

Act No. 117
Public Acts of 1989
Approved by the Governor
June 22, 1989
Filed with the Secretary of State
June 23, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senators Dillingham, Cruce, Cropsey, Schwarz and DiNello

ENROLLED SENATE BILL No. 422

AN ACT to amend the title of Act No. 317 of the Public Acts of 1969, entitled as amended "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 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; and to repeal certain acts and parts of acts," as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws; to add section 253; and to repeal certain parts of the act on specific dates.

The People of the State of Michigan enact:

Section 1. The title of Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, is amended and section 253 is added to read as follows:

TITLE

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 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 repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts.

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 (1) Beginning July 1, 1991, if any cases remain to be decided by the board on the date that section 252 is repealed as provided for in section 266, a worker's compensation appeal board is created, referred to in this act as the board, which shall consist of 5 permanent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 257, 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.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 85th Legislature are enacted into law:

(a) Senate Bill No. 419.

(b) Senate Bill No. 420.

(c) Senate Bill No. 421.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.