responsibility to design a safety program which would provide a review of safety programs for an employer with amnesty for any safety violations, assuming that there is a willingness to correct them. This safety program should include both "people practices" and "physical plant issues."

In conclusion, we reiterate our belief that, with all respect, the Blue Ribbon Commission would be recommending a totally unknown quantity if it attempts to pick different provisions from differing states' statutes. Many provisions within a workers' compensation law interact with one another in a delicate balance. To enact a system which looks good on paper because its provisions work in various states, but which has never been tested, risks enacting a plan which, in practice, simply will not work. That is why we continue to believe quite strongly that the Commission ought to consider recommending a system, the major provisions of which have been proven to work harmoniously with one another. This does not mean, as we have said often before, that we are unwilling to consider some changes in Michigan's system. Rather, to consider major changes in major benefit provisions may produce unintended consequences which, if possible, ought to be avoided.

Once again, we deeply appreciate the opportunity to keep you informed of our thinking on these important transition issues. We fully understand that we are only one of many groups expressing our views to you throughout this process and we respect the determination with which you have protected your autonomy and independence from any particular group or constituency. You are to be applauded for the integrity which that position lends to your efforts.

If there are any specific areas of concern with which we can assist the Blue Ribbon Commission, please do not hesitate to be in touch with us. We wish you well as you enter this final deliberative phase of your work.

Very truly yours,

Kenneth Goodwin
Employer Co-Chair

James Mackie
Employee Co-Chair

cc: Dr. Harvey Picker
Hon. Meilien Levesque
Members of Workers' Compensation Group

Ed Welch
On Workers' Compensation
2875 Northwind Drive, Suite 205-B
East Lansing, Michigan 48823
(517) 332-5266

June 18, 1992

Attn: Michelle Bushey
Blue Ribbon Commission
University of Maine School of Law
246 Deering Ave.
Portland, ME 04102

Dear Michelle:

I am enclosing here a copy of Michigan's Workers' Compensation Act and that portion of the insurance code that relates to workers' compensation.

I am also including some up to date cost figures. When I was in Portland I distributed a table listing the "Benefit Cost Rate" as of 1988. Data for 1989 have just recently been published and I am enclosing a new table. I am also enclosing a graph that compares the Benefit Cost Rate for Maine, Michigan and all states. I would be grateful if you would distribute this to the commission.

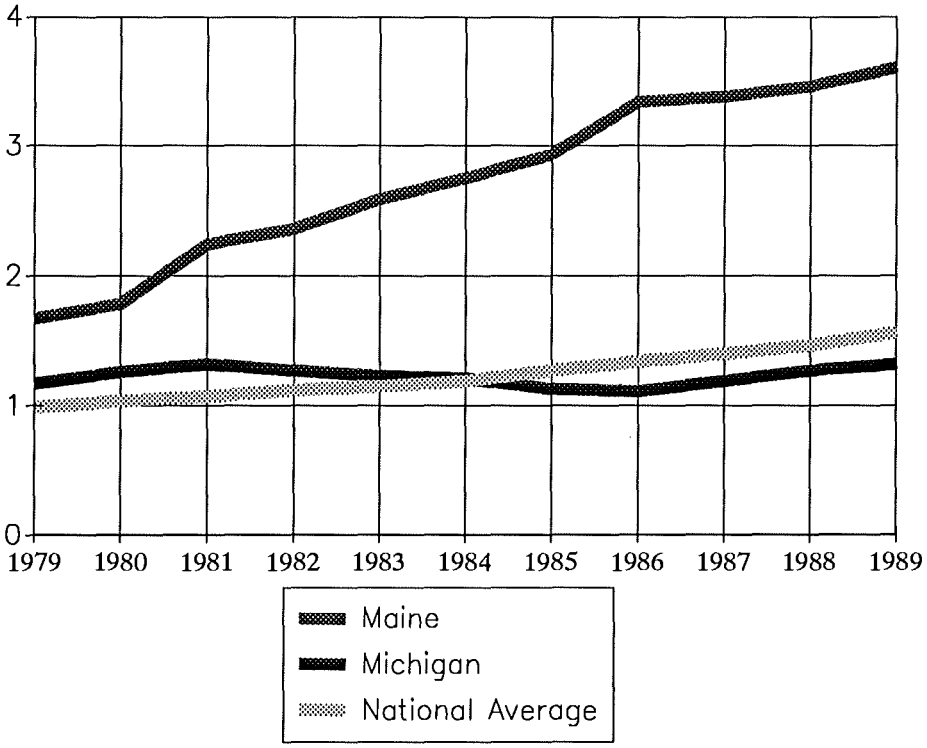
Sincerely,

Edward M. Welch

Enclosures

Michigan Info/Law
Sent by Ed Welch

Benefit Cost Rate



Benefit Costs Per $100 of Payroll, 1989		
1	Montana	3.75
2	**Maine**	**3.61**
3	West Virginia	3.55
4	Texas	3.01
5	New Mexico	2.84
6	Louisiana	2.79
7	Rhode Island	2.72
8	Oregon	2.69
9	Nevada	2.38
10	Alaska	2.29
11	Florida	2.13
12	Colorado	2.13
13	Washington	2.09
14	Oklahoma	1.92
15	Ohio	1.90
16	Wyoming	1.83
17	Hawaii	1.80
18	Pennsylvania	1.80
19	California	1.77
20	Massachusetts	1.73
21	Alabama	1.72
22	Idaho	1.70
23	Arkansas	1.61
24	Kentucky	1.58
25	New Hampshire	1.54
26	Mississippi	1.50
27	Connecticut	1.48
28	South Dakota	1.42
29	North Dakota	1.38
30	Arizona	1.37
31	Georgia	1.37
32	Illinois	1.35
33	Tennessee	1.34
34	**Michigan**	**1.32**
35	Kansas	1.29
36	Utah	1.26
37	Minnesota	1.25
38	Delaware	1.18
39	Wisconsin	1.15
40	Maryland	1.14
41	Vermont	1.14
42	South Carolina	1.12
43	Missouri	1.05
44	Nebraska	1.02
45	Iowa	0.99
46	New Jersey	0.87
47	Virginia	0.86
48	New York	0.81
49	North Carolina	0.76
50	Indiana	0.73
51	DC	0.63
	National Average	1.56

Michigan insurance laws (NILS Publishing Co., 1991) ●
(Available on request-please include the following citation: WC115-BRC-14-181.pdf)

To obtain items available on request, or to report errors or omissions in this history, please contact:
Maine State Law and Legislative Reference Library

An overview of workers' compensation in Michigan (Welch, Edward M.)(Ed Welch on Workers' Compensation) ●

(Available on request-please include the following citation: WC115-BRC-14-206.pdf)

To obtain items available on request, or to report errors or omissions in this history, please contact:
Maine State Law and Legislative Reference Library

WORKERS' COMPENSATION GROUP

MARCH, 1992

WORKERS' COMPENSATION GROUP

John Bowman
Saunders Brothers, Westbrook

Sara Burns
Central Maine Power

John A. Cannon
Professional Firefighters of Maine, IAFF

Mike Cavanaugh
Amalgamated Clothing and Textile

Andy Francoeur
UPIU Local 1069

Kevin P. Gildart
Bath Iron Works Corporation

Kenneth H. Goodwin
Bancroft Contracting Corporation

Dick Haskell
Lucas Tree Expert Company

Bob Hodges
Nichols Portland

Kenneth E. Hutchins
Builder, Southwest Harbor

James Mackie
Local S-6, IAM

Ned McCann
Maine AFL-CIO

Mike McGovern
Cape Elizabeth

Vincent O'Malley
ILA 861

George E. Ward, III
Local 740 IAFF

Diana White
Maine Labor Group on Health, Inc.

Facilitator: Jonathan W. Reitman
Brunswick

WORKERS' COMPENSATION GROUP

I. HISTORY AND PROCESS OF THIS LABOR-MANAGEMENT GROUP

BOB HODGES - Nichols Portland
NED MCCANN - Maine AFL-CIO

II. CRITERIA DEVELOPED TO EVALUATE STATES' SYSTEMS

DIANA WHITE - Maine Labor Group on Health, Inc.

KEVIN GILDART - Bath Iron Works Corporation

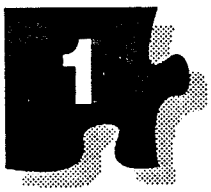
III. CRITERIA AS APPLIED TO MICHIGAN

KEN GOODWIN - Bancroft Contracting Corporation

JIM MACKIE - Local S-6, IAM

WORKERS' COMPENSATION GROUP

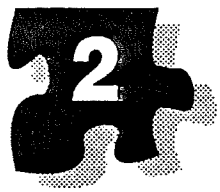
CRITERIA



FOCUS ON SAFETY AND INJURY PREVENTION

- Emphasis on reducing workplace illness and injury, to reduce human suffering, and reduce costs

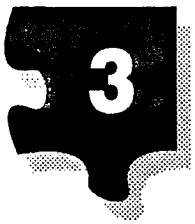
- Incentives in the system which support prevention efforts



EFFECTIVE REHABILITATION AND RETURN TO WORK PROGRAMS

- Rapid return to work is best for the injured worker

- Rapid return to work reduces cost



COLLABORATION BETWEEN LABOR AND MANAGEMENT AND STABILITY OF THE SYSTEM

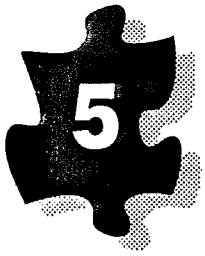
- Employers and employees are the most affected parties to the system

- Stability in the Workers' Compensation System is important to the economic climate

COOPERATIVE ATMOSPHERE

- Alternatives to litigation promote a more collaborative workplace

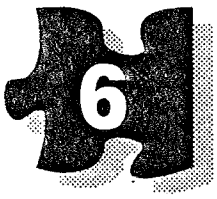
- Alternatives to litigation speed the process of claims resolution



A COMPETITIVE STATE FUND

- Small businesses need a choice for insurance outside of the assigned risk pool

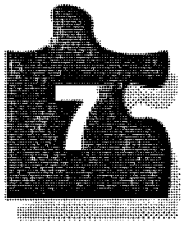
- Leads to a competitive, healthy insurance market



APPROPRIATE BENEFIT LEVEL

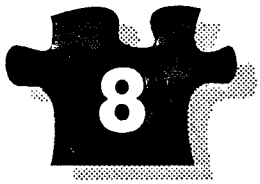
- Benefits need to promote an economic lifeline for injured workers

- Equitable to both parties



PROCEDURAL MECHANISMS AND TIME FRAMES

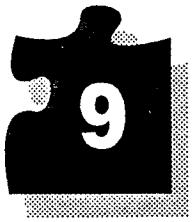
- Speeds resolution of cases
- Lowers costs



RATE SETTING

- Contributes to a competitive environment

- Allows for rate adjustments based on experience



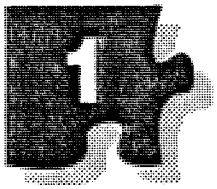
COST CONTROLS AND MEDICAL COST CONTAINMENT

- Medical costs should be contained

- System which leads to fair and affordable costs

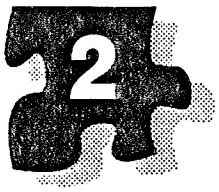
WORKERS' COMPENSATION GROUP

CRITERIA AS APPLIED TO MICHIGAN



FOCUS ON SAFETY AND INJURY PREVENTION

- Incentive programs
- Creative Use of Safety, Second Injury Funds



EFFECTIVE REHABILITATION AND RETURN TO WORK PROGRAMS

- Strong emphasis and expectation by employers and employees that injured worker will return to work as soon as possible after injury

- Successful history of returning injured employees to work

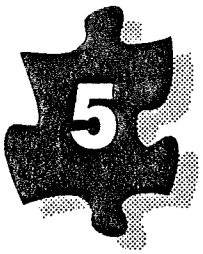
COLLABORATION BETWEEN LABOR AND MANAGEMENT AND STABILITY OF THE SYSTEM

- Powerful Economic Alliance of business and labor interests, Quality Assurance Committee, Advisory Group.

- No major changes in system for last seven years

COOPERATIVE ATMOSPHERE

- Low litigation rate (80% of cases not contested)
- Strong Alternative Dispute Resolution
- Simple system — no attorney needed to explain it

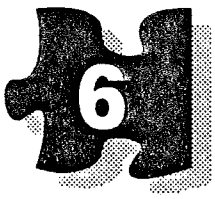


A COMPETITIVE STATE FUND

- Accident Fund promotes competition, has 20% of market

- Has $40-$50 million surplus

- Helps Employers get out of assigned risk pool



APPROPRIATE BENEFIT LEVELS

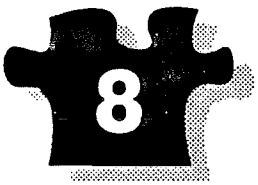
- Compensation rate is 80% of net pay

- Maximum weekly rate is $441 per week

PROCEDURAL MECHANISMS AND TIME FRAMES

- Quick decisions; no backlog of hearings

- All medical bills paid within 30 days

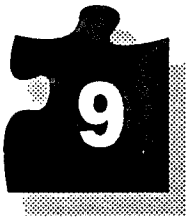


RATE SETTING

- Unregulated free market, with more than 20 carriers

- Employers encouraged to "shop around" for lower rates

- Even assigned risk employers (12%) can negotiate rates



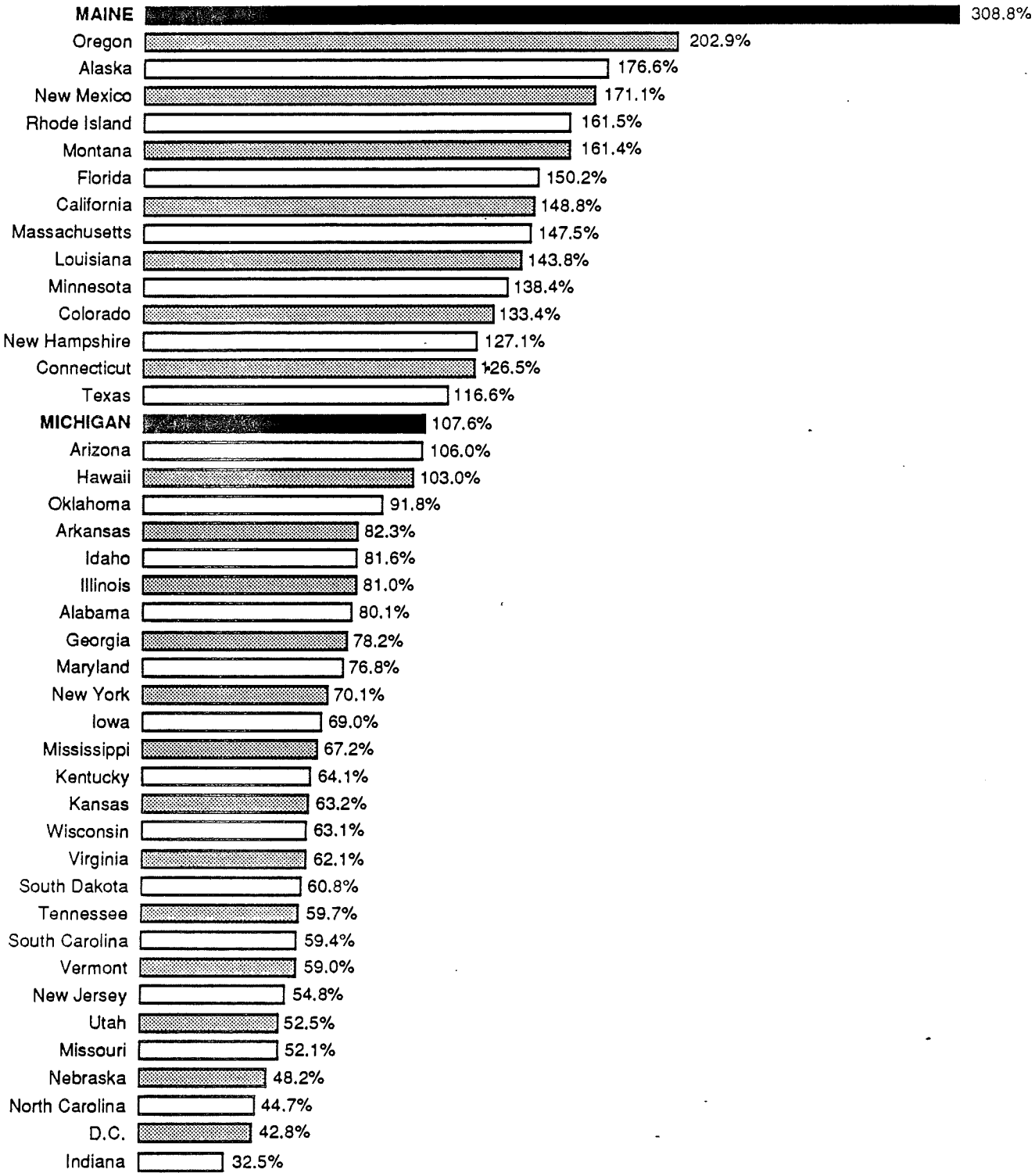
COST CONTROLS AND MEDICAL COST CONTAINMENT

- Only state which implements all 6 recognized medical cost containment provisions

- Benefits (indemnity plus medical) are less than 40% of Maine's

JOHN BURTON'S WORKERS' COMPENSATION MONITOR

Total (Indemnity plus Medical) Benefits per 100,000 Covered Workers, State's Cost as a Percentage of U.S. Average Cost



NOTE: The U.S. average of $38,371,156 per 100,000 covered workers is a weighted average of the 43 states, using 1988 state employment as weights.

Sara Burns
Central Maine Power
Edison Drive
Augusta, ME 04330
B 623-3521 X3004 R 528-8019

Mike Cavanaugh
ACTWU
PO Box 365
Biddeford, ME 04005
B 284-4471 R 772-7371

Kenneth H. Goodwin
Bancroft Contracting Corp.
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WORKERS COMPENSATION GROUP

MAY, 1992

MAY 1992

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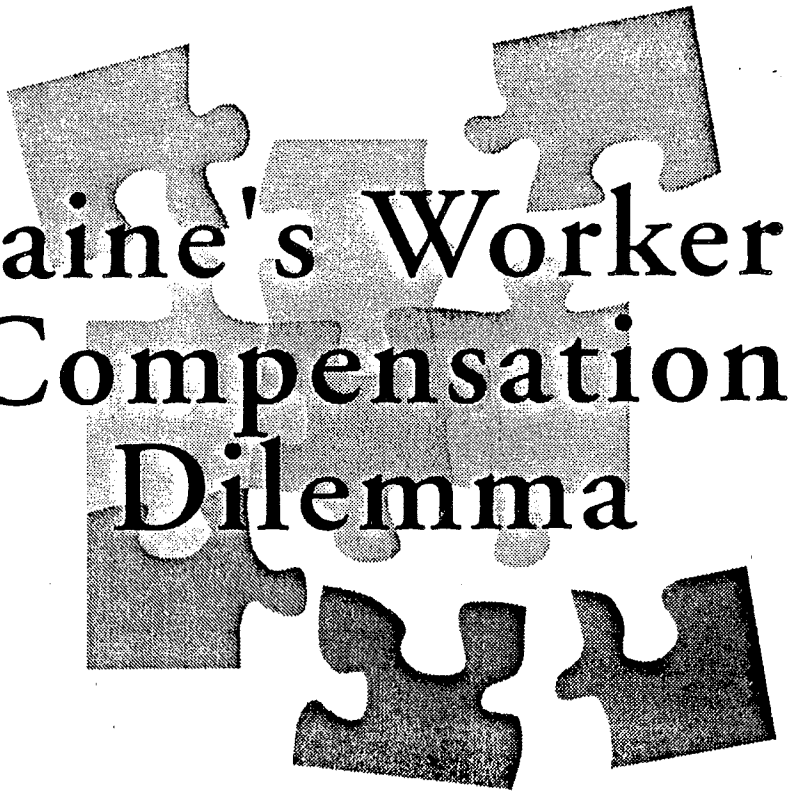
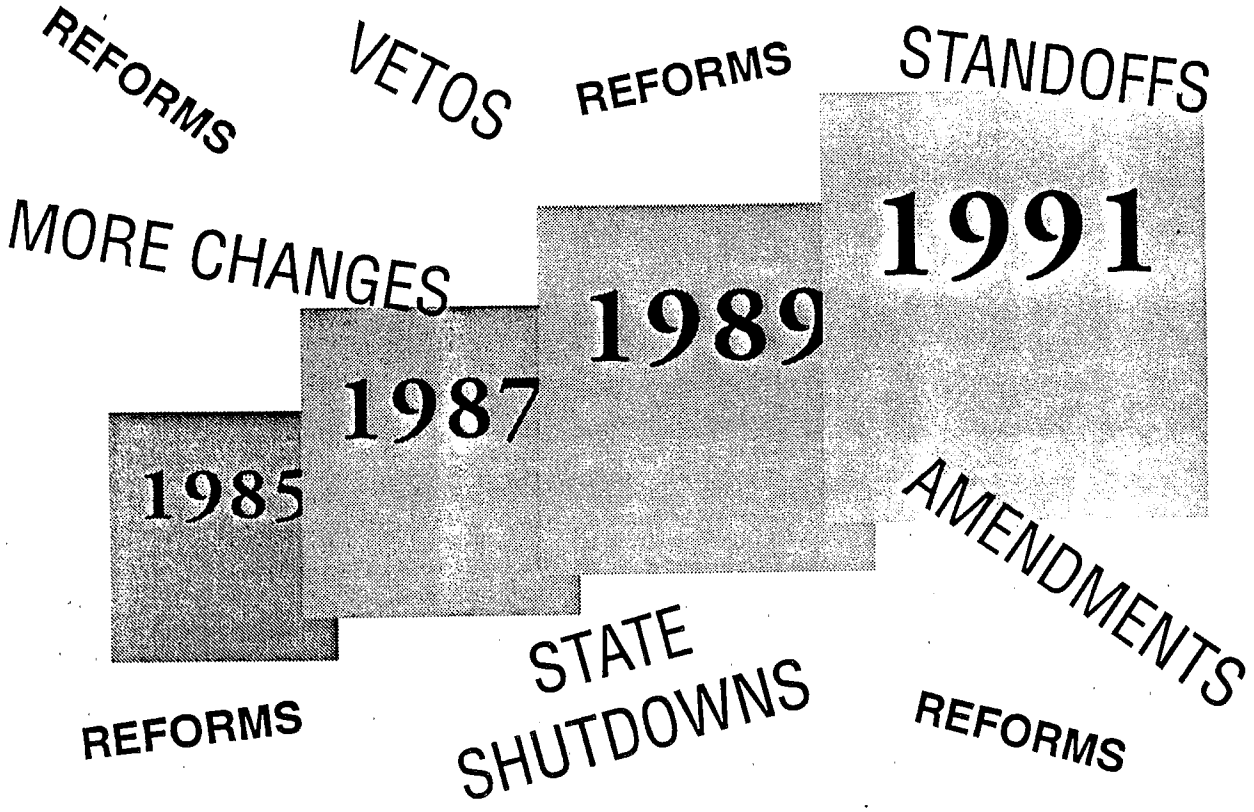
The Workers' Compensation Group gratefully acknowledges the many individuals and organizations who have contributed to this work. Most importantly, we wish to thank the many individuals who work with insurance carriers, labor unions, Chambers of Commerce, and with-in state goverments who served as resources during the hundreds of telephone calls we made in the course of our investigations. Thanks also to the Workers' Compensation Research Institute for background materials and to Hewes, Douglas, Whiting & Quinn, whose analysis of the changes the Michigan statute would entail is quoted herein. Thanks to the many in-kind donations of staff time and resources provided by businesses and labor organizations who were members of the Group. And finally, thanks to the Channel Crossing Restaurant in South Portland and to the Town of Cape Elizabeth, both of whom provided meeting spaces for the Group at no cost.



Maine's Workers' Compensation Dilemma


REFORMS
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1985
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STATE SHUTDOWNS
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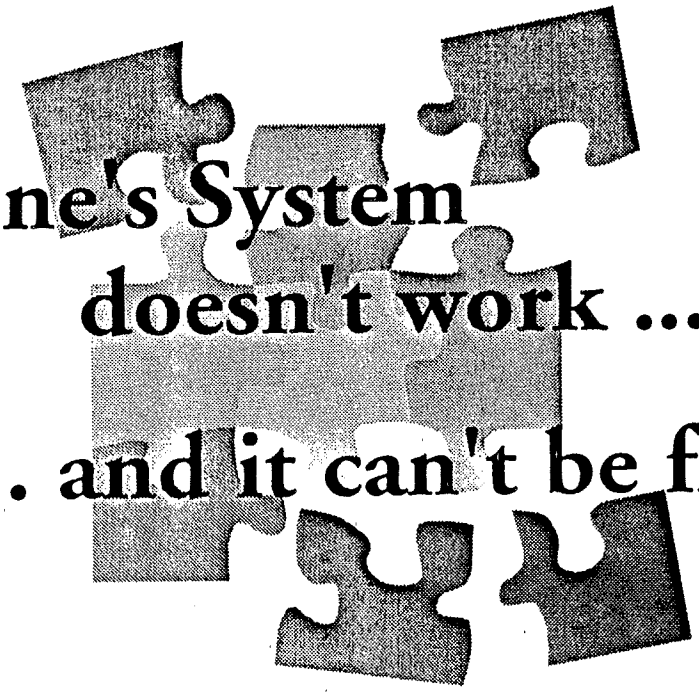

"Maine's System
doesn't work ...
... and it can't be fixed !"

"Demands for reform (of workers' compensation systems) arise from one or more interests in a growing number of states. Yet many of these states implemented major reforms that were heralded as "successful" during the late 1970's and 1980's. In retrospect, questions are being asked about whether the reforms have addressed the underlying problems, or merely the visible symptoms."

--Challenges for the 1990s, Workers Compensation Research Institute, July, 1990.

"The Maine workers' compensation system is a disaster. It wastes millions of dollars each year. It destroys employer-employee relationships. It distracts the state's attention from other vital issues.

Legislative reform offers little reason for hope. The law has become too complex, with changes overlapping changes. And the reform process has become too entangled in politics."

--Portland Press Herald, September, 1991

"The commitment between labor and management to work together toward (workers' compensation) reform is the most crucial element in achieving reform. If the two parties cannot agree on the legislation, it is doomed to fail. The states that are doing well with reform are the ones that foster an atmosphere of teamwork and cooperation."

--Risk and Insurance, March, 1992

INTRODUCTION

The record of the business and labor communities on the issue of workers' compensation insurance in the last 10 years has been nothing in which to take pride. Both management and labor have taken an adversarial, "scorched earth" approach to the issue, blaming the other for all the ills of the system.

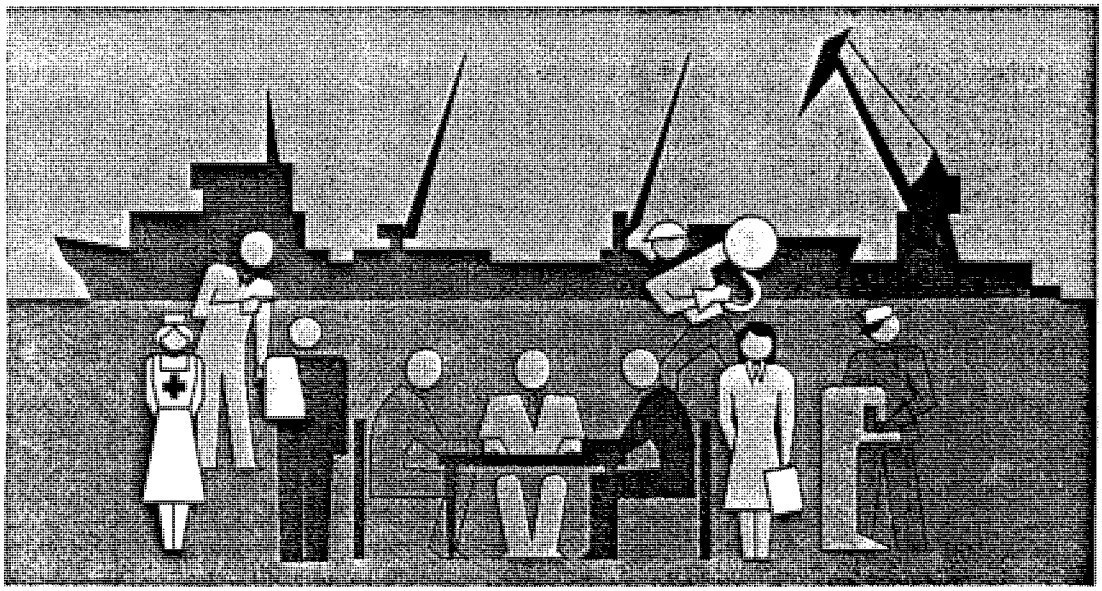
When business would propose a reform in the system, labor's knee jerk reaction would often be to call the proposal a plot to take away the hard earned rights of employees. When labor would propose reform, business would scream about the already-too-generous benefits, the lawyers who are getting rich off the system, and the burdensome cost of securing coverage.

As a result of this totally polarized atmosphere, the workers' compensation "reforms" which did make it through the legislative process were so watered down by compromises insisted upon by the opponents that they often failed to produce any meaningful change.

Perhaps equally important, neither management nor labor ever felt fully satisfied, and vowed to return to the legislative arena in the following year with yet another plan to achieve those objectives which they had theretofore failed to achieve. With each side claiming victory in one small skirmish after another, the statute grew to be a patchwork of provisions which had little internal consistency and which sometimes worked at cross-purposes.

The results were predictable: Employer costs skyrocketed. Workers felt cheated and despised. Insurance carriers were on the verge of leaving the state. The very people who the system was designed to serve had become its victims. The system was collapsing, threatening to take Maine's economy with it.

The Labor/Management Group



... An Alternative Solution ...

Pick Another State's Workers' Comp System To Replace Maine's ...

... *UNANIMOUSLY!*

SECTION I:
THE WORKERS' COMPENSATION GROUP AND OUR GROUP PROCESS

In the fall of 1991, a group of management and labor representatives began quietly meeting to discuss the issue of the workers' compensation system in Maine. Many of those attending the sessions had been front-line participants in the legislative struggles over workers' compensation "reform" during the past decade.

As they talked, it became clear that despite their adversarial roles in the past, they had more in common than they might have thought: they were all frustrated by the stalemate which stymied any real change, even if they were some of the very players responsible for the impasse.

They were convinced on the basis of their own experience that Maine's workers' comp system could no longer be fixed by "tinkering" — if true change were to be enacted, it would mean scrapping the current system and starting from scratch with a totally new system.

Further, they believed that management and labor were the most affected parties, the groups which the workers' compensation system was initially designed to serve. Therefore, labor and management should no longer look to the legislature to take the lead in workers' compensation reform, but should themselves take primary responsibility for leading that effort.

Finally, they believed that while their "positions" on certain issues were sometimes diametrically opposed, that their "interests" on those issues might actually share some common ground.

Given these discussions, the participants felt that if labor and management could ever agree on a plan which they would both unanimously recommend, their recommendation would have great power and influence on a process which has most often led to fragmentation and disarray, and rarely consensus.

Thus, the Workers' Compensation Group was born. Composed of eight management and eight labor representatives, the group made three preliminary decisions at its first meeting. First, it would solicit voluntary contributions to cover its expenses solely from its own members (businesses and labor organizations). Second, it would hire a neutral facilitator to work with the group. Third, it would conduct its meetings and research out of the public spotlight and away from the partisan political arena.

For the past few months the Group has been meeting on a weekly basis to work toward its goal. From the start, the Group felt we did not need to "re-invent the wheel," that there must be a state which had a workers' compensation system which was working. We needed to identify that state, and recommend that system be used to replace Maine's in its entirety. Any attempt to "cut and paste" favorable provisions from different states would return us to the morass from which we sought to emerge. Only by careful research and a thoughtful and unanimous conclusion could we avoid the battles of the past decade.

At the very first meeting, we started by asking why we thought this group had "standing." Why could we make a difference when others had tried and failed in their efforts to reform the workers' compensation system? There was consensus that if we could achieve unanimity, we would have a level of credibility which other participants in the debate would not, simply because of the remarkable achievement a unanimous recommendation would represent.

The concept of the group's work was defined in two ways: 1) To pick another state's workers' compensation system that is better than ours over the long run, and 2) To demonstrate that 16 people can have very sharp differences of opinion on this issue, air their differences, and still produce an agreement that has value in the debate.

We set out and agreed upon general ground rules for communication and conflict resolution within the group. We agreed this work was unlike a commercial negotiation or collective bargaining session, in that there was no need for "positioning" or posturing (that had clearly not worked up to that time). While all present expressed their commitment to the process, we also created room for honest skepticism about the achievability of our stated goals.

We spent much of the first meetings identifying those interests about workers' compensation which employers and employees have in common, and what values we wanted in whatever system we recommended to embody. Although there was not total agreement on each item, what follows is a partial list of the common interests we identified:

— fast
— focus on prevention, safety
— a system which allows for/promotes labor/management collaboration
— Provides for "Return to Work" of injured employees
— Minimum administrative costs possible
— Competitive State Fund
— the system should give the "players" more control over their own destiny and sustain the dignity of the injured worker
— Does No Harm
— Adequate Benefits
— Minimize the adversarial nature of process
— Delimit medical role and expenses
— should include a system for reviewing the overall management of the way the system is working
— Manageable Costs to Employers
— Simple (K.I.S.S.)
— Administration of system responsive primarily to labor/management

We continued our discussions by refining these elements into a number of criteria we would use to screen other state systems. Our first draft of selection criteria included:

1) States which allow and promote labor/management collaboration and control

2) Focus on Safety/Prevention

3) Includes an entity (State Fund or other) or mechanism which:

   a) provides incentive to provide coverage and safety services to small businesses
   b) is publicly accountable
   c) provides a means to check on the accuracy of figures used by private carriers
   d) is non-profit

4) Minimizes adversarial process (i.e., attorney involvement) and promotes use of Alternative Dispute Resolution (ADR) methods

5) Cost structure which dedicates high percentage of premium dollar to benefits and prevention

6) Incentives for employees and employers for retraining, re-employment, and rehabilitation.

7) Has procedural mechanisms like no "gap" for first three days, time frames for decision-making, etc.

These screening criteria were eventually refined as we investigated further and discovered that some of them did not reveal the kinds of information about a state system that would allow us to evaluate whether the system was one which we could recommend. For example, in working with tentative criteria number five above, we discovered that some states in which we were extremely interested devoted a relatively low percentage of premium dollars to benefits. On further examination it appeared that was so because other parts of the system were working so well that there were relatively few lost time days which needed to be compensated. Our final list of criteria is discussed in Section Two on Michigan below.

After discussing alternative procedures by which to apply these criteria, we agreed to form a subcommittee which met to apply them to the 49 states beside Maine and the District of Columbia we intended to survey. Understanding that some of our criteria would necessarily require judgement calls, the subcommittee would nevertheless use them to reduce the list to those states on which we would focus.

The following are reports from the "initial cut" subcommittee's work:

WORKERS' COMPENSATION GROUP
STATE SELECTION SUBCOMMITTEE

Task: Choosing a smaller universe of state systems

Date: January 29 and 30, 1992

A subcommittee met on 1/29 to select a small number of states from the universe of 49 state workers' compensation systems, plus the District of Columbia and Puerto Rico. The criteria that we were asked to use were:

1. States which allow and promote labor/management collaboration and control

2. Focus on Safety/Prevention

3. Includes an entity (State Fund or other) or mechanism which:

   a) Provides incentive to provide coverage and safety services to small businesses
   b) Is publicly accountable
   c) Provides a means to check on the accuracy of figures used by private carriers.

   d) Is non-profit

4. Minimizes adversarial process (i.e., attorney involvement) and promotes use of Alternative Dispute Resolution (ADR) methods

5. Cost structure which dedicates high percentage of premium dollar to benefits and prevention

6. Incentives for employees and employers for retraining, re-employment, and rehabilitation

7. Has procedural "goodies" like no "gap" for first three days, time frames, etc.

Hard data did not exist on any of the criteria except the existence of the full or partial state funds. The group agreed on indirect measures for some of the criteria, and for some others were unable to collect any information. After tabulating the existing information, nine states were selected for presentation to the entire group (see attached minutes). The data analysis, based on the criteria, has been kept. The nine states were:

1. Connecticut
2. Idaho
3. Maryland
4. Michigan
5. Minnesota
6. Montana
7. Oregon
8. Pennsylvania
9. Wisconsin

After presenting the information, the entire group decided that the subcommittee had erred in excluding states with exclusive state funds. Because they met at least some of the other criteria, the following states were added:

Ohio
Washington
North Dakota
West Virginia

Given the nature of the selection process, members were given the opportunity to add any states about which they had heard positive comments. The following states were added:

Florida
Indiana

This gave us a total of 15 states which remained after the first screening.

WORKERS' COMPENSATION GROUP
STATE SELECTION SUBCOMMITTEE

The working sub-committee formed at the meeting on January 23, 1992, met on Wednesday, January 29, 1992 at the MSEA office. Support services such as photocopying, FAX, and telephone were provided by the AFL-CIO arranged through Ned McCann. Present at the meeting were Ken Goodwin, Bob Hodges, Sara Burns, Diana White, Jim Mackie, and John Cannon. Jon Reitman was present at the beginning to facilitate a start.

After several hours of work, a list of seven possible states for consideration was determined. The following states were listed as definite contenders for further consideration: Connecticut, Idaho, Maryland, Michigan, Minnesota, Montana, Pennsylvania, Oregon, Wisconsin.

STATE	REASONS
CT:	System has mandatory retraining and rehabilitation. 1988 Benefits cost 126% of National Average. 66-2/3% weekly wages. MAX benefit $719.
ID:	Labor/Management oversight and control. Competitive State Fund, program for retraining and rehabilitation. 1988 Benefits costs 81% of National Average. 60% weekly wages, MAX benefit $309-$430.
MD:	Competitive State Fund, Strong employee rehabilitation/retraining. 1988 Benefits 76.8% of National Average. 66.66% weekly wages. MAX benefits $452.
MI:	Competitive State Fund. Modified vocational rehabilitation program? 1988 Benefits cost 107.6% of National Average. 80% take home pay MAX benefits $441.
MN:	Labor/Management control, Competitive State Fund, Program for rehabilitation, re-employment, retraining. 1988 Benefits 138.4% of National Average. 66.66% weekly wages, $428 max benefit.
MT:	Competitive State Fund, program for rehabilitation, re-employment, retraining. 1988 Benefits 161.4% National Average. 66.66% weekly wages. Max benefit $299.
OR:	Competitive State Fund. Litigation reduction program. Program for rehabilitation, re-employment, retraining. 1988 Benefits 202.9% of National Average.66.66% weekly wages. $431 max benefit.
PA:	Labor management control. Competitive State Fund. Medical rehabilitation only? Benefits N/A. 66.66% weekly wages.
WI:	Labor management control, litigation reduction, rehabilitation, re-employment, retraining. 1988 benefit cost 63.1% of National Average. 66.66% weekly wages, $388 max benefit -/+15%.

To obtain further information on our "List of 15" we assigned each of the 15 states to a different member of the WCG. Each member then made as many contacts as (s)he could in the particular state and answered as many of the questions as possible on a form we devised, the "State Workers' Compensation Criteria Check-Off Sheet." For purposes of illustration only, a sample "Check-Off Sheet" is attached.

WORKERS' COMPENSATION GROUP
STATE WORKERS COMPENSATION CRITERIA CHECK-OFF SHEET

STATE:

CONTACT PERSON:
ADDRESS:
TELEPHONE:

ADDITIONAL SOURCES OF INFORMATION:

CONFIRM	YES	NO	REMARKS
Information on list:			
Rehabilitation:			
Labor Management Involvement:			
Competitive State Fund:			
Adversarial:			

1. Safety Prevention focus

   - Incentives
   - Trends
   - State/Fed OSHA
   - Injury rate/lost time

2. Rehabilitation Programs:

   - Vocational
   - Medical
   - Retraining

3. Labor Management Collaboration:

   - Composition of Boards
   - Advisory or decision making
   - Method of selection
   - Does it actually work?

4. Minimizing adversarial atmosphere:

   - Data on time frames for resolution
   - Dispute reduction program (within/separate from WC)
   - Medical options impact on cases being litigated
   - Who makes final decision?

5. State Funds:

   - Financial soundness of fund
   - How funded
   - Number and percentage of employees/employers in State Fund
   - Impact on existence of "high risk" pool
   - Profile of membership (type of industries)
   - Who is running State Fund?
   - Is it working?

6. What percentage of premium dollars into:

   - Benefits
   - Administration
   - Legal
   - Medical
   - Safety/Prevention

7. What procedural mechanisms are working well?

   - Gap
   - Time frames

8. Is Workers Comp. system stable?

Upon reviewing the information contained in this first round of interviews with persons in states in which we were interested, it was clear that several of the states did not meet our criteria. We were therefore able to eliminate some states from further consideration.

At this stage of our process, then, we had two categories of remaining states. The "first tier" states were ones we felt met most, if not all, our criteria and definitely warranted further study. They were Maryland, Michigan, Wisconsin and Oregon. To each of these states we assigned a labor-management "investigative team" which coordinated further research (others were encouraged to funnel any contacts/information to the team leaders.)

The "second tier" were states we would continue to study because we needed more information to determine if they belonged in the first tier. They were: Pennsylvania, North Dakota, Florida, Minnesota, Washington, Connecticut, and Montana. If members thought their state belonged in the first tier after they conducted their preliminary data collection, the member would join forces with a labor/management representative and proceed to obtain more detailed information.

As to the first tier states (and those which might become first tier) we agreed we needed to firm up the information we had received thus far. In additional, we developed a "Supplemental Information Sheet" which we would use as a basis for additional questioning and which is attached.

WORKERS' COMPENSATION GROUP
SUPPLEMENTAL INFORMATION SHEET

STATE: _____

COMPILED BY: _____

1. What is the State or Federal OSHA relationship with both the Worker's Compensation Commission and also the system?

2. What are the injury and lost time rates? What is the worker's compensation system's influence on the duration of injury rate?

3. Does the system prevent people from returning to work? (subjective)

4. How does system limit or control the involvement of?

   Attorneys:

   Physicians:

5. In the final decision process, what weight is given to medical opinion of disability versus the evidence of impairment? What elements and factors are considered by the decision makers?

6. To whom are the decision makers accountable to; How are they appointed and reviewed?

7. Describe the profile of the residual market and the State fund. What categories exist in the State? (State Fund, self-insured, high risk, others?)

8. What system exists for determining, review and approval of rate structure?

9. Is the State Fund self-sustaining or subsidized?

Following this process, we moved Washington State into the "first tier" and left Maryland, Michigan and Wisconsin in this group of final states we would study in more detail. After again assigning a labor and management representative to each state for the purpose of coordinating information, we agreed that each Group member would call contacts in each of the four states and try to uncover as much detail, both pro and con, as it was possible to obtain through telephone interviews. We would also review written materials about each state.

By our next meeting we had obtained substantial additional information on the four remaining "first tier" states. After reviewing the information at length, some serious reservations were expressed concerning the "payroll deduction" method of funding Washington's system, and the "general revenue" method of funding Maryland's system. Despite these concerns, we agreed there were some gaps in our information on the four states and it would therefore be prudent not to eliminate any of the four until we filled as many of those gaps as possible.

To fill those gaps, we identified some of the issues on which we would like more precise information. Those issues were as follows:

1) How are premium dollars spent? What percentage goes to benefits, legal and medical fees, administration, safety, other?

2) Time frames for decision-making. Real numbers, not just those set out in statute.

3) Actual premium rates for standard classifications.

4) Actual power of advisory boards—talk to members of them.

5) Medical Cost Containment systems.

6) Get regulations which relate to WC issues (e.g., medical cost containment, safety) but wouldn't be in statute.

7) Talk to injured workers and others who may have negative comments about each state system.

8) More detail on how Return to Work/Vocational Rehabilitation systems work.

9) What insurance companies do business in Maryland, Wisconsin and Michigan?

10) What are the Actual Benefit Levels in all 4 states?

At this point in the process, we felt there was an emerging consensus within our group that Michigan's system worked extremely well and appeared to meet the criteria we had selected at the start of our work. We therefore decided to send a labor and management representative from the Group to Michigan to meet with participants in the system, question them, and determine if labor and management were actually as enthusiastic about their system as our research up to that point had suggested.

The WCG representatives met first with a Senior Workers' Compensation Claim Supervisor with the Travelers Insurance Company. The insurance representative indicated that for many years, Michigan's system was in total disarray, highly litigious, and almost as controversial an issue in the state as Maine's system is now. Starting in 1982, and continuing through 1985, a number of meaningful reforms had been enacted which had made a "significant difference" in the administration of the system.

The Travelers representative explained in detail the benefit structure and administrative procedures of the Michigan system. Of interest was a new medical fee schedule established this past year which based medical payments on 110% of the "usual and customary" rates for certain procedures. There was a threat by the medical community that physicians would stop treating workers' compensation patients if the fee schedule was established. That has not occurred. In fact, physicians seem content with Michigan's system, largely because while they may be paid somewhat less than they might otherwise receive, their bills are paid quite promptly (the statute calls for payment within 30 days, but the Travelers pays most bills within seven days). We later learned the medical fee schedule is only one of the six recognized medical cost containment provisions Michigan has in place—the only state in the country which employs all six. (See Appendix for list.)

From the perspective of at least this private carrier, there is substantial competition among the self-insurers, the competitive state fund, and the private market.

Our representatives met with Roger Fries, the Deputy Director of the State Accident Fund, which is the competitive state fund for Michigan. The fund has a current surplus in excess of $40 million. Interestingly, the state fund appears to be the market of choice for small employers, since approximately seventy-five per cent of the policyholders in the state fund have premiums of less than $5,000.

The state fund has considerable flexibility in setting rates and discounting premiums for good safety records. It is the goal of the state fund to take any "assigned risk" policyholder and work with them on safety to get them back in the voluntary market within one year.

Our representatives also met with Nancy McKeague, an executive with the Michigan Chamber of Commerce who is also chairperson of the state's Quality Advisory Committee (QAC).

The QAC reviews all applications for magistrate (similar to our Commissioners) positions, administers an application to applicants, interviews all candidates, and on the basis of this screening then recommends three names for each vacancy in the Magistrate Division of the Governor's selection. The QAC similarly screens applicants for judges for the Appellate Division.

The QAC is composed of three labor and three management representatives, all of whom are appointed by the Governor.

According to McKeague, the Economic Alliance for Michigan, composed equally of labor and management, also plays an important role. That group created the medical fee schedule, for instance.

Like others with whom we spoke to in Michigan, Nancy McKeague expressed her willingness to share Michigan's experience with anyone in Maine who feels her perspective would be helpful.

We also spoke with Jack Miron, Deputy Director of the Workers' Compensation Disability Division within the Department of Labor; Bruno Ccyrka, responsible for supervising the self-insureds in the State, and Jack Wheatley, Director of the Division of Workers' Compensation within the state Department of Labor.

These administrators all felt issues of benefit levels, medical fee schedules and other substantive issues are ones which should be addressed by labor and management, and should not be influenced by the state bureaucracy.

The Workers' Compensation Division receives its funding from general fund appropriations, supplemented by a $200 fee levied on all lump sum settlements. According to these administrators there is very little fraud in the system, largely because of the consistent emphasis on early returns to work following an injury.

In addition to the QAC and the Economic Alliance for Michigan, the Director of the Workers' Compensation Division also has yet another consulting group composed of labor, management and insurance industry officials. This informal body meets regularly to advise the Director on issues relating to the administration of the system.

All these administrators emphasized the success of their alternative dispute resolution system in reducing litigation. Mediators (not always attorneys) are skilled at meeting informally with employees and employers and getting the parties to resolve their disputes.

The WCG representatives also met with Tim Hughes, Legislative Director of the state AFL-CIO. Huse confirmed the excellent working relationship between labor and management on the issue of workers' compensation. In part, this relationship may have remained so cooperative because of the various institutions which really control the Michigan system and on which labor and management are equally represented.

Huse also reiterated that everyone involved in the system has a strong commitment to accident prevention, adequately compensating employees who are injured, and returning injured employees to work as soon as possible.

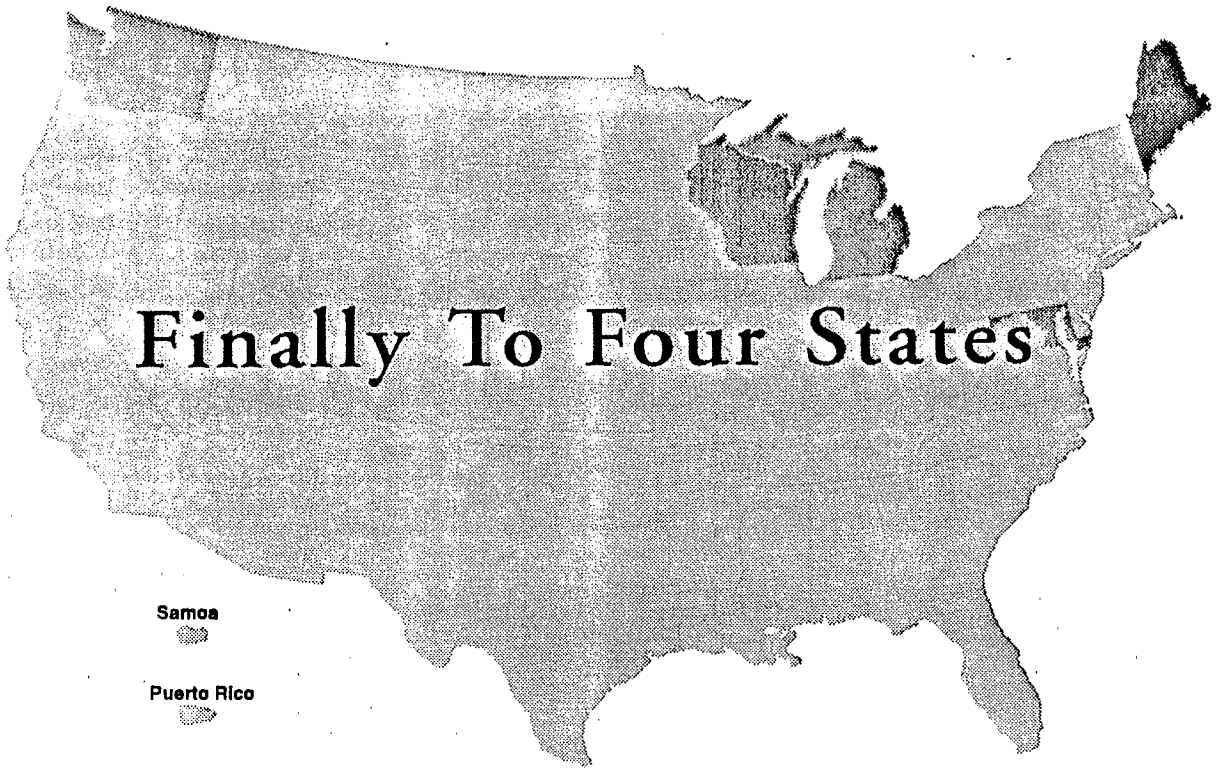
Our two representatives also attended an all-day seminar at Michigan State University entitled "An Overview of Workers' Compensation." The seminar was presented by Edward M. Welch, a lecturer in the School of Labor and Industrial Relations at Michigan State University. One of the preeminent authorities on workers' compensation nationally, Welch was Director of Michigan's Bureau of Workers' Disability Compensation from 1985 through 1990.

Welch has also expressed his willingness to meet with the Blue Ribbon Commission and other interested Maine parties to explain the details of the Michigan system which are beyond the scope of this report.

Based on the documentary information available to us, our numerous conversations with "players" involved in the system, and the rigorous examination of the attributes of the Michigan system in light of our criteria, the 16 members of the Workers' Compensation Group unanimously agreed to recommend the adoption of the Michigan workers' compensation system as a replacement for the system currently in place in Maine.

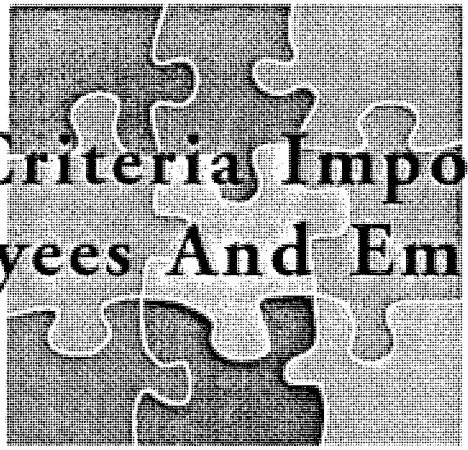

Reviewed All Fifty States
Including Samoa
And Puerto Rico
Samoa
Puerto Rico


Narrowed The Focus
To Eleven States
Samoa
Puerto Rico


Finally To Four States
Samoa
Puerto Rico


CHOSE MICHIGAN
UNANIMOUSLY
Samoa
Puerto Rico

Chose Criteria Important To "Employees And Employers"



SECTION TWO:
THE MICHIGAN SYSTEM

While it is beyond the scope of this report to analyze each provision of the Michigan statutes and regulations pertaining to workers' compensation, it is important to point to those findings which persuaded the Workers' Compensation Group that Michigan met or exceeded each of the criteria we had established.

To do that, we must examine the list of final criteria we used to evaluate the "final four" states and why we felt they were important.

1) **Focus on Injury and Prevention** — We wanted a system which reduced workplace illness and injury, both to reduce human suffering and costs. We looked favorably on those states with incentives in the system which supported prevention efforts.

2) **Effective Rehabilitation and Return to Work Programs** — We felt strongly that rapid return to work following an injury was both best for the injured worker and reduces costs.

3) **Collaboration Between Labor and Management and Stability** — Again, we started from the premise that employers and employees are the most affected parties and only if they could agree on the outlines was a system likely to succeed. Moreover, we all felt we wanted a system that had demonstrated over a several year period that it had avoided any major changes (to avoid returning workers' compensation to the political arena). Some states with favorable provisions were ruled out because their changes had been so recent we could not say with certainty they would meet the test of time.

4) **Cooperative Atmosphere** — We wanted a state with strong emphasis on alternative dispute resolution. Alternatives to litigation promote a more collaborative workplace and speed the process of claims resolution.

5) **A Competitive State Fund** — We felt small businesses need a choice for insurance outside the assigned risk pool; we also felt a state fund could lead to a healthy, competitive insurance market.

6) **Appropriate Benefit Level** — We recognized that benefits needed to be an economic lifeline for injured workers, while being equitable to both parties.

7) **Procedural Mechanisms and Time Frames** — We want a state that the procedures of which speeded the resolution of cases, and lowered costs. We also checked to be sure that the time frames set forth in the statute were actually observed by the decision-makers, which is not always the case.

8) **Rate setting** — Regardless of the form in which premium rates were established (by regulation, free market forces, or some combination of the two) we wanted rate setting procedures to contribute to a competitive environment and allow for rate adjustments based on experience (a further incentive for accident prevention).

9) **Cost Controls and Medical Cost Containment** — In most states, medical costs were driving major increases in the cost of the system. We therefore wanted a state where strong cost containment measures were in place and where there were fair and affordable costs.

The following Executive Summary of each of our criteria and the Michigan attributes concerning that criteria was distributed to legislators following the WCG's presentations to the Governor, legislative leadership and Banking and Insurance and Labor Committees last month.

Executive Summary

The labor-management Workers' Compensation Group devised nine criteria which it felt the state of Maine's workers' compensation system should meet. Listed below is the group's selection criteria as applied to the state of Michigan.

SELECTION CRITERIA	ATTRIBUTES, STATE OF MICHIGAN WORKERS' COMPENSATION SYSTEM
Focus on Safety and Injury Prevention	• Incentive Programs • Creative Use of Safety, Second Injury Funds
Effective Rehabilitation and Return to Work Programs	• Strong emphasis and expectation by employers and employees that injured worker will return to work as soon as possible after injury • Successful history of returning injured employees to work
Collaboration Between Labor and Management and Stability of the System	• Powerful Economic Alliance of business and labor interest, Quality Assurance Committee, Advisory Group • No major changes in system for last seven years
Cooperative Atmosphere	• Low litigation rate (80% of cases not contested) • Strong Alternative Dispute Resolution • Simple system - no attorney needed to explain it
A Competitive State Fund	• Accident Fund promotes competition, has 20% of market • Has $40-$50 million surplus • Helps employers get out of assigned risk pool
Appropriate Benefit Levels	• Compensation rate is 80% of net pay • Maximum weekly rate is $441 per week
Procedural Mechanisms and Time Frames	• Quick decisions; no backlog of hearings • All medical bills paid within 30 days
Rate Setting	• Unregulated free market, with more than 20 carriers • Employers encouraged to "shop around" for lower rates • Even assigned risk employers (12%) can negotiate rates
Cost Controls and Medical Cost Containment	• Only state which implements all 6 recognized medical cost containment provisions • Benefits (indemnity plus medical) are less than 40% of Maine's

The Workers' Compensation Group recommends developing a process to replace our current workers' compensation system with that of the state of Michigan.

AN OVERVIEW OF THE MICHIGAN SYSTEM

While our group members brought considerable first-hand experience with workers' compensation to this project, and while we thought based on that experience that we knew what was important, we have never held ourselves out as "experts."

The following selected highlights of the Michigan workers' compensation system, therefore, come from one of the acknowledged "experts" in the field, Edward M. Welch. They are excerpted from his 1990 pamphlet "An Overview of Workers' Compensation in Michigan," published by the Michigan Department of Labor, and are used here with grateful appreciation to the author. The language is somewhat simplified, which may be one of its virtues. We were told several times in the course of our investigation that the Michigan system was simple enough that an injured worker did not need an attorney to explain her rights to her.

Origin of the Michigan Law

Before 1912, a worker who was injured in the course of his or her employment could sue his or her employer in a civil or "tort" action, which was the same remedy available to a person injured under other circumstances. The tort remedy, however, had certain problems. It required the worker to prove that the injury occurred because the employer was negligent and the employer had three important defenses: (1) that the worker was also negligent, (2) that the worker knew of the dangers involved and "assumed the risk," or (3) that the injury occurred because of the negligence of a "fellow employee." Under this system it was very difficult for workers to recover against their employers. If they did win, however, they could receive virtually whatever damages a jury wanted to give them.

In 1912 Michigan, along with most of the other states, adopted a Workmen's Compensation Act. The new remedy is essentially a "no-fault" system under which a worker no longer has to prove negligence on the part of the employer, and the employer's three defenses were eliminated. The intent of the law was to require an employer to compensate a worker for any injury suffered on the job, regardless of the existence of any fault or whose it might be.

In return for this almost automatic liability, the Act limited the amount that a worker could recover. Workers are now entitled only to (1) certain wage loss benefits, (2) the cost of medical treatment, and (3) certain rehabilitation services.

Insurance

The law requires that every employer subject to the Act must provide some way of assuring that it can pay benefits to its workers should they become injured. Most employers in Michigan provide this security by purchasing an insurance policy from a private insurance company. The insurance company then reports to the bureau that it is providing coverage for that employer. Some employers, however, are"self-insured."

There are severe penalties for the failure of an employer to provide workers' compensation coverage. If a worker is injured, he or she may sue the employer for civil damages. If the employer was at fault for the injury, this might result in the payment of a great deal of money by the employer.

The employer may be subject to a fine of $1,000 or imprisonment for not less than 30 days nor more than 6 months, or both. Each day for which the employer is uninsured is considered a separate offense.

Rate Setting

Workers' compensation insurance rates are based upon the "classification" of the employees to be covered. The classification refers to the type of work the individuals perform. Insurance companies establish a premium rate for each classification. However, there are often many adjustments to these basic rates.

Since 1983, Michigan has had competitive pricing of workers' compensation insurance. In many states an insurance bureau sets uniform rates that insurance companies are required to follow in selling workers' compensation insurance. In Michigan, insurance rates are now set on a competitive basis in the marketplace.

Because insurance companies do not all charge the same rate for the same workers' compensation coverage, it is very important for a business, either directly or through its insurance agent, to shop around for the best price on workers' compensation insurance. In shopping for insurance, price is a very important consideration but an employer should also inquire concerning the services that the insurance company will provide. This includes the services concerning claims as well as prevention and loss control.

Coverage

Of course, to be compensable, the injury must happen at work. Workers' compensation is designed to cover only injuries which "arise out of and in the course of the employment." In the majority of cases it is obvious whether an injury happened at work. There are, however, many times when this becomes questionable.

Disability

Sections 301(4) and 401(1) of the Workers' Disability Compensation Act state:

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.

In order to receive benefits, a worker must be "disabled" as defined above. However, the fact that a worker is disabled is not enough to obtain benefits. In addition to being disabled, the injury or disability must be work-related and there must be a wage loss. Benefits can also be denied if the worker has refused a reasonable offer of employment or has established a wage-earning capacity. All of these factors will be discussed below.

Section 371 of the Act contains a special definition of disability for retirees. It makes a it harder for a retiree to obtain benefits. A person is considered a "retiree" if he or she is receiving a pension or retirement benefit (but not a disability pension) that was paid for by the employer. To be disabled, a retiree must prove that he or she is unable "to perform work suitable to the employee's qualifications, including training or experience."

Return to Work

In most cases of work-related injuries, the most desirable result is a return to work. Indeed in the vast majority of cases the worker gets better and goes back to work and that is the end of the case.

Even if the worker is not completely recovered, it is to the advantage of both the employer and the worker for the worker to return to a job that he or she can perform.

If the employer or anyone else offers an injured worker a job which he or she can do, the worker must accept the job or face the loss of benefits. Sections 301(5)(a) and 401(3)(a) provide that if a previous employer, another employer, or the Michigan Employment Security Commission makes an offer of "reasonable employment," the worker must accept the job or lose benefits. Sections 301(9) and 401(7) provide that "reasonable employment" is work that the employee can perform, poses no clear and proximate threat to the employee's health, and is within a reasonable distance from the employee's residence. Reasonable employment is not limited to work suitable to the employee's qualifications and training.

If the job that is offered is a lower paying job, the worker will continue to receive workers' compensation benefits based upon the difference in wages.

Disputes often arise concerning whether or not a worker can do the job that is offered. This is a question that can only be answered in individual cases and often requires the expert opinion of a doctor. Of course, a worker should never do a job that will cause injury or harm. In general, however, a worker is always better off to try a job that is offered. If a worker tries the job and is unable to do it, benefits continue or resume; but if the worker refuses to try the job, the employer is likely to challenge his or her right to continuing benefits.

The job offered does not have to be at the same skill or pay level that the worker was doing. As mentioned above, however, if it is a lower paying job, the worker continues to receive benefits based upon the difference.

The law does not require the employer to offer a job. Most enlightened employers, however, try to make work available for their injured employees whenever they can. First of all, there is a money factor. An employer is better off to have an individual in the job doing work in return for wages than to have the individual at home receiving workers' compensation. Accordingly, although there is no legal requirement that an employer offer work, it is financially better off if it does.

Even more important it must be remembered that everyone is better off if the worker goes back as soon as possible. Most men and women in our society recognize their responsibility to perform work in return for their wages. Most people want to go back to the job as soon as they can. Most people who have worked and supported themselves and/or their families feel uncomfortable when they are not able to work. If they remain in that unhappy and uncomfortable state longer than is necessary, it becomes harder and harder for them to go back to their jobs.

Many employers in Michigan are finding that disabilities are shorter and the costs lower if they are willing to go out of their way in helping their injured employees get back to the job. Sometimes this requires making a small change in the person's work station. Sometimes it requires moving some people around in order to find a job the person can do.

Some employers even create special "transitional workshops" for injured employees to work in temporarily. Whatever it takes, most people find that the sooner an employee can get back to the job, the better off everyone is.

If a worker returns to a job, tries and is unable to do it, his or her benefits should be resumed. Of course, in some cases, there may be disputes over whether the worker really tried and whether the job was too hard to do.

If the worker returns to work for a period of time and then leaves, the question of whether benefits resume depends upon whether or not the new work "established a wage-earning capacity." That, in turn, depends upon several factors including (1) how long he or she continued to work after returning, (2) the nature of the work performed, and (3) the reasons for leaving work.

Generally if he or she returned for less than 100 weeks, it is most likely that the work will not establish a wage-earning capacity. If the worker returned for between 100 and 250 weeks, the work may or may not have established a wage-earning capacity. If the return was for more than 250 weeks, the work probably will have established the wage-earning capacity.

The nature of the work is also a factor. If the work was a "favored job" especially created for this worker, it probably will not establish a wage-earning capacity. On the other hand, if it was a job regularly performed by other workers, it probably will establish a wage-earning capacity.

Finally, if the worker leaves the job for reasons beyond his or her control, the payment of benefits is more likely to be resumed. If, however, the worker voluntarily leaves the job, benefits will probably not resume.

Causation

The work must "cause" the disability. If John Doe simply comes down with the flu while on the job, he is probably not entitled to workers' compensation benefits. The work must somehow be the cause of the disability.

The work does not have to be the only cause. It is enough if the work causes, contributes to, or aggravates a condition which results in disability. Some of us can lift 200 pounds without any difficulty. Some of us, however, would severely hurt our back if we lifted 100 pounds. The law does not make this distinction. If a person does something at work that causes him or her to become disabled, the worker is entitled to benefits. It does not matter if there was some pre-existing weakness or if the worker was born with some condition that made him or her more susceptible to injury.

There are some special rules for certain conditions. In cases of heart disease, mental disabilities, and conditions of the aging process, the worker must prove that the employment aggravated or accelerated the condition in a significant manner. In cases of mental disability, the condition must be caused by actual events of employment. A worker is not entitled to benefits if he or she simply imagined something at work which caused the disability.

When the worker's compensation law was first passed, there had to be an "accident" in order for benefits to be paid. That has long since been changed. If Mary Smith did not hurt her back by a single incident but her back gradually became painful as the result of lifting over and over, day after day, she can still be entitled to workers'

compensation benefits. This is what the law calls "an injury not attributable to a single event."

Second Injury Cases

The Second Injury Fund was originally created to deal with the situation in which an individual suffers first one specific loss and then another specific loss that results in total and permanent disability. Assume for example that Mary Doe lost the sight of one eye as a child. Then later as a result of an industrial injury, lost her left arm. She would be considered totally and permanently disabled and entitled to the benefits described above. However, the employer would only have to pay for the first 269 weeks. This is the amount of specific loss benefits paid for the loss of an arm. All other wage loss benefits would be paid to Mary by the Second Injury Fund.

If a worker loses one bodily member and later suffers the loss of another member that results in total and permanent disability, the employer must only pay for the specific loss of the second member. The Second Injury Fund then pays all other wage loss benefits. (Medical and rehabilitation benefits are still the responsibility of the employer.) It does not matter whether the first member is lost at work or at home or even if the loss occurred at birth. The second loss, however, must be at work. If Mary Smith lost her arm and work and later lost her eye as a result of an injury not related to her work, she would not be entitled to total and permanent disability benefits.

Special help for a young worker with high earnings potential who is injured at a low-paying job

Section 356(1) of the Act provides special help for individuals who are earning a very low wage at the time of their injury and can demonstrate that at the time of their injury they had a potential for higher earnings.

It applies to individuals whose rate of compensation is less than 50 percent of the state average weekly wage as of the time of their injury. After two years of continuous disability, such a person may petition for a hearing and demonstrate that "by virtue of the employee's age, eduction, training, experience, or other documented evidence which would clearly reflect the employee's earning capacity, the employee's earnings would have been expected to increase." If the employee can demonstrate this, the the magistrate may order an increase in compensation up to 50 percent of the state average weekly wage for the year of injury.

This one-time adjustment and the higher rate of benefits is paid only from the time a claim is made under this section. The cost of the increase payments comes from the Second Injury Fund and not the employer.

Calculation of Wage-Loss Benefits

In the ordinary case a worker receives 80 percent of the after-tax value of his or her wage loss. It does not matter whether the worker is "totally" or "partially" disabled. Benefits are based on the wage loss and set at 80 percent of the after-tax value of the loss.

Thus, if Jane Smith is unable to work, a determination would be made of her "average weekly wage" before her injury and she would be paid benefits equal to 80 percent of the after-tax value of that amount. If she returned to work and because of her injury received wages less than her average weekly wage, she would receive benefits equal to 80 percent of the after-tax value of the difference.

Under certain circumstances the value of fringe benefits may be included in determining the average weekly wage. "Fringe benefits" include things such as the cost of health insurance, employer contributions to a pension plan, and vacation and holiday pay. Sometimes when a worker is injured, the company continues to provide fringe benefits. There is nothing in the law that requires the company to do this.

However, if benefits are not continued, the worker has suffered a greater loss of income. The value of fringe benefits that are not continued is added to the value of the cash wages to determine the worker's average weekly wage. There is a limit, however, Fringe benefits cannot be used to raise the benefit to more than two-thirds of the state average weekly wage.

Duration and Payment of Benefits

Section 311 of the Act provides that no compensation is paid for an injury which does not last for at least one week. If the disability lasts beyond one week, the worker is entitled to benefits as of the eighth day after the injury. If a disability continues for two weeks or longer, then the worker is entitled to be paid compensation for the first week of disability.

Benefits continue so long as the worker is disabled. This could be for the rest of his or her life. Benefits are reduced 5 percent each year beginning with the year of the worker's 65th birthday.

This reduction continues until the worker is 75 years of age. At that time benefits have been reduced to 50 percent. They continue at that level for the rest of his or her life. (This 5 percent reduction only applies if the worker is receiving social security benefits and is not subject to coordination as discussed below.)

Coordination of Benefits

Section 354 provides for the "coordination" or reduction of workers' compensation benefits to the extent the worker receives other benefits paid for by the employer. Thus if a worker receives sick and accident benefits, pension benefits, or other similar benefits, his or her workers' compensation rate will be reduced by one dollar for each dollar in other benefits that are received.

If the other benefits are taxable, such as a pension benefit might be, there is an adjustment to represent the after-tax value of the benefit received.

Social security benefits are paid 50 percent by the employer and 50 percent by the worker. Accordingly there is a 50 percent reduction for social security retirement benefits.

Social security disability benefits are already reduced if an individual receives workers' compensation. Accordingly, there is no reduction in workers' compensation for social security disability benefits.

Medical Benefits

During the first ten days of treatment the employer has the right to choose the doctor. After that, the worker is free to change doctors if he or she so desires. The worker, however, must notify the employer of the change.

In practice, many large employers have company doctors. The worker ordinarily seeks treatment from the company doctor first. If the assistance of a specialist is necessary, the company doctor refers the worker to such a specialist. Small employers, on the other hand, often tell their workers that they should go to their family doctor or someother physician in the community.

The law provides that medical providers such as doctors and hospitals cannot charge more than the amount specified in a fee schedule. If they attempt to charge more, the insurance company will pay only the maximum allowed by the schedule. The provider is not allowed to collect the difference from the worker.

Vocational Rehabilitation

Section 319 of the Act provides that a worker has a right to vocational rehabilitation benefits. Vocational rehabilitation can include a whole variety of things. It might simply mean that the employer makes some minor change in the worker's job station so that he or she can return to work in spite of some continuing problem. It might mean that an outside rehabilitation counselor will work with the employer and the employee to aid in a return to work at the same job or a similar job with the same employer.

It might mean that a vocational rehabilitation agency, either a state agency or private agency, will help the worker find a job with some other employer

It might involve short-term training to help the worker find a new job or in some unusual circumstances, long-term re-education. In the appropriate circumstance an employer can be required to provide up to two years of vocational rehabilitation services. Must a worker take part in vocational rehabilitation?

In certain circumstances if the company offers vocational rehabilitation services and the worker refuses to cooperate, wage loss benefits can be terminated.

Procedures

In about 75 percent of the cases, there is no problem and no dispute.

Whenever a worker is injured on the job, he or she should immediately report the injury to the immediate supervisor. If a problem does not result from a single event but instead results from an exposure over a long period of time, the worker should report the injury as soon as he or she knows there is a problem that may be related to the work.

The law does not require that either notice or claim be in writing. However, most employers provide forms upon which to report an accident or injury. Workers should use such forms. The failure to report an injury in writing will not in itself mean that the worker is not entitled to compensation. However, if there is any doubt about the situation, it will be much easier for the worker to prove that he or she reported the injury (and that the injury happened) if a written report is made and if the worker keeps a copy of the report.

Section 381 of the Act requires that the employee give his or her employer notice of an injury within 90 days after the injury or within 90 days after the employee knew or should have known of the injury. If the worker fails to give such notice, however, the employer does not escape responsibility unless it can show that it was somehow harmed by the worker's failure to give notice.

Section 381 also requires that a worker must make a claim for compensation benefits within two years after the injury. The claim to the employer need not be in writing, but as discussed above, there are good reasons why it should be. In the vast majority of cases, the claim is made with the employer. The law, however, does provide the alternative that a worker can make a claim by filing it in writing with the bureau on a form available from the bureau.

Circumstances can arise under which a worker has given the proper notice and made a proper claim but for various reasons benefits were not paid. Sometimes many years go by before a worker files an application for hearing. Section 381(2) provides that in those cases the worker cannot receive past due benefits for more than two years back from the date he or she filed an application for hearing.

Section 833(1) deals with the situation in which a worker receives benefits which are then stopped and the worker later files an application for hearing to have benefits started again. Ordinarily a worker would do this shortly after benefits were stopped. Sometimes, however, this is delayed for a long period of time. Section 833(1) provides that under these circumstances the employer cannot be ordered to pay benefits for more than one year back from the date the application is filed with the bureau.

Sometimes, for various reasons, an employer pays a worker more benefits than he or she is entitled to. Under those circumstances the employer has a right to recover that overpayment from the worker. Usually this is done by reducing future benefits by a specified amount until the overpayment is recovered.

Informal Mediation

Some problems concerning workers' compensation require formal litigation, lawyers, and judges. Many others, however, can be solved in a simpler, faster way.

If a worker or an employer has any questions about workers' compensation benefits, he or she can obtain help by simply calling the nearest bureau office. Very often minor disputes concerning workers' compensation can be resolved by the mediators that are available in these offices. Sometimes the problem is solved by simply providing the needed information. Sometimes the mediator will make a phone call to the other party involved in the case and sometimes the mediator will arrange for an informal conference between all the people involved. When problems can be resolved in this way, the need for formal litigation is avoided. Sometimes, however, there is no simple solution and formal litigation will be necessary.

Formal Dispute Procedures

Most often formal disputes are started when a worker files an "application for mediation or hearing (Form 104)." The law requires that this form include detailed information about the injury. At the time it is filed the worker must also provide the employer with any medical records relevant to the claim that are in his or her possession. When the application is received by the bureau, it is sent to or "served upon" the employer and its insurance carrier. The employer must then file a Carrier's Response From providing detailed information form its point of view and must send medical records in its possession to the worker or the worker's attorney.

After an application and the Carrier's Response Form have been exchanged, many cases are set for a mediation hearing. Mediation hearings are scheduled in those cases that involve a claim for a closed period of time where the employee has returned to work, case involving only a claim for medical benefits, cases in which the worker is not represented by

an attorney, and any case in which the bureau determines that the claim might be settled by mediation.

At the mediation hearing the parties sit down with a mediator appointed by the bureau and examine all the aspects of the case. The mediator encourages the parties to exchange completely all information about the case. The mediator then explores with the parties the various possibilities for an agreeable solution to the problem. The bureau is finding that many workers' compensation disputes can be resolved through a voluntary agreement by the parties arrived at during a mediation

If the dispute is not resolved at the mediation hearing, the case is assigned a trial date before a workers' compensation magistrate.

If the case involves a claim of less than $2,000, the case may be heard as a "small claim" rather than having the usual formal trial.

Small claims are heard by the same magistrates or judges as other cases, but the proceedings are much less formal. Written medical reports may be submitted into evidence instead of taking testimony or "depositions" from doctors. The formal rules of evidence are not strictly applied and attorneys are not permitted. (If either side hires an attorney, the case is "removed" to the more formal, usual trial procedures.) At a small claims hearing a party may represent him or herself or may be represented by another person who is not an attorney.

Ordinarily small claims cases will be scheduled for a mediation hearing as discussed above. After the mediation hearing, if the dispute cannot be resolved, they will then be scheduled for a small claims hearing before a magistrate.

Appeals

If the parties disagree with a decision of a magistrate, they may file an appeal to the Workers' Compensation Appellate Commission

Concerning issues of fact, the Workers' Compensation Appellate Commission must "affirm" or agree with the magistrate if there is substantial evidence to support his or her findings. On issues of law, the Appellate Commission is free to completely review the matter. In other words the Commission makes a complete review of legal issues but must ordinarily accept the magistrate's determination of factual issues.

If a party disagrees with the decision of the Appellate Commission, it may seek "leave" or permission to appeal to the Court of Appeals or the Supreme Court. The courts are limited by the Constitution to review only issues of law if there is any evidence to support the factual conclusions that were reached by the Appellate Commission and magistrate.

Lump Sum Settlements

Sometimes cases are settled by a redemption. If a case is redeemed, the worker receives a single, lump sum payment from the employer and in return gives up all of his or her future rights to workers' compensation benefits. Redemptions are valid only if they are approved by a magistrate after a formal hearing. At such a hearing papers are prepared that show exactly how much the settlement will be, where the monies will go and how much the worker will receive. The case and the reasons for the settlement are then explained to the magistrate by the parties. The magistrate makes certain that the worker understands his or her rights. Only then will a magistrate approve such a redemption settlement.

Attorney Fees

Workers are usually represented by attorneys who are paid on the basis of a contingent percentage fee. The worker is not ordinarily required to pay any fee or monies when he or she hires the attorney. Instead the attorney agrees to accept as his or her fee a percentage of the amount the attorney recovers for the worker. If there is no recovery, the attorney does not receive any fee.

Ordinarily the attorney will pay the costs of preparing the case for trial. This often involves a considerable amount of money to pay doctors for reports and examinations and to pay court reporters. If there is a recovery of money for the worker, this amount is deducted first to reimburse the attorney for the monies he or she has paid out. Then the attorney charges a percentage fee on the remaining amount of money that is recovered. The attorney is allowed to base the fee on all the workers' compensation benefits that have been recovered for the worker up to the time the case is concluded. The attorney is not permitted to charge a fee on benefits that are paid in the future.

If the worker wins the case as the result of a trial and/or an appeal, or if benefits are paid as the result of a voluntary payment, the attorney is entitled to charge a maximum fee of 30 percent of the benefits received. The maximum attorney fee, however, cannot be based upon a rate of benefits that is higher than two-thirds of the state average weekly wage.

If the case is resolved through a redemption settlement, the amount paid in a lump sum is usually higher. This is because a redemption settlement usually involves some payment for the future. Accordingly, lawyers are limited to smaller fees in those cases. If the case is settled before a trial is completed, the fee is limited to 15 percent of the amount of the settlement if it is for less than $25,000. If the settlement is for more than $25,000, the maximum fee is 15 percent of the first $25,000 and 10 percent of the amount over that. If a trial has been held and completed and the case is later settled through a redemption, the attorney is entitled to a fee of 20 percent.

While the Workers' Compensation Group intentionally chose to limit its membership to management and labor representatives, our work has understandably been the object of great interest from attorneys and other parties with an interest in workers' compensation.

While we have neither requested nor received formal presentations from any parties or groups, it has been brought to our attention that, particularly after our presentation to the legislature last month, a number of parties have been scrutinizing the Michigan system. The work of two lawyers—one representing employers and insurance carriers, the other representing injured workers—has been brought to our attention and portions of their comments are included here.

While the WCG clearly does not endorse the validity or accuracy of these analyses, we thought it would be instructive to examine the preliminary summaries of attorneys practicing in the field.

The Employer law firm wrote:

"The following are highlights of the Michigan law which, if put into effect in Maine, would significantly alter existing practice:

1. Limitation of penalties. Like Maine, Michigan requires payment of benefits within 14 days of a report of injury, and allows penalties if payment is not made within 44 days. The penalties are, however, strictly limited to a maximum of $1,500.00; they accrue at $50.00 per day until they reach this maximum. If the penalty results from the Employer's failure to notify the carrier of the reported injury, the Employer itself must pay the penalty. No penalties may be assessed for failure to pay a claim which involves an "ongoing dispute"; the existence of a dispute is a question of fact which does not appear to require any formal filing such as Maine's Notice of Controversy. Furthermore, the monetary penalty is the only sanction available against employers: failure to pay within 44 days DOES NOT result in acceptance of the claim.

2. EMPLOYEES PAY THEIR OWN ATTORNEYS' FEES AND EXPENSES on a contingency basis according to rules developed by the Director. Employees' attorneys' fees on petitions for award cannot exceed 30% of the balance remaining after payment of expenses; fees in connection with lump sum settlements cannot exceed 15% of the first $25,000.00 and 10% of any amount in excess of $25,000.00 The Employer/Insurer's attorneys' fees are not regulated.

3. SMALL CLAIMS (involving benefits of less than $2,000.00) may by agreement be heard in a summary proceeding in which the parties are not represented by counsel and the rules of evidence are relaxed. In the absence of fraud, the magistrate's decree in such a proceeding is final.

4. BINDING ARBITRATION is available at both the trial and the appeal level; the parties must agree to the procedure, and to the arbitrator involved. Arbitrators must be members of the bar and of the American Arbitration Association with at least five years experience with Workers' Compensation. Decisions must issue within 90 days of the

commencement of the proceeding; extensions are available only for good cause shown. The rules of evidence apply only if the arbitrator determines that failure to do so would prejudice a party.

5. MEDIATION of claims is mandatory (except on petitions to stop or reduce benefits) in closed-end and "no lost time" claims, where the employee is not represented by counsel, and in cases in which "the bureau determines that the claim may be settled by mediation." Mediation is required in other cases unless a party refuses to participate. The recommendation of the mediator is not binding, but a party who willfully fails to comply with the procedure is barred from proceeding under the Act.

6. LIABILITY IS REDUCED by the amount of any disability insurance benefits, retirement or pension benefits, or social security benefits received by the employee. Also, BENEFITS FOR EMPLOYEES OVER 65 YEARS OF AGE ARE REDUCED by 5% per year for ten years, so that a 75-year-old claimant received 50% of his original benefits. (Note: the provisions offsetting social security benefits and reducing benefits for older claimants may be unconstitutional.)

7. THE COMPENSATION RATE IS BASED ON 80% OF THE EMPLOYEE'S AFTER-TAX AVERAGE WEEKLY WAGE. The current maximum rate is $441, as compared with Maine's $518 maximum rate.

8. PETITIONS TO STOP OR REDUCE COMPENSATION ARE GIVEN PRECEDENCE over other petitions and must be heard within 60 days of filing.

9. MEDICAL COSTS are subject to a detailed, annually revised fee schedule covering all "treatment, attendance, service, devices, apparatus, or medicine." If a carrier determines that a health-care provider has over-charged or over-treated, it may withhold payment of the disputed amount; the provider must then appeal to the Department of Management and Budget.

10. As in Maine, employers must pay for VOCATIONAL REHABILITATION; it appears, however, that NO STATUTORY BAR EXISTS TO FILING PETITIONS DURING REHABILITATION. The unreasonable refusal of the Employee to accept rehabilitation services may lead to the reduction or termination of his benefits.

11. Employees have 90 DAYS IN WHICH TO PROVIDE NOTICE of an injury. Employers must prove ACTUAL PREJUDICE in order to prevail on a notice defense.

12. A STATE FUND would compete with private insurers.

13. Insurance prices are deregulated, theoretically increasing competition and encouraging safe-workplace discounts."

The law firm representing workers wrote:

"It would be of interest to summarize the particulars of Michigan law which may result in a further deterioration of benefits and protection for Maine's injured workers.

1. Maximum benefits are cut from $518 to $441 a week.

2. Maximum individual benefits are at 80% of net pay rather than 66-2/3% of gross pay. I believe this is an overall reduction of about 2-3%.

3. Michigan essentially has no inflation protection in the vast majority of cases where Maine has inflation protection for total disability after 3 years.

4. Michigan has a heavier causation requirement for conditions of the aging process.

5. Michigan has no protection for the continued receipt of benefits by injured workers. That is, it has an unlimited payment without prejudice scheme which may leave injured workers to have their benefits terminated or reduced at the discretion of insurers.

6. There is no provision for payment by insurers of injured workers' attorneys' fee in the Michigan law that is generally applicable.

7. There is a reduction of benefits after age 65 on a 5% per year basis.

Eric Blom's article as reprinted in the Kennebec Journal of March 25, particularly in regard to the box entitled "Michigan's Comp at a Glance" notes that under the Maine system, workers now get 66-2/3% but fails to note that it is of gross wages, and which in many cases, indeed in the majority, is more than 80% of net wages.

Nevertheless, the investigation by the Joint Labor-Management Committee into the essence of the Michigan system which is labor-management cooperation in safety, return to work and non-contentious payment of benefits with a state fund being provided must clearly be at the center of real reform".

In researching other states' workers' compensation systems, the WCG compiled a substantial list of written publications, which we intend to edit into a usable bibliography. For purposes of further understanding the Michigan system at the time of this report, however, it is suggested the reader review the "Administrative Inventory" of the Michigan system prepared by the Workers' Compensation Research Institute, which is appended hereto.

SECTION THREE:
TRANSITION ISSUES

Transitional Issues

- Case Law
- Start Up Money for State Mutual Fund
- Administration
- Settlement of Old Claims
- Unfunded Liability of Old System
- "Fresh Start"
- Housekeeping

As the idea of adopting another state's workers' compensation system began to evolve, it soon became apparent that if this were to happen there would be a whole range of consequences which would need to be addressed.

In the WCG's deliberations, we simply noted these transitions issues as they arose, putting them on a list for future discussion. We did not want any of those issues to become obstacles to our reaching consensus if we were otherwise able to do so.

Moreover, we felt that if we could reach consensus on the concept, that all these transition issues, complex and thorny though they might be, would be able to be solved if there was a forum for discussions to take place.

Once we unanimously agreed on Michigan, it was time once again to turn to the list of transition issues we had been compiling. For organization's sake, we divided these into two groups: non-financial and financial transition issues. We have assigned task forces from our group to work in each of these areas.

Non-Financial Issues

The first issue which would need attention if an entirely new system were to be adopted is what disposition would be made of the existing cases under the "old system." How would they be handled administratively? The task force is examining a number of alternative solutions to this issue, including providing parties whose claims arose under the "old" system the option to have their claims proceed under the "new" administrative procedures. The Workers' Compensation Group is willing to work with the Blue Ribbon Commission members and staff to analyze this issue.

A second major issue which must be resolved is the question of what body of legal precedent ("case law") would be used by adjudicators under the "new" law. Since they would be interpreting provisions virtually identical to Michigan's statute, would legal precedent arrived at by Michigan courts be used for interpretive purposes. Would Michigan case law be used for guidance, but not considered binding?

Practitioners throughout the workers' compensation community have volunteered a variety of opinions on this issue. Because this issue was so important and was beyond the expertise of WCG members, and because we wanted an impartial analysis, the Workers' Compensation Group has retained Professor David Gregory of the University of Maine School of Law to provide an independent, thorough analysis of the issue.

Professor Gregory has been asked to provide the WCG an analysis of the probable legal consequences in the area of "case law" if Maine in fact chooses to adopt Michigan's system.

The only constraint on Professor Gregory's inquiry is that we have asked him to address those steps which Maine could take to definitively answer this question. We would like to eliminate as much uncertainty as possible, in order to avoid needless litigation for years to come over whether a particular issue would be guided by Michigan precedent, Maine precedent, or some combination of the two.

Professor Gregory's analysis of this issue should be available by approximately May 8.

A third category of transition issues we have loosely grouped under the heading of Administrative Structure/Personnel Issues. These would include questions about the terms of existing Commissioners and how they would be integrated into a new system. Under the comparable statutes, there would be a slight reduction in salary if existing Commissioners became magistrates under a system patterned on Michigan's.

There are a number of issues raised by the different structures the respective states have evolved to administer Workers' Compensation. For example, in Maine, the Workers' Compensation Commission is an independent agency; whereas in Michigan it is a Division with the Department of Labor. For another example, workers' compensation insurance matters in Maine are regulated by the Bureau of Insurance, whereas in Michigan that function is also handled by the Workers' Compensation Division.

While our task force continues to examine this constellation of issues, we have discussed the extent to which it is important to adopt the state government structures from Michigan as well as the substantive benefit and procedure provisions, or whether to do so would create unnecessary chaos and confusion. These discussions are ongoing.

A fourth category of transition issues is that body of collateral statutes which reference the workers' compensation statute, but are not contained within it. For instance the Workplace Safety Education and Training Fund, the Workplace Load Fund, anti-discrimination issues under the Maine Human Rights Act, and administration issues found in Title 5 all reference the existing Maine statute. While we continue to try to identify other collateral statutes, our initial response to this question is that those statutes were enacted to serve important public policies not in conflict with the Michigan law, and should therefore remain as they are.

Another transition issue we raised was the issue of differences between Michigan and Maine in their respective approaches to data collection and confidentiality of data. Here again, we tended to view these as administrative issues not at the heart of the Michigan system and therefore, in the interests of minimizing the number of changes with which we would have to grapple, felt we should leave Maine law as it is.

Finally, as we scrutinized Michigan's system carefully, it became apparent that many of the components of the system we found most helpful were found not in their statute, but in the regulations which had been promulgated to implement the statue. We suggested the adoption of Michigan's regulations in a way which would not unduly prolong the effective date of the new system. We are quite concerned that formal rule-making under the Administrative Procedures Act on each regulation included in the Michigan system would consume too much time. Here again, we are willing to work with the Blue Ribbon Commission to devise a workable solution to this issue.

There are undoubtedly other transition issues which we have not yet addressed and which we are willing to examine. What seems most important to us, however, is that such a discussion take place only after there has been agreement on the concept of adopting the Michigan system. If parties in interest each begin to advocate for acceptance of their particular interest's changes as the price for their acceptance of the Michigan plan, the rough-and-tumble of political debate, compromise and stalemate may very well be re-enacted.

Once consensus has been reached on the concept, however, we feel confident the Blue Ribbon Commission or some other forum will serve as the ground where legitimate needs and concerns can be addressed.

Financial Transition Issues

Our Task Force on Financial Transition Issues has been meeting to define the issues which are known, and to begin discussion of them.

A major financial concern will be the method and ability to capitalize the start-up costs for the competitive state fund. The "rule of thumb" is there must be a three or four to one ration between the amount of capital available and the amount of coverage underwritten.

The WCG Task Force has met with a representative from the National Association of State Insurance Funds, involved with capitalizing state funds in recent years in a number of states. We would be happy to share that information with the Blue Ribbon Commission. It appears there are a number of ways in which this task can be accomplished, depending to some extent on the political and economic climate in the state.

A second major financial transition issue is how to deal with the large unfunded liability the State of Maine currently has on its own cases if a new system is adopted. This has been estimated by some sources as in excess of $70 million. There is some sentiment that the State should be required to meet the same underwriting requirements as other self-insureds.

A third issue is whether and to what extent heterogeneous groups of self-insureds could exist under the Michigan plan, which currently restricts group self-insurance to employers in the same or similar business. Our feeling was that since group self-insurance appears to be working reasonably well, that those groups which either currently exist or are to be formed shortly could be grandfathered and allowed to operated under the "new" system.

A fourth issue relates to completion of the current "fresh start" program, in which the state has assessed carriers to compensate for the unfunded liability on "assigned risk" pool cases from 1990 forward, which assessment insurers are then permitted to pass along as surcharges to employers. While this program is currently in litigation (some carriers have refused to pay their assessment), some resolution of the issue must be considered as part of any transition to the new system.

A fifth and related financial issues is how to deal with the unfunded liability for the "assigned risk" pool cases for the years 1987, 1988 and 1989. The amount of this unfunded liability has been variously estimated at between $75 and $150 million. While our group takes no position on how this matter should be resolved, its resolution should be considered if the state is to move to another system in its entirety.

A final financial issue we identified is the need for a thorough actuarial analysis of the probable financial consequences of adoption of Michigan's system. While such a full-blown analysis is beyond the economic resources of the WCG, we have been discussing a preliminary actuarial analysis with a number of actuaries.

CONCLUSION

After months of study and debate, the Worker's Compensation Group has achieved what many said could never happen: we have found the common ground which exists between labor and management on this issue.

We have overcome our own skepticism. We have recognized our old wounds from past battles. By sitting together in an atmosphere of reconciliation and dialogue, we have begun to trust one another.

There are some who have criticized us for not reaching out sooner to solicit participation and ideas from insurance carriers, from attorneys, from physicians or other players in the system. To them we can only say that we know how important you are to the smooth functioning of the system, but we faced an enormous task and, quite frankly, it took every bit of energy we had to stay focused on that task if we were to succeed.

To the Blue Ribbon Commission, we extend our heartfelt wishes for success as well. Yours is in some ways a much tougher job than was ours, for you must perform your work in the glare of public scrutiny. We submit this report with humble hopes that you will recognize the soundness of our simple idea and find it useful in your deliberations. As we continue to analyze these complex issues, we look forward to the opportunity to work closely with you.

Summary

- Need a System that Works for Employees and Employers
- Fast
- Incentives for Safe Workplaces
- Returns Workers to Their Jobs *ASAP*
- Quality Benefits at Fair Costs
- Non-Adversarial

START NOW!

- Put A New System in Place.
- Transitional Issues can be Overcome. Our Group will Continue to Work on these Issues.

Our sincerest hope is that the Blue Ribbon Commission may find a just and lasting solution to this issue which has so threatened the very economic lifeblood of our state for far too long. The time for conciliation and consensus is now.

Respectfully submitted,

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Bob Hodges
Nichols Portland

Sara Burns
Central Maine Power

Kenneth E. Hutchins
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Facilitator: Jonathan W. Reitman
Brunswick

Dated: at Portland, Maine
May 4, 1992

Workers' compensation in Michigan: Administrative history (Hunt, H. Allan, Eccleston, Stacey M. (Workers Compensation Research Institute, 1990) ●

(Available on request-please include the following citation: WC115-BRC-14-336.pdf)

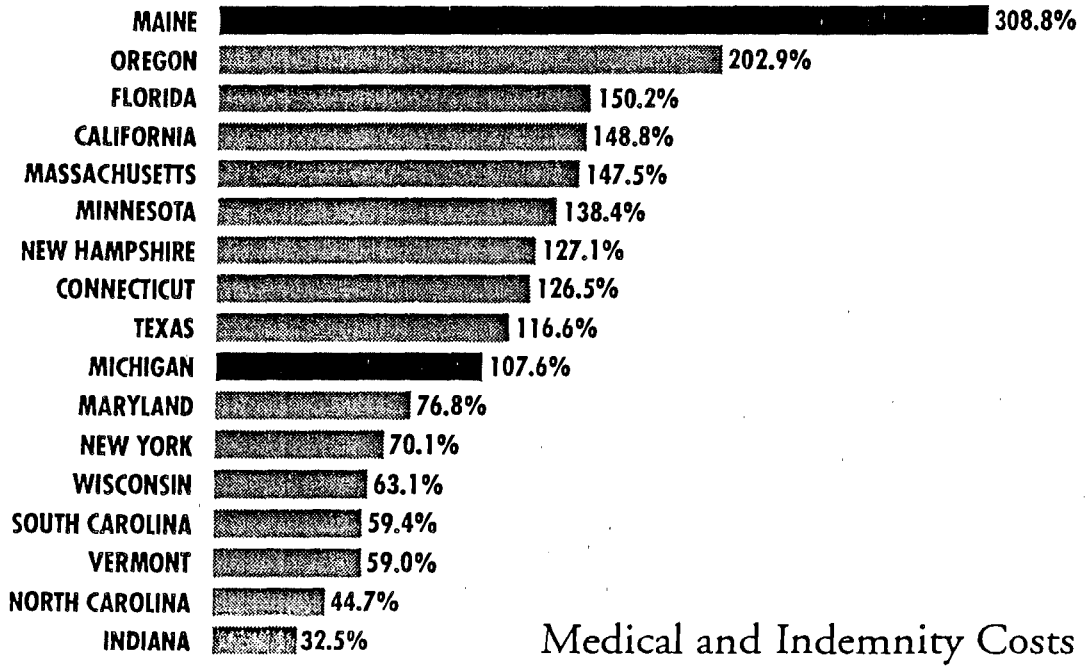
To obtain items available on request, or to report errors or omissions in this history, please contact:
Maine State Law and Legislative Reference Library

Jurisdiction	Limited Initial Provider Choice	Limited Provider Change	Medical Fee Schedule	Hospital Charge Regulation	Utilization Review	Bill Review
Louisiana		X	†	†	X	X
Maine		X	X	†	†	
Maryland			X			
Massachusetts			X	X		
Michigan	X	X	X	X	X	X
Minnesota		X	X	X		
Mississippi						
Missouri	X	X				
Montana		X	X	X		
Nebraska		X	X	X		
Nevada‡		X	X	X	X	X
New Hampshire			†	†	†	
New Jersey	X	X		X	X	
New Mexico	X°	X	†	X	X	
New York			X	X	X	
North Carolina	X	X	X	X		X
North Dakota‡		X	†	†	X	X
Ohio‡			X		X	X
Oklahoma		X	X	X		
Oregon		X	X	X	†	X
Pennsylvania	X	X				
Rhode Island				X		
South Carolina	X	X	X	X		X
South Dakota		X				
Tennessee	X	X				
Texas		X	X	X	†	X
Utah	X	X	X		X	
Vermont						
Virginia	X	X				
Washington‡			X	X	X	X
West Virginia‡		X	X	X	X	X
Wisconsin		X	X (7/1/92) range of acceptable charges			
Wyoming‡		X	X	X	X	X
TOTALS (exclude †)	21	40	27	22	14	13

° Arizona and California divide initial provider choice between the employer and the employee. In New Mexico, the employer or insurer can control provider choice and change during the sixty days following the injury or after that period.
† Being developed.
‡ Exclusive state fund.

NOTE: The table does not reflect strategies that the states have authorized but rather strategies that the states have implemented.

Michigan Workers' Comp System



Medical and Indemnity Costs

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