

HOUSE BILL No. 5310

October 23, 2001, Introduced by Rep. Birkholz and referred to the Committee on Insurance and Financial Services.

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; payments
6 under a self-insurance plan, a wage continuation plan, or a dis-
7 ability insurance policy provided by the employer; or pension or
8 retirement payments pursuant to a plan or program established or
9 maintained by the employer, are also received or being received
10 by the employee. Except as otherwise provided in this section,
11 the employer's obligation to pay or cause to be paid weekly

1 benefits other than specific loss benefits under section 361(2)
2 and (3) shall be reduced by these amounts:

3 (a) Fifty percent of the amount of the old-age insurance
4 benefits received or being received under the social security
5 act. HOWEVER, IN NO EVENT SHALL THE WEEKLY BENEFITS PAYABLE
6 AFTER THE REDUCTION PROVIDED BY THIS SUBDIVISION BE LESS THAN 50%
7 OF THE WEEKLY BENEFITS OTHERWISE PAYABLE WITHOUT THE REDUCTION.

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

22 (c) The proportional amount, based on the ratio of the
23 employer's contributions to the total insurance premiums for the
24 policy period involved, of the after-tax amount of the payments
25 received or being received by the employee pursuant to a disabil-
26 ity insurance policy provided by the same employer from whom
27 benefits under section 351, 361, or 835 are received, if the

1 employee did contribute directly to the payment of premiums
2 regarding the disability insurance policy.

3 (d) The after-tax amount of the pension or retirement pay-
4 ments received or being received pursuant to a plan or program
5 established or maintained by the same employer from whom benefits
6 under section 351, 361, or 835 are received, if the employee did
7 not contribute directly to the pension or retirement plan or
8 program. Subsequent increases in a pension or retirement program
9 shall not affect the coordination of these benefits.

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

20 (f) For those employers who do not provide a pension plan,
21 the proportional amount, based on the ratio of the employer's
22 contributions to the total contributions made to a qualified
23 profit sharing plan under section 401(a) of the internal revenue
24 code or any successor to section 401(a) of the internal revenue
25 code covering a profit sharing plan which provides for the pay-
26 ment of benefits only upon retirement, disability, death, or

1 other separation of employment to the extent that benefits are
2 vested under the plan.

3 (2) To satisfy any remaining obligations under section 351,
4 361, or 835, the employer shall pay or cause to be paid to the
5 employee the balance due in either weekly or lump sum payments
6 after the application of subsection (1).

7 (3) In the application of subsection (1) any credit or
8 reduction shall occur pursuant to this section and all of the
9 following:

10 (a) The bureau shall promulgate rules to provide for notifi-
11 cation by an employer or carrier to an employee of possible eli-
12 gibility for social security benefits and the requirements for
13 establishing proof of application for those benefits.
14 Notification shall be promptly mailed to the employee after the
15 date on which by reason of age the employee may be entitled to
16 social security benefits. A copy of the notification of possible
17 eligibility shall be filed with the bureau by the employer or
18 carrier.

19 (b) Within 30 days after receipt of the notification of pos-
20 sible employee eligibility the employee shall:

21 (i) Make application for social security benefits.

22 (ii) Provide the employer or carrier with proof of that
23 application.

24 (iii) Provide the employer or carrier with an authority for
25 release of information which shall be utilized by the employer or
26 carrier to obtain necessary benefit entitlement and amount
27 information from the social security administration. The

1 authority for release of information shall be effective for 1
2 year.

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

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

25 (6) Within 30 days after either the date of first payment of
26 compensation benefits under section 351, 361, or 835, or 30 days
27 after the date of application for any benefit under subsection

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

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

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

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

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

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

20 (12) Nothing in this section shall be considered to compel
21 an employee to apply for early federal social security old-age
22 insurance benefits or to apply for early or reduced pension or
23 retirement benefits.

24 (13) As used in this section, "after-tax amount" means the
25 gross amount of any benefit under subsection (1)(b), (1)(c),
26 (1)(d), or (1)(e) reduced by the prorated weekly amount which
27 would have been paid, if any, under the federal insurance

1 contributions act, 26 U.S.C. 3101 to 3126, state income tax and
2 federal income tax, calculated on an annual basis using as the
3 number of exemptions the disabled employee's dependents plus the
4 employee, and without excess itemized deductions. In determining
5 the "after-tax amount" the tables provided for in section 313(2)
6 shall be used. The gross amount of any benefit under subsection
7 (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the
8 same as the average weekly wage for purposes of the table. The
9 applicable 80% of after-tax amount as provided in the table will
10 be multiplied by 1.25 which will be conclusive for determining
11 the "after-tax amount" of benefits under subsection (1)(b),
12 (1)(c), (1)(d), or (1)(e).

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

20 (15) With respect to volunteer fire fighters, volunteer
21 safety patrol officers, volunteer civil defense workers, and vol-
22 unteer ambulance drivers and attendants who are considered
23 employees for purposes of this act pursuant to section 161(1)(a),
24 the reduction of weekly benefits provided for disability insur-
25 ance payments under subsection (1)(b) and (c) and subsection (11)
26 may be waived by the employer. An employer that is not a
27 self-insurer may make the waiver provided for under this

1 subsection only at the time a worker's compensation insurance
2 policy is entered into or renewed.

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

10 (17) The decision of the Michigan Supreme Court in Franks v
11 White Pine Copper Division, 422 Mich 636 (1985) is declared to
12 have been erroneously rendered insofar as it interprets this sec-
13 tion, it having been and being the legislative intention not to
14 coordinate payments under this section resulting from liability
15 pursuant to section 351, 361, or 835 for personal injuries occur-
16 ring before March 31, 1982. It is the purpose of this amendatory
17 act to so affirm. This remedial and curative amendment shall be
18 liberally construed to effectuate this purpose.

19 (18) This section applies only to payments resulting from
20 liability pursuant to section 351, 361, or 835 for personal inju-
21 ries occurring on or after March 31, 1982. Any payments made to
22 an employee resulting from liability pursuant to section 351,
23 361, or 835 for a personal injury occurring before March 31, 1982
24 that have not been coordinated under this section as of the
25 effective date of this subsection shall not be coordinated, shall
26 not be considered to have created an overpayment of compensation

1 benefits, and shall not be subject to reimbursement to the
2 employer or carrier.

3 (19) Notwithstanding any other section of this act, any pay-
4 ments made to an employee resulting from liability pursuant to
5 section 351, 361, or 835 for a personal injury occurring before
6 March 31, 1982 that have been coordinated before the effective
7 date of this subsection shall be considered to be an underpayment
8 of compensation benefits, and the amounts withheld pursuant to
9 coordination shall be reimbursed with interest, within 60 days of
10 the effective date of this subsection, to the employee by the
11 employer or carrier.

12 (20) Notwithstanding any other section of this act, any
13 employee who has paid an employer or carrier money alleged by the
14 employer or carrier to be owed the employer or carrier because
15 that employee's benefits had not been coordinated under this sec-
16 tion and whose date of personal injury was before March 31, 1982
17 shall be reimbursed with interest, within 60 days of the effec-
18 tive date of this subsection, that money by the employer or
19 carrier.

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