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:

Sec. 354. (1) This section applies if either weekly or lump sum payments are made to an employee as a result of liability under section 301(7) or (8), 351, or 835 with respect to the same time period for which the employee also received or is receiving old-age
insurance benefit payments under the social security act, 42 USC 301 to 1397, 1397mm; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the employer; or pension or retirement payments under a plan or program established or maintained by the employer. 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, chapter 531, 49 Stat. 620. 42 USC 301 to 1397mm. However, if the injured employee has been receiving old-age insurance benefit payments under the social security act, chapter 531, 49 Stat. 620, 42 USC 301 to 1397mm, before the date of the personal injury or work-related disease, then in no event shall the weekly benefits payable after the reduction provided by this subdivision must not be less than 50% of the weekly benefits otherwise payable without the reduction.

(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 301(7) or (8), 351, 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 the 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 that 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 must 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 301(7) or (8), 351, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

(d) Subject to subsection (12), the after-tax amount of the pension or retirement payments received or being received by the employee, or which the employee is currently eligible to receive if the employee has suffered total and permanent disability and has reached full retirement age, pursuant to a plan or program established or maintained by the same employer from whom benefits under section 301(7) or (8), 351, 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 301(7) or (8), 351, 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, 26 USC 401, or any successor to section 401(a) of the internal revenue code, 26 USC 401, 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 301(7) or (8), 351, 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 agency 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 agency by the employer or carrier.

(b) Within 30 days after receipt of the notification of possible employee eligibility the employee shall:
(i) Apply 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) If the employee fails to provide the proof of application or the authority for release of information as prescribed in subsection (3), the employer or carrier, with the approval of the agency, may discontinue the compensation benefits payable to the employee under section 301(7) or (8), 351, 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 providing 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. If the employee fails to provide the new authority for release of information, the employer or carrier, with the approval of the agency, may 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 providing
the new authority for release of information.

(6) Within 30 days after either the date of first payment of compensation benefits under section 301(7) or (8), 351, 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 must 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 allows the employer or carrier with the approval of the agency to discontinue the compensation benefits payable under section 301(7) or (8), 351, 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 allows the employer or carrier with the approval of the agency to discontinue benefits under section 301(7) or (8), 351, 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 301(7) or (8), 351, 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, 42 USC 301 to 1397mm, or any fund, policy, or program as specified in subsection (1) that the employee has received or is receiving after March 31, 1982 and during a period when the employee was receiving unreduced compensation benefits under section 301(7) or (8), 351, 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 allows the employer or carrier with the approval of the agency to discontinue 50% of future weekly compensation payments under section 301(7) or (8), 351, 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
(10) The employer or carrier taking a credit or making a reduction as provided in this section shall immediately report to the agency the amount of any credit or reduction, and as requested by the agency, furnish to the agency satisfactory proof of the basis for a credit or reduction.

(11) Disability insurance benefit payments under the social security act, shall be 42 USC 301 to 1397mm, are considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 301(7) or (8), 351, or 835 as old-age benefit payments under the social security act, 42 USC 301 to 1397mm, are considered pursuant to under this section. The coordination of social security disability Social Security Disability Insurance benefits shall must commence on the date of the award certificate of the social security disability Social Security Disability Insurance benefits. Any accrued social security disability Social Security Disability Insurance benefits shall must not be coordinated. However, social security disability insurance Social Security Disability Insurance benefits shall must only be considered payments as described in this subsection if section 224 of the social security act, 42 USC 424a, is revised so that a reduction of social security disability insurance 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 is considered to compel an employee to apply for early federal social security old-age insurance benefits under the social security act, 42 USC 301 to 1397mm, 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 USC 3101 to 3128, and 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 in existence on March 31, 1982 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 does 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 that recognize human factors
substantially in addition to the wage loss concept, coordination of
benefits should not apply to those 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 301(7) or
(8), 351, or 835 for personal injuries occurring before March 31,
1982. It is the purpose of the amendatory act that added this
subsection—1987 PA 28—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 301(7) or (8), 351, or 835 for
personal injuries occurring on or after March 31, 1982. Any
payments made to an employee resulting from liability pursuant to
section 301(7) or (8), 351, 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 be not be considered to have created an
overpayment of compensation benefits, and shall are 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 301(7) or (8), 351, or 835 for a personal injury occurring before March 31, 1982 that have been coordinated before May 14, 1987 shall be are considered to be an underpayment of compensation benefits, and the amounts withheld pursuant to coordination shall must be reimbursed with interest, by July 13, 1987, 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 must be reimbursed with interest, by July 13, 1987, 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 does not affect the validity of the remainder of this section.

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

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

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