



HOUSE BILL No. 5746

April 17, 1996, Introduced by Reps. Randall, McNutt and DeLange and referred to the Committee on Human Resources and Labor.

A bill to amend sections 615, 641, and 645 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," sections 641 and 645 as amended by Act No. 118 of the Public Acts of 1993, being sections 418.615, 418.641, and 418.645 of the Michigan Compiled Laws; and to add sections 162, 616, and 626.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 615, 641, and 645 of Act No. 317 of the
2 Public Acts of 1969, sections 641 and 645 as amended by Act
3 No. 118 of the Public Acts of 1993, being sections 418.615,
4 418.641, and 418.645 of the Michigan Compiled Laws, are amended
5 and sections 162, 616, and 626 are added to read as follows:

6 SEC. 162. (1) AN EMPLOYEE WHO HAS RECEIVED AN EXEMPTION
7 UNDER SECTION 3127 OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT,
8 CHAPTER 21 OF THE INTERNAL REVENUE CODE OF 1986, 26 U.S.C. 3127,

1 MAY FILE AN APPLICATION WITH THE DIRECTOR ON A FORM PRESCRIBED BY
2 THE DIRECTOR TO WAIVE ACCEPTANCE OF AND TO BE EXCLUDED FROM THE
3 PAYMENT OF COMPENSATION AND OTHER BENEFITS UNDER THIS ACT.

4 (2) THE APPLICATION FOR WAIVER SHALL BE APPROVED IF THE
5 DIRECTOR DETERMINES THAT THE EMPLOYEE QUALIFIES FOR THE EXEMPTION
6 IN SECTION 3127 OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT AS
7 DESCRIBED IN SUBSECTION (1).

8 (3) IF THE EMPLOYEE UNDER SUBSECTION (1) IS A MINOR, THE
9 WAIVER REQUIRED BY SUBSECTION (1) MAY BE MADE BY A PARENT OR
10 GUARDIAN OF THE MINOR.

11 (4) AN APPLICATION FOR WAIVER APPROVED UNDER THIS SECTION
12 SHALL BE VALID FOR ALL FUTURE YEARS UNLESS THE EMPLOYEE CEASES TO
13 MEET THE REQUIREMENTS OF THIS SECTION.

14 Sec. 615. (1) Upon written request of the director, every
15 employer who has not been exempted by the director from insuring
16 his OR HER compensation risk shall report to ~~him~~ THE DIRECTOR
17 in writing the number of employees, the nature of their work, the
18 name of the insurer with whom ~~he~~ THE EMPLOYER has insured ~~his~~
19 liability under this act, and the number and date of expiration
20 of ~~such~~ THE policy. Failure to furnish the report within 10
21 days ~~from~~ AFTER the making of a request by registered mail con-
22 stitutes presumptive evidence that the delinquent employer is
23 violating ~~the provisions of~~ section 611.

24 (2) IF THE DIRECTOR HAS REASON TO BELIEVE THAT THE EMPLOYER
25 MAY BE IN NONCOMPLIANCE WITH SECTION 611, OR THE DIRECTOR, UPON
26 RECEIPT OF A REPORT OF VIOLATION OF THE MANDATORY INSURANCE
27 PROVISIONS OF SECTION 611, VERIFIES BY REVIEW OF THE BUREAU'S

1 INSURANCE RECORDS THAT PROOF OF COVERAGE IS NOT ON FILE WITH THE
2 BUREAU, THE DIRECTOR SHALL INITIATE A PRELIMINARY INVESTIGATION
3 TO DETERMINE IF REASONABLE GROUNDS EXIST TO BELIEVE THAT THE
4 EMPLOYER HAS NOT SECURED THE PAYMENT OF COMPENSATION UNDER THIS
5 ACT. UPON REASONABLE BELIEF THAT THE EMPLOYER IS UNINSURED, THE
6 DIRECTOR MAY MAKE AN INSPECTION IN ACCORDANCE WITH SECTION 616.

7 SEC. 616. (1) IN ORDER TO DETERMINE COMPLIANCE WITH SECTION
8 611, UPON PRESENTING APPROPRIATE CREDENTIALS TO THE EMPLOYER,
9 OWNER, OR THE OPERATOR OR AGENT IN CHARGE FOR THE EMPLOYER, THE
10 DIRECTOR MAY ENTER WITHOUT DELAY AND AT REASONABLE TIMES ANY
11 PLACE OF EMPLOYMENT, MAY INSPECT AND INVESTIGATE DURING REGULAR
12 WORKING HOURS AND AT OTHER REASONABLE TIMES, WITHIN REASONABLE
13 LIMITS AND IN A REASONABLE MANNER, ANY RECORDS PERTAINING TO THAT
14 EMPLOYER'S WORKERS' DISABILITY COMPENSATION INSURANCE POLICY,
15 NUMBER OF EMPLOYEES, DOCUMENTS GOVERNING CONDITIONS AND BENEFITS
16 OF EMPLOYMENT, CONTRACTS WITH EMPLOYEES AND THEIR AUTHORIZED REP-
17 RESENTATIVES, AND ANY OTHER DOCUMENTS THAT MAY BE RELEVANT TO THE
18 ENFORCEMENT OF SECTION 611, AND MAY QUESTION PRIVATELY AN EMPLOY-
19 ER, OR OWNER, OR AN OPERATOR OR AGENT FOR THE EMPLOYER OR OWNER,
20 OR AN EMPLOYEE WITH RESPECT TO MATTERS RELEVANT TO THE ENFORCE-
21 MENT OF SECTION 611.

22 (2) IN MAKING INSPECTIONS AND INVESTIGATIONS UNDER THIS
23 CHAPTER, THE DIRECTOR MAY ADMINISTER OATHS, TAKE AND CAUSE TO BE
24 TAKEN DEPOSITIONS OF WITNESSES, ISSUE SUBPOENAS, AND COMPEL THE
25 ATTENDANCE OF WITNESSES AND PRODUCTION OF PAPERS, BOOKS, DOCU-
26 MENTS, RECORDS, AND TESTIMONY. A PERSON WHO FAILS TO COMPLY WITH
27 A SUBPOENA LAWFULLY ISSUED OR A PERSON WHO REFUSES TO PRODUCE

1 EVIDENCE OR TO TESTIFY TO ANY MATTER FOR WHICH THE PERSON MAY BE
2 LAWFULLY INTERROGATED MAY BE PUNISHED AS FOR CONTEMPT OF COURT.
3 AN APPLICATION FOR A DETERMINATION THAT THE PERSON IS IN CONTEMPT
4 OF COURT MAY BE MADE TO A COURT OF COMPETENT JURISDICTION WITHIN
5 WHOSE JURISDICTION THE ALLEGED FAILURE OR REFUSAL TO COMPLY WITH
6 THIS SUBSECTION IS COMMITTED AND FOR WHICH PURPOSE THE COURT IS
7 GIVEN JURISDICTION.

8 (3) UPON THE REFUSAL OF AN EMPLOYER OR OWNER OR AN OPERATOR
9 OR AGENT IN CHARGE FOR THE EMPLOYER OR OWNER TO PERMIT ENTRY AS
10 SPECIFIED IN THIS SECTION, THE DIRECTOR MAY APPLY FOR AN ORDER IN
11 THE CIRCUIT COURT IN THE COUNTY IN WHICH ENTRY WAS REFUSED, OR IN
12 INGHAM COUNTY, TO COMPEL THE EMPLOYER TO PERMIT THE DIRECTOR TO
13 ENTER AND INSPECT THE PLACE OF EMPLOYMENT.

14 (4) ADVANCE NOTICE OF AN INSPECTION OR INVESTIGATION MAY BE
15 AUTHORIZED BY THE DIRECTOR ONLY UNDER 1 OR MORE OF THE FOLLOWING
16 CONDITIONS:

17 (A) IF THE INSPECTION OR INVESTIGATION CAN MOST EFFECTIVELY
18 BE CONDUCTED AFTER REGULAR BUSINESS HOURS OR IF SPECIAL PREPARA-
19 TIONS ARE NECESSARY FOR AN INSPECTION OR INVESTIGATION.

20 (B) IF NECESSARY TO ENSURE THE PRESENCE OF REPRESENTATIVES
21 OF THE EMPLOYER AND EMPLOYEES WHERE THE APPROPRIATE PERSONNEL ARE
22 NEEDED TO AID IN THE INSPECTION OR INVESTIGATION.

23 (C) IN OTHER CIRCUMSTANCES WHERE THE DIRECTOR DETERMINES
24 THAT THE GIVING OF ADVANCE NOTICE WOULD ENHANCE THE PROBABILITY
25 OF AN EFFECTIVE AND THOROUGH INSPECTION OR INVESTIGATION.

1 SEC. 626. THE DIRECTOR MAY CONTRACT WITH OTHER PARTIES
2 REGARDING THE COLLECTION OF APPROPRIATE COVERAGE DATA REQUIRED BY
3 SECTIONS 621 AND 625.

4 Sec. 641. (1) An employer who fails to comply with ~~the~~
5 ~~provisions of~~ section 611 is guilty of a ~~misdemeanor~~ FELONY
6 and may be fined not more than ~~\$1,000.00~~ \$50,000.00, or impris-
7 oned for not more than ~~6 months~~ 4 YEARS, or both. Each day's
8 failure is a separate offense.

9 (2) The employee of an employer who violates the provisions
10 of section 171 or 611 shall be entitled to recover damages from
11 the employer in a civil action because of an injury that arose
12 out of and in the course of employment notwithstanding ~~the pro-~~
13 ~~visions of~~ section 131.

14 (3) The director of the bureau shall have the right and
15 obligation to recover on behalf of the workplace health and
16 safety fund from an uninsured employer in a civil action the
17 amounts provided in section 723. If the employer is a corpora-
18 tion, the officers and directors of the corporation shall be
19 individually and jointly and severally liable for any portion of
20 the obligation and expenses that are not satisfied by the
21 corporation.

22 (4) Any amounts collected pursuant to subsection (3) shall
23 be paid to the uninsured employer's security account within the
24 workplace health and safety fund established in sections 722 and
25 723.

26 (5) For the purposes of this section, the director shall be
27 considered a party as described in section 863.

1 (6) Subsections (3), (4), and (5) shall apply to injuries
2 that occur on or after June 29, 1990.

3 Sec. 645. ~~(1) The director may file a complaint in the
4 circuit court for the county in which the employer is located, or
5 in the circuit court for Ingham county, requesting the relief
6 permitted by this section against an employer that has failed, at
7 any time within the immediately preceding 3 years, to comply with
8 section 611.~~

9 ~~(2) If the director's complaint alleges that the employer's
10 liability is currently uninsured, there shall immediately be
11 served on the employer an order to show cause why the employer
12 should not be restrained from employing any person in his or her
13 business pending the proceedings or until the employer shall have
14 satisfied the court that the employer has complied with the pro-
15 visions of section 171 or 611. The order to show cause shall be
16 returnable before the court at a time to be fixed in the order
17 not less than 24 hours nor more than 7 days after its issuance.~~

18 ~~(3) Upon a complaint filed pursuant to subsection (1), an
19 injunction shall be issued unless the employer proves that he or
20 she is not subject to the provisions of this act or furnishes a
21 surety company bond in an amount to secure all of the liability
22 of the employer under this act. An injunction issued against an
23 employer under this subsection shall perpetually enjoin the
24 employer from employing any person in his or her business at any
25 time the employer is not complying with section 171 or 611.~~

26 ~~(4) The director's complaint may seek a civil fine of not
27 more than \$1,000.00 per day against an employer who has failed,~~

1 ~~at any time within the immediately preceding 3 years, to comply~~
2 ~~with section 611, whether or not the employer is currently in~~
3 ~~noncompliance. A civil fine shall be assessed by the court of~~
4 ~~not more than \$1,000.00 for each day the court finds the employer~~
5 ~~not to have been in compliance with section 611.~~

6 (1) ~~(5) A civil fine collected pursuant to this section~~
7 ~~shall be paid to the worker's compensation administrative revolv-~~
8 ~~ing fund established by section 835a.~~ THE BUREAU, HAVING REASON
9 TO BELIEVE THAT AN EMPLOYER HAS FAILED TO COMPLY WITH SECTION
10 611, MAY ISSUE A CEASE AND DESIST ORDER DIRECTING THE EMPLOYER TO
11 COMPLY WITH SECTION 611, TO REFRAIN FROM EMPLOYING ANY PERSON AT
12 ANY TIME WITHOUT COMPLYING WITH SECTION 611, AND TO PAY A CIVIL
13 FINE UP TO \$1,000.00 PER DAY DURING WHICH THE EMPLOYER WAS NOT IN
14 COMPLIANCE.

15 (2) AN EMPLOYER SHALL BE NOTIFIED BY THE BUREAU THAT IT HAS
16 15 DAYS FROM THE MAILING DATE TO CONTEST SUCH AN ORDER BY FILING
17 A WRITTEN OBJECTION WITH THE DIRECTOR OF THE BUREAU, STATING IN
18 DETAIL ITS REASONS FOR OBJECTING. IF THE DIRECTOR DOES NOT
19 RECEIVE AN OBJECTION WITHIN 15 DAYS, THE BUREAU'S ORDER SHALL
20 CONSTITUTE A FINAL ORDER.

21 (3) IF THE DIRECTOR DOES RECEIVE A TIMELY OBJECTION, THE
22 DIRECTOR SHALL REFER THE MATTER TO THE BOARD OF MAGISTRATES FOR
23 AN EXPEDITED HEARING BEFORE A MAGISTRATE. THE MAGISTRATE SHALL
24 ISSUE A DECISION EITHER AFFIRMING, REVERSING, OR MODIFYING THE
25 BUREAU'S ORDER WITHIN 10 DAYS AFTER THE CLOSE OF THE HEARING. IF
26 THE MAGISTRATE AFFIRMS THE BUREAU'S ORDER, THE MAGISTRATE MAY
27 ORDER THE EMPLOYER TO PAY AN ADDITIONAL CIVIL FINE UP TO

1 \$1,000.00 PER DAY IF THE EMPLOYER CONTINUED TO EMPLOY PERSONS
2 WITHOUT COMPLYING WITH SECTION 611 WHILE THE PROCEEDINGS WERE
3 PENDING. IF EITHER THE DIRECTOR'S OR THE MAGISTRATE'S ORDER IS
4 NOT TIMELY APPEALED, THE ORDER SHALL CONSTITUTE A FINAL ORDER AND
5 VIOLATION OF THAT ORDER SHALL BE ENFORCEABLE BY WAY OF CIVIL CON-
6 TEMPT PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION IN WHICH
7 THE OFFENSE IS COMMITTED, OR INGHAM COUNTY CIRCUIT COURT.

8 (4) ANY APPEAL FROM A DECISION OF THE MAGISTRATE SHALL BE TO
9 THE WORKERS' COMPENSATION APPELLATE COMMISSION. IF AN APPEAL IS
10 TAKEN FROM A DECISION OF THE MAGISTRATE MADE PURSUANT TO THIS
11 SECTION, THE MAGISTRATE SHALL REQUIRE THE EMPLOYER TO POST A
12 SURETY BOND, IRREVOCABLE LETTER OF CREDIT, OR OTHER SECURITY IN A
13 REASONABLE AMOUNT TO GUARANTEE THAT MONEY WILL BE AVAILABLE TO
14 PAY WORKERS' DISABILITY COMPENSATION BENEFITS TO INJURED EMPLOY-
15 EES COVERED BY THE ACT. SUCH SECURITY SHALL BE FILED WITH THE
16 DIRECTOR AT THE TIME AN APPEAL IS TAKEN TO THE APPELLATE COMMIS-
17 SION AND SHALL BE CONSISTENT WITH THE PROVISIONS OF R 408.43A AND
18 R 408.43Q OF THE MICHIGAN ADMINISTRATIVE CODE. AN APPEAL SHALL
19 NOT BE CONSIDERED FILED UNLESS ACCOMPANIED WITH EVIDENCE THAT THE
20 SECURITY HAS BEEN FILED WITH THE DIRECTOR. A CLAIM FOR REVIEW OF
21 THE MAGISTRATE'S ORDER OR DECISION MADE PURSUANT TO THIS SECTION
22 SHALL BE FILED WITH THE WORKERS' COMPENSATION APPELLATE COMMIS-
23 SION WITHIN 15 DAYS AFTER THE MAILING DATE OF THE ORDER OR
24 DECISION. IF A CLAIM FOR REVIEW IS NOT FILED WITHIN 15 DAYS, THE
25 AGGRIEVED PARTY SHALL BE CONSIDERED TO HAVE WAIVED THE RIGHT TO
26 APPEAL. WITHIN 15 DAYS AFTER SERVICE OF A COPY OF THE CLAIM FOR
27 REVIEW, UNLESS THE TIME IS EXTENDED BY ORDER OF THE APPELLATE

1 COMMISSION, THE BUREAU SHALL FILE THE ORIGINAL OR CERTIFIED COPY
2 OF THE ENTIRE RECORD OF THE PROCEEDINGS, UNLESS PARTIES TO THE
3 PROCEEDINGS FOR REVIEW STIPULATE THAT THE RECORD BE SHORTENED. A
4 PARTY WHO UNREASONABLY REFUSES TO SO STIPULATE MAY BE TAXED BY
5 THE APPELLATE COMMISSION FOR THE ADDITIONAL COSTS OF
6 PREPARATION. IF THE EMPLOYER DISPUTES THE IMPOSITION OF ADDI-
7 TIONAL SECURITY AT TIME OF APPEAL FROM THE MAGISTRATE, SUCH DIS-
8 PUTE SHALL BE IN THE FORM OF A MOTION DIRECTED TO THE COMMISSION
9 WITHIN 15 DAYS AFTER THE FILING OF THE RECORD. THE BUREAU'S
10 REPLY TO SUCH MOTION SHALL BE FILED WITHIN 15 DAYS AFTER RECEIPT
11 OF APPELLANT'S MOTION. THE COMMISSION SHALL ACT ON THE MOTION
12 WITHIN 15 DAYS AFTER THE FILING OF THE BUREAU'S REPLY TO
13 APPELLANT'S MOTION, AND SHALL NOTIFY THE PARTIES OF INTEREST OF
14 ITS DECISION. THE APPEALING PARTY'S BRIEF SHALL BE FILED WITH
15 THE APPELLATE COMMISSION 15 DAYS AFTER THE FILING OF THE RECORD,
16 AND A COPY SHALL BE SERVED UPON THE OPPOSING PARTY. THE BUREAU'S
17 REPLY BRIEF SHALL BE FILED WITHIN 15 DAYS AFTER RECEIPT OF THE
18 APPELLANT'S BRIEF. ORAL ARGUMENT MAY BE REQUESTED BY ANY PARTY
19 TO THE PROCEEDINGS. SUCH REQUEST SHALL BE IN THE FORM OF A
20 MOTION DIRECTED TO THE COMMISSION WITHIN 15 DAYS AFTER THE FILING
21 OF THE RECORD. THE COMMISSION SHALL ACT ON THE MOTION WITHIN 15
22 DAYS AFTER FILING THE MOTION AND SHALL NOTIFY THE PARTIES IN
23 INTEREST OF ITS DECISION. OTHERWISE, AND SUBSEQUENT TO THE EXPI-
24 RATION OF 15 DAYS, THE APPELLATE COMMISSION SHALL HEAR THE CASE
25 UPON THE RECORD AND SHALL CONSIDER ONLY BRIEFS THAT HAVE BEEN
26 FILED. THE DECISION OF THE APPELLATE COMMISSION SHALL BE MADE
27 WITHIN 30 DAYS AFTER THE DATE OF THE ORAL ARGUMENT OR, IF NO ORAL

1 ARGUMENT, WITHIN 30 DAYS AFTER THE DATE THAT THE BUREAU'S BRIEF
2 IS REQUIRED TO BE FILED. THE APPELLATE COMMISSION MAY REMAND THE
3 MATTER TO THE MAGISTRATE FOR PURPOSES OF SUPPLYING A COMPLETE
4 RECORD IF IT IS DETERMINED THAT THE RECORD IS INSUFFICIENT FOR
5 PURPOSES OF REVIEW. THE COMMENCEMENT OF PROCEEDINGS UNDER THIS
6 SECTION SHALL NOT OPERATE AS A STAY OF THE MAGISTRATE'S ORDER
7 INCLUDING ANY ADDITIONAL SECURITY IMPOSED BY THE MAGISTRATE
8 UNLESS STAYED BY ORDER OF THE APPELLATE COMMISSION. THE COMMIS-
9 SION ORDERED STAY SHALL BE SUBJECT TO SUCH CONDITIONS AS THE
10 APPELLATE COMMISSION MAY IMPOSE.

11 (5) ALL CIVIL FINES ASSESSED UNDER THIS SECTION SHALL BE
12 DEPOSITED IN THE WORKERS' COMPENSATION ADMINISTRATIVE REVOLVING
13 FUND.