

HOUSE BILL NO. 4760

April 29, 2021, Introduced by Reps. Hope, Sabo, Koleszar, Bolden, Shannon, Haadsma, Pohutsky, Steckloff, Cavanagh, Stone, Brenda Carter, Hertel, Kuppa, Morse, Thanedar, Rogers, Tyrone Carter, Young, O'Neal, Scott, Breen, Brabec, Weiss, Tate and Cynthia Johnson and referred to the Committee on Workforce, Trades, and Talent.

A bill to amend 1969 PA 317, entitled "Worker's disability compensation act of 1969," by amending sections 354 and 358 (MCL 418.354 and 418.358), as amended by 2011 PA 266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 354. (1) This section applies if either weekly or lump
2 sum payments are made to an employee as a result of liability under
3 section 301(7) or (8), 351, or 835 with respect to the same time
4 period for which the employee also received or is receiving old-age

1 insurance benefit payments under the social security act, 42 USC
 2 301 to ~~1397f~~; **1397mm**; payments under a self-insurance plan, a wage
 3 continuation plan, or a disability insurance policy provided by the
 4 employer; or pension or retirement payments under a plan or program
 5 established or maintained by the employer. Except as otherwise
 6 provided in this section, the employer's obligation to pay or cause
 7 to be paid weekly benefits other than specific loss benefits under
 8 section 361(2) and (3) ~~shall be~~ **are** reduced by these amounts:

9 (a) Fifty percent of the amount of the old-age insurance
 10 benefits received or being received under the social security act,
 11 ~~chapter 531, 49 Stat. 620.~~ **42 USC 301 to 1397mm**. However, if the
 12 injured employee has been receiving old-age insurance benefit
 13 payments under the social security act, ~~chapter 531, 49 Stat. 620,~~
 14 **42 USC 301 to 1397mm**, before the date of the personal injury or
 15 work-related disease, then ~~in no event shall~~ the weekly benefits
 16 payable after the reduction provided by this subdivision **must not**
 17 be less than 50% of the weekly benefits otherwise payable without
 18 the reduction.

19 (b) The after-tax amount of the payments received or being
 20 received under a self-insurance plan, a wage continuation plan, or
 21 under a disability insurance policy provided by the same employer
 22 from whom benefits under section 301(7) or (8), 351, or 835 are
 23 received if the employee did not contribute directly to the plan or
 24 to the payment of premiums regarding the disability insurance
 25 policy. If the self-insurance plans, wage continuation plans, or
 26 disability insurance policies are entitled to repayment in the
 27 event of a worker's compensation benefit recovery, the carrier
 28 shall satisfy that repayment out of funds the carrier has received
 29 through the coordination of benefits provided for under this

1 section. Notwithstanding the provisions of this subsection,
2 attorney fees ~~shall~~**must** be paid pursuant to section 821 to the
3 attorney who secured the worker's compensation recovery.

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

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

22 (e) The proportional amount, based on the ratio of the
23 employer's contributions to the total contributions to the plan or
24 program, of the after-tax amount of the pension or retirement
25 payments received or being received by the employee pursuant to a
26 plan or program established or maintained by the same employer from
27 whom benefits under section 301(7) or (8), 351, or 835 are
28 received, if the employee did contribute directly to the pension or
29 retirement plan or program. Subsequent increases in a pension or

1 retirement program ~~shall~~**do** not affect the coordination of these
2 benefits.

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

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

16 (3) In the application of subsection (1) any credit or
17 reduction ~~shall~~**must** occur pursuant to this section and all of the
18 following:

19 (a) The agency shall promulgate rules to provide for
20 notification by an employer or carrier to an employee of possible
21 eligibility for ~~social security~~**Social Security** benefits and the
22 requirements for establishing proof of application for those
23 benefits. Notification ~~shall~~**must** be promptly mailed to the
24 employee after the date on which by reason of age the employee may
25 be entitled to ~~social security~~**Social Security** benefits. A copy of
26 the notification of possible eligibility ~~shall~~**must** be filed with
27 the agency by the employer or carrier.

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

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

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

4 (iii) Provide the employer or carrier with an authority for
5 release of information ~~which shall~~ **that must** be utilized by the
6 employer or carrier to obtain necessary benefit entitlement and
7 amount information from the ~~social security administration.~~ **Social**
8 **Security Administration.** The authority for release of information
9 ~~shall be~~ **is** effective for 1 year.

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

19 (5) If the employer or carrier is required to submit a new
20 authority for release of information to the ~~social security~~
21 ~~administration~~ **Social Security Administration** in order to receive
22 information necessary to comply with this section, the employee
23 shall provide the new authority for release of information within
24 30 days of a request by the employer or carrier. If the employee
25 fails to provide the new authority for release of information, the
26 employer or carrier, with the approval of the agency, may
27 discontinue benefits until the authority for release of information
28 is provided as prescribed in this subsection. Compensation benefits
29 withheld ~~shall~~ **must** be reimbursed to the employee upon providing

1 the new authority for release of information.

2 (6) Within 30 days after either the date of first payment of
3 compensation benefits under section 301(7) or (8), 351, or 835, or
4 30 days after the date of application for any benefit under
5 subsection (1)(b), (c), (d), or (e), whichever is later, the
6 employee shall provide the employer or carrier with a properly
7 executed authority for release of information, ~~which shall that~~
8 **must** be utilized by the employer or carrier to obtain necessary
9 benefit entitlement and amount information from the appropriate
10 source. The authority for release of information is effective for 1
11 year. Failure of the employee to provide a properly executed
12 authority for release of information allows the employer or carrier
13 with the approval of the agency to discontinue the compensation
14 benefits payable under section 301 (7) or (8), 351, or 835 to the
15 employee until the authority for release of information is
16 provided. Compensation benefits withheld ~~shall~~**must** be reimbursed
17 to the employee upon providing the required authority for release
18 of information. If the employer or carrier is required to submit a
19 new authority for release of information to the appropriate source
20 in order to receive information necessary to comply with this
21 section, the employee shall provide a properly executed new
22 authority for release of information within 30 days after a request
23 by the employer or carrier. Failure of the employee to provide a
24 properly executed new authority for release of information allows
25 the employer or carrier with the approval of the agency to
26 discontinue benefits under section 301(7) or (8), 351, or 835 until
27 the authority for release of information is provided as prescribed
28 in this subsection. Compensation benefits withheld ~~shall~~**must** be
29 reimbursed to the employee upon the providing of the new authority

1 for release of information.

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

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

12 (9) Except as otherwise provided in this section, any benefit
13 payments under the social security act, **42 USC 301 to 1397mm**, or
14 any fund, policy, or program as specified in subsection (1) that
15 the employee has received or is receiving after March 31, 1982 and
16 during a period ~~in which~~**when** the employee was receiving unreduced
17 compensation benefits under section 301(7) or (8), 351, or 835
18 ~~shall be~~**is** considered to have created an overpayment of
19 compensation benefits for that period. The employer or carrier
20 shall calculate the amount of the overpayment and send a notice of
21 overpayment and a request for reimbursement to the employee.
22 Failure by the employee to reimburse the employer or carrier within
23 30 days after the mailing date of the notice of request for
24 reimbursement allows the employer or carrier with the approval of
25 the agency to discontinue 50% of future weekly compensation
26 payments under section 301(7) or (8), 351, or 835. The compensation
27 payments withheld ~~shall~~**must** be credited against the amount of the
28 overpayment. Payment of the appropriate compensation benefit ~~shall~~
29 **must** resume when the total amount of the overpayment has been

1 withheld.

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

7 (11) Disability insurance benefit payments under the social
8 security act, ~~shall be~~ **42 USC 301 to 1397mm, are** considered to be
9 payments from funds provided by the employer and to be primary
10 payments on the employer's obligation under section 301(7) or (8),
11 351, or 835 as old-age benefit payments under the social security
12 act, **42 USC 301 to 1397mm,** are considered ~~pursuant to~~ **under** this
13 section. The coordination of ~~social security disability~~ **Social**
14 **Security Disability Insurance** benefits ~~shall~~ **must** commence on the
15 date of the award certificate of the ~~social security disability~~
16 **Social Security Disability Insurance** benefits. Any accrued ~~social~~
17 ~~security disability~~ **Social Security Disability Insurance** benefits
18 ~~shall~~ **must** not be coordinated. However, ~~social security disability~~
19 ~~insurance~~ **Social Security Disability Insurance** benefits ~~shall~~ **must**
20 only be ~~se~~ considered **payments as described in this subsection** if
21 section 224 of the social security act, 42 USC 424a, is revised so
22 that a reduction of ~~social security disability insurance~~ **Social**
23 **Security Disability Insurance** benefits is not made because of the
24 receipt of worker's compensation benefits by the employee.

25 (12) Nothing in this section ~~shall be~~ **is** considered to compel
26 an employee to apply for early federal ~~social security~~ old-age
27 insurance benefits **under the social security act, 42 USC 301 to**
28 **1397mm,** or to apply for early or reduced pension or retirement
29 benefits.

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

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

24 (15) With respect to volunteer fire fighters, volunteer safety
25 patrol officers, volunteer civil defense workers, and volunteer
26 ambulance drivers and attendants who are considered employees for
27 purposes of this act pursuant to section 161(1)(a), the reduction
28 of weekly benefits provided for disability insurance payments under
29 subsection (1)(b) and (c) and subsection (11) may be waived by the

1 employer. An employer that is not a self-insurer may make the
 2 waiver provided for under this subsection only at the time a
 3 worker's compensation insurance policy is entered into or renewed.

4 (16) This section does not apply to payments made to an
 5 employee as a result of liability pursuant to section 361(2) and
 6 (3) for the specific loss period set forth therein. It is the
 7 intent of the legislature that, because benefits under section
 8 361(2) and (3) are benefits that recognize human factors
 9 substantially in addition to the wage loss concept, coordination of
 10 benefits should not apply to those benefits.

11 (17) The decision of the Michigan ~~Supreme Court~~ **supreme court**
 12 in ~~Franks v White Pine Copper Division~~, **Franks v White Pine Copper**
 13 **Division**, 422 Mich 636 (1985) is declared to have been erroneously
 14 rendered insofar as it interprets this section, it having been and
 15 being the legislative intention not to coordinate payments under
 16 this section resulting from liability pursuant to section 301(7) or
 17 (8), 351, or 835 for personal injuries occurring before March 31,
 18 1982. It is the purpose of ~~the amendatory act that added this~~
 19 ~~subsection~~ **1987 PA 28** to so affirm. This remedial and curative
 20 amendment ~~shall~~ **must** be liberally construed to effectuate this
 21 purpose.

22 (18) This section applies only to payments resulting from
 23 liability pursuant to section 301 (7) or (8), 351, or 835 for
 24 personal injuries occurring on or after March 31, 1982. Any
 25 payments made to an employee resulting from liability pursuant to
 26 section 301(7) or (8), 351, or 835 for a personal injury occurring
 27 before March 31, 1982 that have not been coordinated under this
 28 section as of the effective date of this subsection ~~shall~~ **must** not
 29 be coordinated, ~~shall~~ **are** not ~~be~~ considered to have created an

1 overpayment of compensation benefits, and ~~shall~~**are** not ~~be~~ subject
2 to reimbursement to the employer or carrier.

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

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

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

21 **(22) Federal unemployment and federal COVID-19 pandemic-**
22 **related benefits must not be coordinated.**

23 Sec. 358. (1) Net weekly benefits payable under section 351,
24 361, or lump sum benefits under section 835, ~~shall~~**must** be reduced
25 by 100% of the amount of benefits paid or payable to the injured
26 employee under the Michigan employment security act, 1936 (Ex Sess)
27 PA 1, MCL 421.1 to 421.75, for identical periods of time.

28 **(2) Federal unemployment and federal COVID-19 pandemic-related**
29 **benefits must not be coordinated.**