

SENATE BILL No. 188

February 18, 2003, Introduced by Senators BIRKHOLZ, GOSCHKA, GARCIA,
PATTERSON, ALLEN, TOY, STAMAS and GILBERT and referred to the Committee on
Commerce and Labor.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 354 (MCL 418.354), as amended by 1987 PA 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 354. (1) This section is applicable when either weekly
2 or lump sum payments are made to an employee as a result of
3 liability pursuant to section 351, 361, or 835 with respect to
4 the same time period for which old-age insurance benefit payments
5 under the social security act, ~~42 U.S.C. 301 to 1397f~~ **chapter**
6 **531, 49 Stat. 620**; payments under a self-insurance plan, a wage
7 continuation plan, or a disability insurance policy provided by
8 the employer; or pension or retirement payments pursuant to a
9 plan or program established or maintained by the employer, are
10 also received or being received by the employee. Except as
11 otherwise provided in this section, the employer's obligation to

1 pay or cause to be paid weekly benefits other than specific loss
2 benefits under section 361(2) and (3) shall be reduced by these
3 amounts:

4 (a) Fifty percent of the amount of the old-age insurance
5 benefits received or being received under the social security
6 act, chapter 531, 49 Stat. 620. However, if the injured employee
7 has been receiving old-age insurance benefit payments under the
8 social security act, chapter 531, 49 Stat. 620, before the date
9 of the personal injury or work-related disease, then in no event
10 shall the weekly benefits payable after the reduction provided by
11 this subdivision be less than 50% of the weekly benefits
12 otherwise payable without the reduction.

13 (b) The after-tax amount of the payments received or being
14 received under a self-insurance plan, a wage continuation plan,
15 or under a disability insurance policy provided by the same
16 employer from whom benefits under section 351, 361, or 835 are
17 received if the employee did not contribute directly to the plan
18 or to the payment of premiums regarding the disability insurance
19 policy. If such self-insurance plans, wage continuation plans,
20 or disability insurance policies are entitled to repayment in the
21 event of a worker's compensation benefit recovery, the carrier
22 shall satisfy ~~such~~ **that** repayment out of funds the carrier has
23 received through the coordination of benefits provided for under
24 this section. Notwithstanding the provisions of this subsection,
25 attorney fees shall be paid pursuant to section 821 to the
26 attorney who secured the worker's compensation recovery.

27 (c) The proportional amount, based on the ratio of the

1 employer's contributions to the total insurance premiums for the
2 policy period involved, of the after-tax amount of the payments
3 received or being received by the employee pursuant to a
4 disability insurance policy provided by the same employer from
5 whom benefits under section 351, 361, or 835 are received, if the
6 employee did contribute directly to the payment of premiums
7 regarding the disability insurance policy.

8 (d) The after-tax amount of the pension or retirement
9 payments received or being received pursuant to a plan or program
10 established or maintained by the same employer from whom benefits
11 under section 351, 361, or 835 are received, if the employee did
12 not contribute directly to the pension or retirement plan or
13 program. Subsequent increases in a pension or retirement program
14 shall not affect the coordination of these benefits.

15 (e) The proportional amount, based on the ratio of the
16 employer's contributions to the total contributions to the plan
17 or program, of the after-tax amount of the pension or retirement
18 payments received or being received by the employee pursuant to a
19 plan or program established or maintained by the same employer
20 from whom benefits under section 351, 361, or 835 are received,
21 if the employee did contribute directly to the pension or
22 retirement plan or program. Subsequent increases in a pension or
23 retirement program shall not affect the coordination of these
24 benefits.

25 (f) For those employers who do not provide a pension plan,
26 the proportional amount, based on the ratio of the employer's
27 contributions to the total contributions made to a qualified

1 profit sharing plan under section 401(a) of the internal revenue
2 code or any successor to section 401(a) of the internal revenue
3 code covering a profit sharing plan ~~which~~ **that** provides for the
4 payment of benefits only upon retirement, disability, death, or
5 other separation of employment to the extent that benefits are
6 vested under the plan.

7 (2) To satisfy any remaining obligations under section 351,
8 361, or 835, the employer shall pay or cause to be paid to the
9 employee the balance due in either weekly or lump sum payments
10 after the application of subsection (1).

11 (3) In the application of subsection (1) any credit or
12 reduction shall occur pursuant to this section and all of the
13 following:

14 (a) The bureau shall promulgate rules to provide for
15 notification by an employer or carrier to an employee of possible
16 eligibility for social security benefits and the requirements for
17 establishing proof of application for those benefits.

18 Notification shall be promptly mailed to the employee after the
19 date on which by reason of age the employee may be entitled to
20 social security benefits. A copy of the notification of possible
21 eligibility shall be filed with the bureau by the employer or
22 carrier.

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

25 (i) Make application for social security benefits.

26 (ii) Provide the employer or carrier with proof of that
27 application.

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

7 (4) Failure of the employee to provide the proof of
8 application or the authority for release of information as
9 prescribed in subsection (3) shall allow the employer or carrier
10 with the approval of the bureau to discontinue the compensation
11 benefits payable to the employee under section 351, 361, or 835
12 until the proof of application and the authority for release of
13 information is provided. Compensation benefits withheld shall be
14 reimbursed to the employee upon the providing of the required
15 proof of application, or the authority for release of
16 information, or both.

17 (5) If the employer or carrier is required to submit a new
18 authority for release of information to the social security
19 administration in order to receive information necessary to
20 comply with this section, the employee shall provide the new
21 authority for release of information within 30 days of a request
22 by the employer or carrier. Failure to provide the new authority
23 for release of information shall allow the employer or carrier
24 with the approval of the bureau to discontinue benefits until the
25 authority for release of information is provided as prescribed in
26 this subsection. Compensation benefits withheld shall be
27 reimbursed to the employee upon the providing of the new

1 authority for release of information.

2 (6) Within 30 days after either the date of first payment of
3 compensation benefits under section 351, 361, or 835, or 30 days
4 after the date of application for any benefit under subsection
5 (1)(b), (c), (d), or (e), whichever is later, the employee shall
6 provide the employer or carrier with a properly executed
7 authority for release of information which shall be utilized by
8 the employer or carrier to obtain necessary benefit entitlement
9 and amount information from the appropriate source. The
10 authority for release of information is effective for 1 year.
11 Failure of the employee to provide a properly executed authority
12 for release of information shall allow the employer or carrier
13 with the approval of the bureau to discontinue the compensation
14 benefits payable under section 351, 361, or 835 to the employee
15 until the authority for release of information is provided.
16 Compensation benefits withheld shall be reimbursed to the
17 employee upon providing the required authority for release of
18 information. If the employer or carrier is required to submit a
19 new authority for release of information to the appropriate
20 source in order to receive information necessary to comply with
21 this section, the employee shall provide a properly executed new
22 authority for release of information within 30 days after a
23 request by the employer or carrier. Failure of the employee to
24 provide a properly executed new authority for release of
25 information shall allow the employer or carrier with the approval
26 of the bureau to discontinue benefits under section 351, 361, or
27 835 until the authority for release of information is provided as

1 prescribed in this subsection. Compensation benefits withheld
2 shall be reimbursed to the employee upon the providing of the new
3 authority for release of information.

4 (7) A credit or reduction under this section shall not occur
5 because of an increase granted by the social security
6 administration as a cost of living adjustment.

7 (8) Except as provided in subsections (4), (5), and (6), a
8 credit or reduction of benefits otherwise payable for any week
9 shall not be taken under this section until there has been a
10 determination of the benefit amount otherwise payable to the
11 employee under section 351, 361, or 835 and the employee has
12 begun receiving the benefit payments.

13 (9) Except as otherwise provided in this section, any benefit
14 payments under the social security act, or any fund, policy, or
15 program as specified in subsection (1) ~~which~~ **that** the employee
16 has received or is receiving after March 31, 1982 and during a
17 period in which the employee was receiving unreduced compensation
18 benefits under section 351, 361, or 835 shall be considered to
19 have created an overpayment of compensation benefits for that
20 period. The employer or carrier shall calculate the amount of
21 the overpayment and send a notice of overpayment and a request
22 for reimbursement to the employee. Failure by the employee to
23 reimburse the employer or carrier within 30 days after the
24 mailing date of the notice of request for reimbursement shall
25 allow the employer or carrier with the approval of the bureau to
26 discontinue 50% of future weekly compensation payments under
27 section 351, 361 or 835. The compensation payments withheld

1 shall be credited against the amount of the overpayment. Payment
2 of the appropriate compensation benefit shall resume when the
3 total amount of the overpayment has been withheld.

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

9 (11) Disability insurance benefit payments under the social
10 security act shall be considered to be payments from funds
11 provided by the employer and to be primary payments on the
12 employer's obligation under section 351, 361, or 835 as old-age
13 benefit payments under the social security act are considered
14 pursuant to this section. The coordination of social security
15 disability benefits shall commence on the date of the award
16 certificate of the social security disability benefits. Any
17 accrued social security disability benefits shall not be
18 coordinated. However, social security disability insurance
19 benefits shall only be so considered if section 224 of **title II**
20 **of** the social security act, 42 U.S.C. 424a, is revised so that a
21 reduction of social security disability insurance benefits is not
22 made because of the receipt of worker's compensation benefits by
23 the employee.

24 (12) Nothing in this section shall be considered to compel an
25 employee to apply for early federal social security old-age
26 insurance benefits or to apply for early or reduced pension or
27 retirement 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~~
 4 **that** would have been paid, if any, under the federal insurance
 5 contributions act, **chapter 21 of subtitle C of the internal**
 6 **revenue code of 1986**, 26 U.S.C. 3101 to ~~3126~~ **3128**, state income
 7 tax and federal income tax, calculated on an annual basis using
 8 as the number of exemptions the disabled employee's dependents
 9 plus the employee, and without excess itemized deductions. In
 10 determining the "after-tax amount" the tables provided for in
 11 section 313(2) shall be used. The gross amount of any benefit
 12 under subsection (1)(b), ~~(1)(c), (1)(d), or (1)(e)~~ **(c), (d), or**
 13 **(e)** shall be presumed to be the same as the average weekly wage
 14 for purposes of the table. The applicable 80% of after-tax
 15 amount as provided in the table will be multiplied by 1.25 which
 16 will be conclusive for determining the "after-tax amount" of
 17 benefits under subsection (1)(b), ~~(1)(c), (1)(d), or (1)(e)~~
 18 **(c), (d), or (e)**.

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

26 (15) With respect to volunteer fire fighters, volunteer
 27 safety patrol officers, volunteer civil defense workers, and

1 volunteer ambulance drivers and attendants who are considered
2 employees for purposes of this act pursuant to section 161(1)(a),
3 the reduction of weekly benefits provided for disability
4 insurance payments under subsection (1)(b) and (c) and subsection
5 (11) may be waived by the employer. An employer that is not a
6 self-insurer may make the waiver provided for under this
7 subsection only at the time a worker's compensation insurance
8 policy is entered into or renewed.

9 (16) This section shall not apply to payments made to an
10 employee as a result of liability pursuant to section 361(2)
11 ~~and or~~ (3) for the specific loss period set forth ~~therein in~~
12 **section 361(2) or (3)**. It is the intent of the legislature that,
13 because benefits under section 361(2) and (3) are benefits which
14 recognize human factors substantially in addition to the wage
15 loss concept, coordination of benefits should not apply to ~~such~~
16 **those** benefits.

17 (17) The decision of the Michigan Supreme Court in Franks v
18 White Pine Copper Division, 422 Mich 636 (1985) is declared to
19 have been erroneously rendered insofar as it interprets this
20 section, it having been and being the legislative intention not
21 to coordinate payments under this section resulting from
22 liability pursuant to section 351, 361, or 835 for personal
23 injuries occurring before March 31, 1982. It is the purpose of
24 this amendatory act to so affirm. This remedial and curative
25 amendment shall be liberally construed to effectuate this
26 purpose.

27 (18) This section applies only to payments resulting from

1 liability pursuant to section 351, 361, or 835 for personal
2 injuries occurring on or after March 31, 1982. Any payments made
3 to an employee resulting from liability pursuant to section 351,
4 361, or 835 for a personal injury occurring before March 31, 1982
5 that have not been coordinated under this section as of ~~the~~
6 ~~effective date of this subsection~~ **May 14, 1987** shall not be
7 coordinated, shall not be considered to have created an
8 overpayment of compensation benefits, and shall not be subject to
9 reimbursement to the employer or carrier.

10 ~~(19) Notwithstanding any other section of this act, any~~
11 ~~payments made to an employee resulting from liability pursuant to~~
12 ~~section 351, 361, or 835 for a personal injury occurring before~~
13 ~~March 31, 1982 that have been coordinated before the effective~~
14 ~~date of this subsection shall be considered to be an underpayment~~
15 ~~of compensation benefits, and the amounts withheld pursuant to~~
16 ~~coordination shall be reimbursed with interest, within 60 days of~~
17 ~~the effective date of this subsection, to the employee by the~~
18 ~~employer or carrier.~~

19 ~~—— (20) Notwithstanding any other section of this act, any~~
20 ~~employee who has paid an employer or carrier money alleged by the~~
21 ~~employer or carrier to be owed the employer or carrier because~~
22 ~~that employee's benefits had not been coordinated under this~~
23 ~~section and whose date of personal injury was before March 31,~~
24 ~~1982 shall be reimbursed with interest, within 60 days of the~~
25 ~~effective date of this subsection, that money by the employer or~~
26 ~~carrier.~~

27 **(19)** ~~—(21)—~~ If any portion of this section is subsequently

1 found to be unconstitutional or in violation of applicable law,
2 it shall not affect the validity of the remainder of this
3 section.