

# HOUSE BILL No. 4152

February 18, 1987, Introduced by Rep. Sparks, Willis Bullard, Power, Oxender, Walberg, Nye, Brotherton, Law, Stacey, Bender, Hoekman, Miller, Martin, Pridnia, Ouwinga, Dunaskiss, Giese, Middaugh, Bandstra, Hoffman, Muxlow, Allen, Wartner, Munsell, Honigman, Emmons, Trim, Krause, Van Regenmorter, Sikkema, Bankes, Fitzgerald, Hayes, Strand, Randall, DeLange, Hillegonds, Connors and Gnodtke and referred to the Committee on Labor.

A bill to amend sections 131, 151, 222, 301, 358, 371, 401, and 431 of Act No. 317 of the Public Acts of 1969, entitled as amended

"Worker's disability compensation act of 1969,"

section 151 as amended by Act No. 103 of the Public Acts of 1985, section 222 as added by Act No. 103 of the Public Acts of 1985, section 301 as amended by Act No. 313 of the Public Acts of 1986, section 358 as added by Act No. 357 of the Public Acts of 1980, section 371 as amended by Act No. 32 of the Public Acts of 1982, and section 401 as amended by Act No. 314 of the Public Acts of 1986, being sections 418.131, 418.151, 418.222, 418.301, 418.358, 418.371, 418.401, and 418.431 of the Michigan Compiled Laws; and to add sections 102, 120, 132, 133, and 162.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 131, 151, 222, 301, 358, 371, 401, and  
2 431 of Act No. 317 of the Public Acts of 1969, section 151 as  
3 amended by Act No. 103 of the Public Acts of 1985, section 222 as  
4 added by Act No. 103 of the Public Acts of 1985, section 301 as  
5 amended by Act No. 313 of the Public Acts of 1986, section 358 as  
6 added by Act No. 357 of the Public Acts of 1980, section 371 as  
7 amended by Act No. 32 of the Public Acts of 1982, and section 401  
8 as amended by Act No. 314 of the Public Acts of 1986, being sec-  
9 tions 418.131, 418.151, 418.222, 418.301, 418.358, 418.371,  
10 418.401, and 418.431 of the Michigan Compiled Laws, are amended  
11 and sections 102, 120, 132, 133, and 162 are added to read as  
12 follows:

13       SEC. 102. THIS ACT SHALL BE IMPLEMENTED, ENFORCED, AND  
14 INTERPRETED SO AS TO ASSURE THE QUICK AND EFFICIENT DELIVERY OF  
15 BENEFITS PROVIDED UNDER THIS ACT TO DISABLED EMPLOYEES AT A REA-  
16 SONABLE COST TO EMPLOYERS WHO ARE SUBJECT TO THE ACT. EACH  
17 WORKER'S COMPENSATION CASE SHALL BE DECIDED ON ITS MERITS AND THE  
18 COMMON-LAW RULE OF LIBERAL CONSTRUCTION BASED UPON THE REMEDIAL  
19 ASPECT OF WORKER'S COMPENSATION SHALL NOT APPLY. THIS ACT IS  
20 BASED UPON A MUTUAL RENUNCIATION OF COMMON-LAW RIGHTS AND  
21 DEFENSES BY BOTH EMPLOYERS AND EMPLOYEES. THE RIGHTS AND INTER-  
22 ESTS OF EMPLOYERS AND EMPLOYEES UNDER THIS ACT SHALL BE CONSID-  
23 ERED EQUAL AND THE RIGHTS AND INTERESTS OF ONE SHALL NOT BE  
24 FAVORED OVER THE OTHER.

1        SEC. 120. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,  
2 ANY PERSON WHO SATISFIES ALL OF THE FOLLOWING CONDITIONS SHALL  
3 NOT BE CONSIDERED AN EMPLOYEE FOR PURPOSES OF THIS ACT:

4        (A) PURSUANT TO A CONTRACT, OPERATES A TRUCK FOR THE PURPOSE  
5 OF TRANSPORTING GOODS.

6        (B) OWNS OR LEASES THE TRUCK.

7        (C) IS COMPENSATED ON THE BASIS OF MILES DRIVEN AND NOT ON  
8 THE BASIS OF HOURS WORKED.

9        (D) IS NOT CONSIDERED AN EMPLOYEE FOR TAX PURPOSES UNDER THE  
10 INTERNAL REVENUE CODE.

11       Sec. 131. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN  
12 SUBSECTION (2) AND SECTION 132, THE right to the recovery of ben-  
13 efits as provided in this act shall be the employee's exclusive  
14 remedy against the employer FOR ANY PHYSICAL OR MENTAL INJURY,  
15 REGARDLESS OF THE SOURCE OF THE INJURY OR THE MANNER IN WHICH THE  
16 INJURY OCCURRED, AND THE EMPLOYER SHALL NOT BE LIABLE FOR CIVIL  
17 DAMAGES UNDER ANY OTHER ACT OR AT COMMON LAW WITH REGARD TO A  
18 PHYSICAL OR MENTAL INJURY.

19       (2) A DISABILITY THAT RESULTS FROM A PERSONAL INJURY  
20 INCURRED DURING AN ACTIVITY, THE MAJOR PURPOSE OF WHICH IS SOCIAL  
21 OR RECREATIONAL, IS NOT COVERED UNDER THIS ACT AND ANY CAUSE OF  
22 ACTION BROUGHT FOR SUCH DISABILITY OR PERSONAL INJURY IS NOT  
23 SUBJECT TO SUBSECTION (1). SUBSECTION (1) SHALL NOT BAR AN  
24 EMPLOYEE FROM MAINTAINING AN ACTION AND RECOVERING DAMAGES IN  
25 THAT ACTION AGAINST AN ARCHITECT, PROFESSIONAL ENGINEER, OR LAND  
26 SURVEYOR AS PROVIDED FOR UNDER SECTION 151(C).

1 (3) As used in this section, SECTION 132, and section 827:

2 ~~"employee"~~

3 (A) "EMPLOYEE" includes the person injured, his OR HER per-  
4 sonal ~~representatives~~ REPRESENTATIVE, and any other person to  
5 whom a claim accrues by reason of the injury to, or death of, the  
6 employee. ~~, and "employer"~~

7 (B) "EMPLOYER" includes ~~his~~ THE insurer OF THE EMPLOYER, a  
8 service agent to a self-insured employer, and the accident fund  
9 insofar as they furnish, or fail to furnish, safety inspections  
10 or safety advisory services incident to providing ~~workmen's~~  
11 WORKER'S compensation insurance or incident to a self-insured  
12 employer's liability servicing contract.

13 SEC. 132. (1) WHERE THE EMPLOYER DELIBERATELY INTENDED BOTH  
14 THE ACTS GIVING RISE TO SUCH INJURY, DISABILITY, OR DEATH AND  
15 INTENDED THE RESULTANT INJURY, DISABILITY, OR DEATH, THE EMPLOYEE  
16 OR THE EMPLOYEE'S PERSONAL REPRESENTATIVE SHALL BE PERMITTED AN  
17 ACTION FOR CIVIL DAMAGES AS A RESULT OF THE EMPLOYER'S INTEN-  
18 TIONAL TORT.

19 (2) THE FILING OF A CLAIM FOR, OR RECEIPT OF, ANY BENEFITS  
20 PURSUANT TO THIS ACT PRECLUDES AN EMPLOYEE, THE EMPLOYEE'S  
21 SPOUSE, DEPENDENTS, OR ESTATE FROM ANY OTHER REMEDY INCLUDING AN  
22 ACTION FOR CIVIL DAMAGES AS PROVIDED IN SUBSECTION (1) AGAINST  
23 THE EMPLOYER FOR THE SAME INJURY, DISEASE, OR DEATH.

24 (3) ANY CLAIM OF AN INTENTIONAL TORT SHALL BE BROUGHT WITHIN  
25 2 YEARS AFTER THE EMPLOYEE'S DEATH OR THE DATE ON WHICH THE  
26 EMPLOYEE KNEW OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE

1 SHOULD HAVE KNOWN OF THE INJURY, DISEASE, OR CONDITION, WHICHEVER  
2 DATE OCCURS FIRST.

3 SEC. 133. AN EMPLOYER IS NOT LIABLE UNDER THIS OR ANY OTHER  
4 ACT, OR AT COMMON LAW, FOR COMPENSATION, BENEFITS, OR DAMAGES  
5 BECAUSE AN EMPLOYEE SUFFERED A PERSONAL INJURY OR WORK-RELATED  
6 DISEASE THAT WAS EITHER OF THE FOLLOWING:

7 (A) PURPOSELY SELF-INFLICTED.

8 (B) CAUSED BY THE EMPLOYEE BEING INTOXICATED OR UNDER THE  
9 INFLUENCE OF A CONTROLLED SUBSTANCE NOT PRESCRIBED BY A PHYSICIAN  
10 IF THE INTOXICATION OR BEING UNDER THE INFLUENCE OF SUCH A CON-  
11 TROLLED SUBSTANCE WAS THE PROXIMATE CAUSE OF THE INJURY.

12 Sec. 151. ~~-(+)~~ The following constitutes employers  
13 subject to this act:

14 (a) The state; each county, city, township, incorporated  
15 village, and school district; each incorporated public board or  
16 public commission in this state authorized by law to hold prop-  
17 erty and to sue or be sued generally; and any library in a county  
18 with a population less than 600,000 established under Act No. 138  
19 of the Public Acts of 1917, as amended, being sections 397.301 to  
20 397.305 of the Michigan Compiled Laws, if the library board by  
21 resolution expresses its intention to be considered as a separate  
22 employer from the county where it is located for purposes of this  
23 act.

24 (b) Every person, firm, and private corporation, including  
25 any public service corporation, who has any person in service  
26 under any contract of hire, express or implied, oral or written,  
27 unless those employees excluded according to the provisions of

1 section 161(4) comprise all of the employees of the person, firm,  
2 or corporation.

3 (C) AN ARCHITECT, PROFESSIONAL ENGINEER, OR LAND SURVEYOR  
4 WITH REGARD TO A CONSTRUCTION PROJECT. HOWEVER, SECTION 131  
5 SHALL NOT APPLY TO AN ACTION FOR DAMAGES AS THE RESULT OF THE  
6 NEGLIGENT PREPARATION OF DESIGN PLANS AND SPECIFICATIONS.

7 SEC. 162. (1) AN EMPLOYER MAY FILE AN APPLICATION WITH THE  
8 DIRECTOR TO BE EXCLUDED FROM THE PROVISIONS OF THIS ACT WITH  
9 RESPECT TO AN EMPLOYEE. THE APPLICATION SHALL INCLUDE A WRITTEN  
10 WAIVER BY THE EMPLOYEE OF ALL COMPENSATION AND BENEFITS UNDER  
11 THIS ACT AND AN AFFIDAVIT BY THE EMPLOYEE THAT HE OR SHE IS A  
12 MEMBER OF A RECOGNIZED RELIGIOUS SECT OR DIVISION OF THAT SECT  
13 AND IS AN ADHERENT OF ESTABLISHED TENETS OR TEACHINGS OF THAT  
14 SECT OR DIVISION AND AS A RESULT THEREOF HE OR SHE IS CONSCIEN-  
15 TIOUSLY OPPOSED TO ACCEPTANCE OF THE COMPENSATION AND BENEFITS OF  
16 ANY PUBLIC OR PRIVATE INSURANCE WHICH MAKES PAYMENTS IN THE EVENT  
17 OF DEATH, DISABILITY, OLD AGE, OR RETIREMENT, OR MAKES PAYMENTS  
18 TOWARD THE COST OF OR PROVIDES SERVICES FOR MEDICAL BILLS,  
19 INCLUDING BENEFITS UNDER THE FEDERAL SOCIAL SECURITY ACT.

20 (2) THE APPLICATION REQUIRED BY SUBSECTION (1) SHALL BE MADE  
21 UPON A FORM PRESCRIBED BY THE DIRECTOR.

22 (3) THE APPLICATION SHALL BE APPROVED IF THE DIRECTOR DETER-  
23 MINES BOTH OF THE FOLLOWING:

24 (A) THE EMPLOYEE IS A MEMBER OF A RECOGNIZED RELIGIOUS SECT  
25 OR DIVISION OF THAT SECT HAVING THE ESTABLISHED TENETS OR TEACH-  
26 INGS REFERRED TO IN SUBSECTION (1).

1 (B) IT IS THE PRACTICE, AND HAS BEEN FOR A SUBSTANTIAL  
2 NUMBER OF YEARS, FOR MEMBERS OF THAT SECT OR DIVISION TO MAKE  
3 PROVISION FOR THEIR DEPENDENT MEMBERS WHICH IN ITS JUDGMENT IS  
4 REASONABLE IN VIEW OF THEIR GENERAL LEVEL OF LIVING.

5 (4) RECEIPT BY THE DIRECTOR OF A FORM REQUIRED BY SUBSECTION  
6 (2) SHALL BE CONSIDERED PRIMA FACIE PROOF THAT SUBSECTION (3) HAS  
7 BEEN COMPLIED WITH.

8 (5) IF THE EMPLOYEE UNDER SUBSECTION (1) IS A MINOR, THE  
9 WAIVER AND AFFIDAVIT REQUIRED BY SUBSECTION (1) MAY BE MADE BY A  
10 GUARDIAN OF THE MINOR.

11 (6) AN EXCLUSION APPROVED UNDER THIS SECTION WITH REGARD TO  
12 A SPECIFIC EMPLOYER AND EMPLOYEE SHALL BE VALID FOR ALL FUTURE  
13 YEARS UNLESS THE EMPLOYEE OR SECT OR DIVISION CEASES TO MEET THE  
14 REQUIREMENTS OF THIS SECTION.

15 (7) ANY EMPLOYER EXCLUDED UNDER THIS SECTION AS TO AN  
16 EMPLOYEE SHALL NOT BE CONSIDERED AN EMPLOYER AS TO THAT EMPLOYEE  
17 FOR PURPOSES OF THIS ACT.

18 (8) ANY EMPLOYEE WHO PROVIDES A WRITTEN WAIVER AND AFFIDAVIT  
19 FOR AN APPLICATION THAT IS APPROVED UNDER THIS SECTION SHALL NOT  
20 BE CONSIDERED AN EMPLOYEE OF THAT EMPLOYER FOR PURPOSES OF THIS  
21 ACT.

22 Sec. 222. (1) ~~After March 31, 1986, the~~ THE bureau, upon  
23 receiving a completed application for mediation or hearing from a  
24 claimant, shall forward a copy of the application to the employer  
25 and carrier. Within 30 days of receiving a completed application  
26 for mediation or hearing from the bureau, the carrier shall file  
27 a written response to the application with the bureau upon a form

1 provided by the bureau. Any application for mediation or hearing  
2 or any written response which is determined by the bureau to be  
3 incomplete shall be returned with an explanation of the addi-  
4 tional information needed.

5 (2) At the time of filing an application for hearing or  
6 mediation, the claimant OR HIS OR HER ATTORNEY shall also provide  
7 the carrier with any medical records relevant to the claim that  
8 are in the claimant's OR HIS OR HER ATTORNEY'S possession. At  
9 the time of filing the written response, ~~the~~ EACH carrier shall  
10 also provide the claimant with any medical records IN THE  
11 POSSESSION of the carrier, ~~or~~ THE employer, OR AN ATTORNEY OF  
12 THE CARRIER OR EMPLOYER concerning the employee that are relevant  
13 to the claim and in existence at the time of filing. The parties  
14 shall submit proof of compliance with this subsection with the  
15 bureau.

16 (3) The application for mediation or hearing shall be as  
17 prescribed by the bureau and shall contain factual information  
18 regarding the nature of the injury; ~~—~~ the date of injury; ~~—~~  
19 the names and addresses of any witnesses, except employees cur-  
20 rently employed by the employer; ~~—~~ the names and addresses of  
21 any doctors, hospitals, or other health care providers who  
22 treated the employee with regard to the personal injury; ~~—~~ the  
23 name and address of the employer; ~~—~~ the dates on which the  
24 employee was unable to work because of the personal injury; ~~—~~  
25 whether the employee had any other employment at the time of, or  
26 subsequent to, the date of the personal injury and the names and



1 addresses of the employers; ~~—~~ and any other information  
2 required by the bureau.

3 (4) The written response of the carrier shall be as pre-  
4 scribed by the bureau and shall specify any legal grounds sup-  
5 porting its position, any factual matters that are disputed,  
6 whether there was a medical examination of the claimant and who  
7 performed it, and any other information required by the bureau.

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

10 (6) The willful failure of a party to comply with this sec-  
11 tion shall prohibit that party from proceeding under this act.

12 Sec. 301. (1) An employee, who ~~receives~~ SUFFERS a per-  
13 sonal injury BOTH arising out of and in the course of employment  
14 by an employer who is subject to this act at the time of the  
15 injury, shall be paid compensation FOR A DISABILITY RESULTING  
16 FROM THAT PERSONAL INJURY as provided in this act. A DISABILITY  
17 THAT RESULTS FROM A PERSONAL INJURY THAT OCCURRED DURING THE  
18 COURSE OF EMPLOYMENT BUT WHICH DID NOT ARISE OUT OF THAT EMPLOY-  
19 MENT IS NOT COMPENSABLE UNDER THIS ACT. In the case of death  
20 resulting from the personal injury to the employee, compensation  
21 shall be paid to the employee's dependents as provided in this  
22 act. Time of injury or date of injury as used in this act in the  
23 case of a disease or in the case of an injury not attributable to  
24 a single event shall be the last day of work in the employment in  
25 which the employee was last subjected to the conditions that  
26 resulted in the employee's disability or death.

1 (2) A DISABILITY IS COMPENSABLE UNDER THIS ACT ONLY IF THE  
2 EMPLOYEE ESTABLISHES BY A PREPONDERANCE OF THE LAY AND MEDICAL  
3 EVIDENCE TAKEN FROM THE RECORD AS A WHOLE THAT THE PERSONAL  
4 INJURY OCCURRED DURING OR AS THE DIRECT RESULT OF THE PERFORMANCE  
5 OF AN ACTUAL EMPLOYMENT ACTIVITY AND WOULD NOT HAVE OCCURRED BUT  
6 FOR THE PERFORMANCE OF THAT ACTIVITY; OR THAT SUCH A PERSONAL  
7 INJURY WAS AGGRAVATED, ACCELERATED, OR CONTRIBUTED TO DIRECTLY  
8 AND PRIMARILY BECAUSE OF AN ACCIDENT OR BECAUSE OF ANY OTHER  
9 INCIDENT OR EXPOSURE OF SIGNIFICANT VARIATION FROM THE ORDINARY  
10 EXPOSURE INCURRED IN THE PERFORMANCE OF THE WORK. COMPENSATION  
11 SHALL ONLY BE PAID FOR THE DURATION OF THE AGGRAVATION, ACCELE-  
12 TION, OR CONTRIBUTION. EMPLOYMENT CAUSES OR CONTRIBUTIONS TO A  
13 PERSONAL INJURY SHALL BE ESTABLISHED AS FACTUAL. AN EMPLOYEE'S  
14 PERCEPTION OF WORK CONTRIBUTION SHALL NOT BE ADMISSIBLE TO DETER-  
15 MINE THE BASIS OF A WORK-RELATED DISABILITY.

16 (3) ~~(2)~~ Mental disabilities and conditions of the aging  
17 process, including, but not limited to, heart and cardiovascular  
18 conditions, shall be compensable if contributed to or aggravated  
19 or accelerated by the employment in a significant manner. Mental  
20 disabilities shall be compensable when arising out of actual  
21 events of employment, not unfounded perceptions thereof.

22 (4) ~~(3)~~ An employee going to or from his or her work ~~—~~  
23 while on the premises where the employee's work is to be per-  
24 formed ~~—~~ and within a reasonable time before and after his or  
25 her working hours ~~—~~ is presumed to be in the course of his or  
26 her employment. ~~Notwithstanding this presumption, an injury~~  
27 ~~incurred in the pursuit of an activity the major purpose of which~~

1 ~~is social or recreational is not covered under this act. Any~~  
2 ~~cause of action brought for such an injury is not subject to sec-~~  
3 ~~tion +3+.~~ A DISABILITY THAT RESULTS FROM A PERSONAL INJURY WHICH  
4 OCCURS WHILE AN EMPLOYEE IS TRAVELING IS COMPENSABLE UNDER THIS  
5 ACT ONLY IF THE EMPLOYEE WAS ENGAGED IN THE PERFORMANCE OF AN  
6 ACTUAL EMPLOYMENT ACTIVITY OR AN ACTIVITY DIRECTLY RELATED TO AN  
7 ACTUAL EMPLOYMENT ACTIVITY, OR ENGAGED IN ANY OTHER ACTIVITY AT  
8 THE DIRECTION OF THE EMPLOYER, AND IS NOT COMPENSABLE IF THE  
9 EMPLOYEE SUFFERS A PERSONAL INJURY DURING OR AS THE RESULT OF ANY  
10 DEVIATION FROM THE ROUTE OR EMPLOYMENT ACTIVITY, HOWEVER SLIGHT,  
11 THAT WAS NOT AUTHORIZED BY THE EMPLOYER.

12 (5) ~~(4)~~ As used in this chapter, "disability" means a lim-  
13 itation of an employee's wage earning capacity in ~~the employee's~~  
14 ~~general field of employment~~ WORK SUITABLE TO HIS OR HER QUALIFI-  
15 CATIONS AND TRAINING resulting from a personal injury or work  
16 related disease. The establishment of disability does not create  
17 a presumption of wage loss.

18 (6) ~~(5)~~ If disability is established pursuant to  
19 ~~subsection (4)~~ THIS SECTION, entitlement to weekly wage loss  
20 benefits shall be determined pursuant to this section and as  
21 follows:

22 (a) If an employee receives a bona fide offer of reasonable  
23 employment from THE previous employer, another employer, or  
24 through the Michigan employment security commission and the  
25 employee refuses that employment without good and reasonable  
26 cause, OR IF AN EMPLOYEE AFTER BEING EMPLOYED LOSES HIS OR HER  
27 JOB THROUGH THE FAULT OF THE EMPLOYEE, the employee shall be

1 considered to have voluntarily removed himself or herself from  
2 the work force and is no longer entitled to any ~~wage loss~~ bene-  
3 fits under this act during the period of such refusal OR JOB  
4 LOSS.

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

14 (c) If an employee is employed and the average weekly wage  
15 of the employee is equal to or more than the average weekly wage  
16 the employee received before the date of injury, the employee is  
17 not entitled to any wage loss benefits under this act for the  
18 duration of such employment.

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

23 (i) If after exhaustion of unemployment benefit eligibility  
24 of an employee, a worker's compensation magistrate or hearing  
25 referee, as applicable, determines ~~for any employee covered~~  
26 ~~under subdivision (d)~~ PURSUANT TO THIS SECTION, that the  
27 employments since the time of injury have not established a new

1 wage earning capacity, the employee shall receive compensation  
2 based upon his or her wage at the original date of injury.

3 ~~There is a presumption of wage earning capacity established for~~  
4 ~~employments totalling 250 weeks or more.~~

5 (ii) ~~The employee must still be disabled as determined pur-~~  
6 ~~suant to subsection (4). If the employee is still disabled, he~~  
7 ~~or she shall be entitled to wage loss benefits based on the dif-~~  
8 ~~ference between the normal and customary wages paid to those per-~~  
9 ~~sons performing the same or similar employment, as determined at~~  
10 ~~the time of termination of the employment of the employee, and~~  
11 ~~the wages paid at the time of the injury.~~ IF AFTER THE EXHAUS-  
12 TION OF UNEMPLOYMENT BENEFIT ELIGIBILITY OF AN EMPLOYEE, A HEAR-  
13 ING REFEREE OR WORKER'S COMPENSATION MAGISTRATE, AS APPLICABLE,  
14 DETERMINES PURSUANT TO THIS SECTION THAT EMPLOYMENTS SINCE THE  
15 TIME OF INJURY HAVE ESTABLISHED A NEW WAGE EARNING CAPACITY, THE  
16 EMPLOYEE SHALL RECEIVE COMPENSATION EQUAL TO 80% OF THE DIFFER-  
17 ENCE BETWEEN THE NORMAL AND CUSTOMARY WAGES PAID TO THOSE PERSONS  
18 PERFORMING THE SAME OR SIMILAR EMPLOYMENT, AS DETERMINED AT THE  
19 TIME OF TERMINATION OF THE EMPLOYMENT OF THE EMPLOYEE, AND THE  
20 WAGES PAID AT THE TIME OF THE INJURY.

21 (iii) ~~If the employee becomes reemployed and the employee~~  
22 ~~is still disabled, he or she shall then receive wage loss bene-~~  
23 ~~fits as provided in subdivision (b).~~ THERE IS A PRESUMPTION OF  
24 WAGE EARNING CAPACITY ESTABLISHED FOR EMPLOYMENTS TOTALING 250  
25 WEEKS OR MORE.

1 (iv) IF THE EMPLOYEE BECOMES REEMPLOYED AND THE EMPLOYEE IS  
2 STILL DISABLED, HE OR SHE SHALL THEN RECEIVE WAGE LOSS BENEFITS  
3 AS PROVIDED IN SUBDIVISION (B).

4 (e) If the employee, after having been employed pursuant to  
5 this subsection for less than 100 weeks loses his or her job ~~for~~  
6 ~~whatever reason~~ THROUGH NO FAULT OF THE EMPLOYEE, the employee  
7 shall receive compensation based upon his or her wage at the  
8 original date of injury.

9 (7) ~~(6)~~ A carrier shall notify the Michigan employment  
10 security commission of the name of any injured employee who is  
11 unemployed and to which the carrier is paying benefits under this  
12 act.

13 (8) ~~(7)~~ The Michigan employment security commission shall  
14 give priority to finding employment for those persons whose names  
15 are supplied to the commission under subsection ~~(6)~~ (7).

16 (9) ~~(8)~~ The Michigan employment security commission shall  
17 notify the bureau in writing of the name of any employee who  
18 refuses any bona fide offer of reasonable employment. Upon noti-  
19 fication to the bureau, the bureau shall notify the carrier who  
20 shall terminate the benefits of the employee pursuant to subsec-  
21 tion ~~(5)(a)~~ (6)(A).

22 (10) ~~(9)~~ "Reasonable employment", as used in this section,  
23 means work that is within the employee's capacity to perform that  
24 poses no clear and proximate threat to that employee's health and  
25 safety, and that is within a reasonable distance from that  
26 employee's residence. The employee's capacity to perform shall  
27 not be limited to ~~jobs in his or her general field of~~

1 ~~employment~~ WORK SUITABLE TO HIS OR HER QUALIFICATIONS AND  
2 TRAINING.

3       (11) ~~(+0)~~ Weekly benefits shall not be payable during the  
4 period of confinement to a person who is incarcerated in a penal  
5 institution for violation of the criminal laws of this state or  
6 who is confined in a mental institution pending trial for a vio-  
7 lation of the criminal laws of this state, if the violation or  
8 reason for the confinement occurred while at work and is directly  
9 related to the claim.

10       (12) ~~(++)~~ A person shall not discharge an employee or in  
11 any manner discriminate against an employee because the employee  
12 filed a complaint or instituted or caused to be instituted a pro-  
13 ceeding under this act or because of the exercise by the employee  
14 on behalf of himself or herself or others of a right afforded by  
15 this act.

16       (13) IF THE IMMEDIATE CAUSE OF AN EMPLOYEE'S WAGE LOSS IS A  
17 LAYOFF FOR ECONOMIC REASONS, THEN, IN ADDITION TO ALL THE OTHER  
18 PROVISIONS OF THIS ACT, THE EMPLOYEE MUST ESTABLISH BY A PREPON-  
19 DERANCE OF THE EVIDENCE THAT HE OR SHE SUFFERS FROM A  
20 WORK-RELATED DISABILITY WHICH SIGNIFICANTLY INTERFERES WITH HIS  
21 OR HER ABILITY TO OBTAIN WORK WITHIN HIS OR HER QUALIFICATIONS,  
22 TRAINING, OR EXPERIENCE. THIS SUBSECTION SHALL NOT APPLY TO  
23 EMPLOYEES WHO WITHIN THE YEAR PRECEDING THE LOSS OF EMPLOYMENT  
24 RECEIVED BENEFITS UNDER THIS ACT OR PERFORMED RESTRICTED OR  
25 FAVORED WORK AS THE RESULT OF A WORK-RELATED INJURY OR OCCUPA-  
26 TIONAL DISEASE.

1       (14) ~~(12) This section~~ SUBSECTIONS (1) TO (12) shall apply  
2 to personal injuries and work-related diseases occurring ~~on or~~  
3 after June 30, ~~1985~~ 1987. SUBSECTION (13) SHALL APPLY TO CASES  
4 FOR WHICH AN APPLICATION UNDER SECTION 847 IS FILED AFTER JUNE  
5 30, 1987.

6       ~~(13) This section is repealed as of May 15, 1987.~~

7       Sec. 358. (1) Net weekly benefits payable under section  
8 351, 361, or lump sum benefits under section 835, shall be  
9 reduced by 100% of the AFTER-TAX amount of benefits paid or pay-  
10 able to the injured employee under the Michigan employment secur-  
11 ity act, Act No. 1 of the Public Acts of the Extra Session of  
12 1936, as amended, being sections 421.1 to ~~421.67a~~ 421.73 of the  
13 Michigan Compiled Laws, for identical periods of time and charge-  
14 able to the same employer.

15       (2) AS USED IN SUBSECTION (1), "AFTER-TAX AMOUNT" MEANS THE  
16 GROSS AMOUNT OF THE BENEFIT PAID OR PAYABLE UNDER ACT NO. 1 OF  
17 THE PUBLIC ACTS OF THE EXTRA SESSION OF 1936, REDUCED BY THE PRO-  
18 RATED WEEKLY AMOUNT WHICH WOULD HAVE BEEN PAID, IF ANY, UNDER THE  
19 FEDERAL INSURANCE CONTRIBUTIONS ACT, 26 U.S.C. 3101 TO 3126,  
20 STATE INCOME TAX AND FEDERAL INCOME TAX, CALCULATED ON AN ANNUAL  
21 BASIS USING AS THE NUMBER OF EXEMPTIONS THE DISABLED EMPLOYEE'S  
22 DEPENDENTS PLUS THE EMPLOYEE, AND WITHOUT EXCESS ITEMIZED  
23 DEDUCTIONS.

24       Sec. 371. (1) The weekly loss in wages referred to in this  
25 act shall consist of the percentage of the average weekly earn-  
26 ings of the injured employee computed according to this section  
27 as fairly represents the proportionate extent of the impairment



1 of the employee's earning capacity in the employments covered by  
2 this act in which the employee was working at the time of the  
3 personal injury. The weekly loss in wages shall be fixed as of  
4 the time of the personal injury, and determined considering the  
5 nature and extent of the personal injury. The compensation pay-  
6 able, when added to the employee's wage earning capacity after  
7 the personal injury in the same or other employments, shall not  
8 exceed the employee's average weekly earnings at the time of the  
9 injury AND SHALL BE CALCULATED PURSUANT TO SECTION 361(1).

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

24 (3) If the employee worked less than ~~39~~ 52 weeks in the  
25 employment in which the employee was injured, the average weekly  
26 wage shall be based upon the total wages earned by the employee  
27 divided by the total number of weeks actually worked. For

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

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

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

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

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

24 Sec. 401. (1) As used in this chapter, "disability" means a  
25 limitation of an employee's wage earning capacity in ~~the~~  
26 ~~employee's general field of employment~~ WORK SUITABLE TO HIS OR  
27 HER QUALIFICATIONS AND TRAINING resulting from a personal injury

1 or work-related disease. The establishment of disability does  
2 not create a presumption of wage loss.

3 (2) As used in this act:

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

5 (b) "Personal injury" ~~shall include a disease or disability~~  
6 ~~which is due to causes and conditions which are characteristic of~~  
7 ~~and peculiar to the business of the employer and which arises out~~  
8 ~~of and in the course of the employment~~ INCLUDES A DISEASE CON-  
9 TRACTED IN THE COURSE OF EMPLOYMENT, WHICH BY ITS CAUSES AND THE  
10 CHARACTERISTICS OF ITS MANIFESTATION OR THE CONDITION OF THE  
11 EMPLOYMENT, RESULTS IN A HAZARD WHICH DISTINGUISHES THE EMPLOY-  
12 MENT IN CHARACTER FROM EMPLOYMENT GENERALLY, AND THE EMPLOYMENT  
13 CREATES A RISK OF CONTRACTING THE DISEASE IN GREATER DEGREE AND  
14 IN A DIFFERENT MANNER THAN THE PUBLIC IN GENERAL.

15 (3) An ordinary disease of life to which the public is gen-  
16 erally exposed outside of the employment is not compensable.  
17 Mental disabilities and conditions of the aging process,  
18 including, but not limited to, heart and cardiovascular condi-  
19 tions, shall be compensable if contributed to or aggravated or  
20 accelerated by the employment in a significant manner. Mental  
21 disabilities shall be compensable when arising out of actual  
22 events of employment, not unfounded perceptions thereof. A  
23 hernia to be compensable must be clearly recent in origin and  
24 result from a strain arising out of and in the course of the  
25 employment and be promptly reported to the employer.

26 (4) A DISABILITY THAT RESULTS FROM A PERSONAL INJURY THAT  
27 OCCURRED DURING THE COURSE OF EMPLOYMENT BUT WHICH DID NOT ARISE

1 OUT OF THAT EMPLOYMENT IS NOT COMPENSABLE UNDER THIS ACT. A  
2 DISABILITY IS COMPENSABLE UNDER THIS ACT ONLY IF THE EMPLOYEE  
3 ESTABLISHES BY A PREPONDERANCE OF THE LAY AND MEDICAL EVIDENCE  
4 TAKEN FROM THE RECORD AS A WHOLE THAT THE PERSONAL INJURY OR  
5 WORK-RELATED DISEASE OCCURRED DURING OR AS THE DIRECT RESULT OF  
6 THE PERFORMANCE OF AN ACTUAL EMPLOYMENT ACTIVITY AND WOULD NOT  
7 HAVE OCCURRED BUT FOR THE PERFORMANCE OF THAT ACTIVITY; OR THAT  
8 SUCH A PERSONAL INJURY OR WORK-RELATED DISEASE WAS AGGRAVATED,  
9 ACCELERATED, OR CONTRIBUTED TO DIRECTLY AND PRIMARILY BECAUSE OF  
10 AN ACCIDENT OR BECAUSE OF ANY OTHER INCIDENT OR EXPOSURE OF SIG-  
11 NIFICANT VARIATION FROM THE ORDINARY EXPOSURE INCURRED IN THE  
12 PERFORMANCE OF THE WORK. COMPENSATION SHALL ONLY BE PAID FOR THE  
13 DURATION OF THE AGGRAVATION, ACCELERATION, OR CONTRIBUTION.  
14 EMPLOYMENT CAUSES OR CONTRIBUTIONS TO A PERSONAL INJURY OR DIS-  
15 EASE SHALL BE ESTABLISHED AS FACTUAL. AN EMPLOYEE'S PERCEPTION  
16 OF WORK CONTRIBUTION SHALL NOT BE ADMISSIBLE TO DETERMINE THE  
17 BASIS OF A WORK-RELATED DISABILITY.

18 (5) ~~(3)~~ If disability is established pursuant to  
19 ~~subsection (1)~~ THIS SECTION, entitlement to weekly wage loss  
20 benefits shall be determined pursuant to this section and as  
21 follows:

22 (a) If an employee receives a bona fide offer of reasonable  
23 employment from the previous employer, another employer, or  
24 through the Michigan employment security commission and the  
25 employee refuses that employment without good and reasonable  
26 cause, OR IF AN EMPLOYEE AFTER BEING EMPLOYED LOSES HIS OR HER  
27 JOB THROUGH THE FAULT OF THE EMPLOYEE, the employee shall be

1 considered to have voluntarily removed himself or herself from  
2 the work force and is no longer entitled to any ~~wage loss~~ bene-  
3 fits under this act during the period of such refusal OR JOB  
4 LOSS.

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

14 (c) If an employee is employed and the average weekly wage  
15 of the employee is equal to or more than the average weekly wage  
16 the employee received before the date of injury, the employee is  
17 not entitled to any wage loss benefits under this act for the  
18 duration of such employment.

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

23 (i) If after exhaustion of unemployment benefit eligibility  
24 of an employee, a worker's compensation magistrate or hearing  
25 referee, as applicable, determines ~~for any employee covered~~  
26 ~~under subdivision (d)~~ PURSUANT TO THIS SECTION, that the  
27 employments since the time of injury have not established a new

1 wage earning capacity, the employee shall receive compensation  
2 based upon his or her wage at the original date of injury.

3 ~~There is a presumption of wage earning capacity established for~~  
4 ~~employments totalling 250 weeks or more.~~

5 (ii) ~~The employee must still be disabled as determined pur-~~  
6 ~~suant to subsection (i). If the employee is still disabled, the~~  
7 ~~employee shall be entitled to the wage loss benefits based on~~

8 IF, AFTER THE EXHAUSTION OF UNEMPLOYMENT BENEFIT ELIGIBILITY OF  
9 AN EMPLOYEE, A HEARING REFEREE OR WORKER'S COMPENSATION MAGIS-  
10 TRATE, AS APPLICABLE, DETERMINES PURSUANT TO THIS SECTION THAT  
11 EMPLOYMENTS SINCE THE TIME OF INJURY HAVE ESTABLISHED A NEW WAGE  
12 EARNING CAPACITY, THE EMPLOYEE SHALL RECEIVE COMPENSATION EQUAL  
13 TO 80% OF the difference between the normal and customary wages  
14 paid to those persons performing the same or similar employment,  
15 as determined at the time of termination of THE employment of the  
16 employee, and the wages paid at the time of the injury.

17 (iii) THERE IS A PRESUMPTION OF WAGE EARNING CAPACITY ESTAB-  
18 LISHED FOR EMPLOYMENTS TOTALING 250 WEEKS OR MORE.

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

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

1       (6) ~~-(4)-~~ A carrier shall notify the Michigan employment  
2 security commission of the name of any injured employee who is  
3 unemployed and to which the carrier is paying benefits under this  
4 act.

5       (7) ~~-(5)-~~ The Michigan employment security commission shall  
6 give priority to finding employment for those persons whose names  
7 are supplied to the commission under subsection ~~-(4)-~~ (6).

8       (8) ~~-(6)-~~ The Michigan employment security commission shall  
9 notify the bureau in writing of the name of any employee who  
10 refuses any bona fide offer of reasonable employment. Upon noti-  
11 fication to the bureau, the bureau shall notify the carrier who  
12 shall terminate the benefits of the employee pursuant to subsec-  
13 tion ~~-(3)(a)-~~ (5)(A).

14       (9) ~~-(7)-~~ As used in this section, "reasonable employment"  
15 means work that is within the employee's capacity to perform that  
16 poses no clear and proximate threat to that employee's health and  
17 safety, and that is within a reasonable distance from that  
18 employee's residence. The employee's capacity to perform shall  
19 not be limited to ~~jobs in his or her general field of~~  
20 ~~employment~~ WORK SUITABLE TO HIS OR HER QUALIFICATIONS AND  
21 TRAINING.

22       (10) IF THE IMMEDIATE CAUSE OF AN EMPLOYEE'S WAGE LOSS IS A  
23 LAYOFF FOR ECONOMIC REASONS, THEN, IN ADDITION TO ALL THE OTHER  
24 PROVISIONS OF THIS ACT, THE EMPLOYEE MUST ESTABLISH BY A PREPON-  
25 DERANCE OF THE EVIDENCE THAT HE OR SHE SUFFERS FROM A  
26 WORK-RELATED DISABILITY WHICH SIGNIFICANTLY INTERFERES WITH HIS  
27 OR HER ABILITY TO OBTAIN WORK WITHIN HIS OR HER QUALIFICATIONS,

1 TRAINING, OR EXPERIENCE. THIS SUBSECTION SHALL NOT APPLY TO  
2 EMPLOYEES WHO, WITHIN THE YEAR PRECEDING THE LOSS OF EMPLOYMENT,  
3 RECEIVED BENEFITS UNDER THIS ACT OR PERFORMED RESTRICTED OR  
4 FAVORED WORK AS THE RESULT OF A WORK-RELATED INJURY OR OCCUPA-  
5 TIONAL DISEASE.

6 (11) ~~(8) This section~~ SUBSECTIONS (1) TO (9) shall apply  
7 to personal injuries or work-related diseases occurring ~~on or~~  
8 after June 30, ~~1985~~ 1987. SUBSECTION (10) SHALL APPLY TO CASES  
9 FOR WHICH AN APPLICATION UNDER SECTION 847 IS FILED AFTER JUNE  
10 30, 1987.

11 ~~(9) This section is repealed as of May 15, 1987.~~

12 Sec. 431. ~~No compensation~~ COMPENSATION shall NOT be pay-  
13 able for A DISABILITY RESULTING FROM an occupational disease if  
14 the employee at the time of entering into the employment of the  
15 employer by whom the compensation would otherwise be payable, or  
16 thereafter, ~~wilfully and falsely~~ represents in writing that he  
17 OR SHE has not previously suffered from the disease OR CONDITION  
18 which is the cause of the disability or death AND THE EMPLOYEE  
19 KNEW OR SHOULD HAVE KNOWN THAT HE OR SHE HAD PREVIOUSLY SUFFERED  
20 FROM THE DISEASE OR CONDITION. ~~Where an occupational disease is~~  
21 ~~aggravated by any other disease or infirmity, not itself compen-~~  
22 ~~sable, or where disability or death from any other cause, not~~  
23 ~~itself compensable, is aggravated, prolonged, accelerated or in~~  
24 ~~any way contributed to by an occupational disease, the compensa-~~  
25 ~~tion payable shall be a proportion only of the compensation that~~  
26 ~~would be payable if the occupational disease were the sole cause~~  
27 ~~of the disability or death as such occupational disease, as a~~



~~1 causative factor, bearing to all the causes of such disability or~~  
~~2 death, such reduction in compensation to be effected by reducing~~  
~~3 the number of weekly payments or the amounts of such payments, as~~  
~~4 under the circumstances of the particular case may be for the~~  
~~5 best interest of the claimant or claimants.~~ IF DISABILITY OR  
6 DEATH RESULTING FROM A DISABILITY IS CAUSED BY ANY COMBINATION OF  
7 OCCUPATIONAL CAUSE AND NONOCCUPATIONAL CAUSE, THE WORKER'S COM-  
8 PENSATION MAGISTRATE SHALL DETERMINE UPON THE PROOFS PRESENTED  
9 THAT PERCENTAGE OF DISABILITY OR DEATH RESULTING FROM A DISABIL-  
10 ITY WHICH IS DIRECTLY ATTRIBUTABLE TO AN OCCUPATIONAL CAUSE OR  
11 CAUSES AND ENTER AN ORDER DIRECTING THE PAYMENT OF BENEFITS FOR  
12 THAT PERCENTAGE DUE TO AN OCCUPATIONAL CAUSE OR CAUSES WHICH  
13 SHALL REPRESENT THE EMPLOYER'S TOTAL LIABILITY.