

HOUSE BILL No. 5981

October 19, 2016, Introduced by Rep. Goike and referred to the Committee on Commerce and Trade.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 161 (MCL 418.161), as amended by 2012 PA 83.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 161. (1) As used in this act, "employee" means:
2 (a) A person in the service of the state, a county, city,
3 township, village, or school district, under any appointment, or
4 contract of hire, express or implied, oral or written. A person
5 employed by a contractor who has contracted with a county, city,
6 township, village, school district, or the state, through its
7 representatives, shall not be considered an employee of the state,
8 county, city, township, village, or school district that made the
9 contract, if the contractor is subject to this act.

1 (b) Nationals of foreign countries employed pursuant to
2 section 102(a)(1) of the mutual educational and cultural exchange
3 act of 1961, Public Law 87-256, 22 USC 2452, shall not be
4 considered employees under this act.

5 (c) Police officers, fire fighters, or employees of the police
6 or fire departments, or their dependents, in municipalities or
7 villages of this state providing like benefits, may waive the
8 provisions of this act and accept like benefits that are provided
9 by the municipality or village but are not entitled to like
10 benefits from both the municipality or village and this act.
11 However, this waiver does not prohibit those employees or their
12 dependents from being reimbursed under section 315 for the medical
13 expenses or portion of medical expenses that are not otherwise
14 provided for by the municipality or village. This act shall not be
15 construed as limiting, changing, or repealing any of the provisions
16 of a charter of a municipality or village of this state relating to
17 benefits, compensation, pensions, or retirement independent of this
18 act, provided for employees.

19 (d) On-call members of a fire department of a county, city,
20 village, or township shall be considered to be employees of the
21 county, city, village, or township, and entitled to all the
22 benefits of this act if personally injured in the performance of
23 duties as on-call members of the fire department whether the on-
24 call member of the fire department is paid or unpaid. On-call
25 members of a fire department of a county, city, village, or
26 township shall be considered to be receiving the state average
27 weekly wage at the time of injury, as last determined under section

1 355, from the county, village, city, or township for the purpose of
2 calculating the weekly rate of compensation provided under this act
3 except that if the member's average weekly wage was greater than
4 the state average weekly wage at the time of the injury, the
5 member's weekly rate of compensation shall be determined based on
6 the member's average weekly wage.

7 (e) On-call members of a fire department or an on-call member
8 of a volunteer underwater diving team that contracts with or
9 receives reimbursement from 1 or more counties, cities, villages,
10 or townships is entitled to all the benefits of this act if
11 personally injured in the performance of their duties as on-call
12 members of a fire department or as an on-call member of a volunteer
13 underwater diving team whether the on-call member of the fire
14 department or the on-call member of the volunteer underwater diving
15 team is paid or unpaid. On-call members of a fire department shall
16 be considered to be receiving the state average weekly wage at the
17 time of injury, as last determined under section 355, from the fire
18 department for the purpose of calculating the weekly rate of
19 compensation provided under this act except that if the member's
20 average weekly wage was greater than the state average weekly wage
21 at the time of the injury, the member's weekly rate of compensation
22 shall be determined based on the member's average weekly wage. On-
23 call members of a volunteer underwater diving team shall be
24 considered to be receiving the state average weekly wage at the
25 time of injury, as last determined under section 355, from the fire
26 department for the purpose of calculating the weekly rate of
27 compensation provided under this act except that if the member's

1 average weekly wage was greater than the state average weekly wage
2 at the time of the injury, the member's weekly rate of compensation
3 shall be determined based on the member's average weekly wage.

4 (f) The benefits of this act are available to a safety patrol
5 officer who is engaged in traffic regulation and management for and
6 by authority of a county, city, village, or township, whether the
7 officer is paid or unpaid, in the same manner as benefits are
8 available to on-call members of a fire department under subdivision
9 (d), upon the adoption by the legislative body of the county, city,
10 village, or township of a resolution to that effect. A safety
11 patrol officer or safety patrol force when used in this act
12 includes all persons who volunteer and are registered with a school
13 and assigned to patrol a public thoroughfare used by students of a
14 school.

15 (g) A volunteer civil defense worker who is a member of the
16 civil defense forces as provided by law and is registered on the
17 permanent roster of the civil defense organization of the state or
18 a political subdivision of the state shall be considered to be an
19 employee of the state or the political subdivision on whose
20 permanent roster the employee is enrolled if engaged in the
21 performance of duty and shall be considered to be receiving the
22 state average weekly wage at the time of injury, as last determined
23 under section 355, from the state or political subdivision for
24 purposes of calculating the weekly rate of compensation provided
25 under this act.

26 (h) A volunteer licensed under section 20950 or 20952 of the
27 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who

1 is an on-call member of a life support agency as defined under
2 section 20906 of the public health code, 1978 PA 368, MCL
3 333.20906, shall be considered to be an employee of the county,
4 city, village, or township and entitled to the benefits of this act
5 if personally injured in the performance of duties as an on-call
6 member of a life support agency whether the on-call member of the
7 life support agency is paid or unpaid. An on-call member of a life
8 support agency shall be considered to be receiving the state
9 average weekly wage at the time of injury, as last determined under
10 section 355, from the county, city, village, or township for
11 purposes of calculating the weekly rate of compensation provided
12 under this act except that if the member's average weekly wage was
13 greater than the state average weekly wage at the time of the
14 injury, the member's weekly rate of compensation shall be
15 determined based on the member's average weekly wage.

16 (i) A volunteer licensed under section 20950 or 20952 of the
17 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who
18 is an on-call member of a life support agency as defined under
19 section 20906 of the public health code, 1978 PA 368, MCL
20 333.20906, that contracts with or receives reimbursement from 1 or
21 more counties, cities, villages, or townships is entitled to all
22 the benefits of this act if personally injured in the performance
23 of his or her duties as an on-call member of a life support agency
24 whether the on-call member of the life support agency is paid or
25 unpaid. An on-call member of a life support agency shall be
26 considered to be receiving the state average weekly wage at the
27 time of injury, as last determined under section 355, from the life

1 support agency for the purpose of calculating the weekly rate of
2 compensation provided under this act except that if the member's
3 average weekly wage was greater than the state average weekly wage
4 at the time of the injury, the member's weekly rate of compensation
5 shall be determined based on the member's average weekly wage.

6 (j) If a member of an organization recognized by 1 or more
7 counties, cities, villages, or townships within this state as an
8 emergency rescue team is employed by a state, county, city,
9 village, or township within this state as a police officer, fire
10 fighter, emergency medical technician, or ambulance driver and is
11 injured in the normal scope of duties including training, but
12 excluding activation, as a member of the emergency rescue team, he
13 or she shall be considered to be engaged in the performance of his
14 or her normal duties for the state, county, city, village, or
15 township. If the member of the emergency rescue team is not
16 employed by a state, county, city, village, or township within this
17 state as a police officer, fire fighter, emergency medical
18 technician, or ambulance driver, and is injured in the normal scope
19 of duties, including training, as a member of the emergency rescue
20 team, he or she shall be considered to be an employee of the team.
21 For the purpose of securing the payment of compensation under this
22 act, on activation, each member of the team shall be considered to
23 be covered by a policy obtained by the team unless the employer of
24 a member of the team agrees in writing to provide coverage for that
25 member under its policy. Members of an emergency rescue team shall
26 be considered to be receiving the state average weekly wage at the
27 time of injury, as last determined under section 355, from the team

1 for the purpose of calculating the weekly rate of compensation
2 provided under this act except that if the member's average weekly
3 wage was greater than the state average weekly wage at the time of
4 the injury, the member's weekly rate of compensation shall be
5 determined based on the member's average weekly wage. As used in
6 this subdivision, "activation" means a request by the emergency
7 management coordinator appointed pursuant to section 8 or 9 of the
8 emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made
9 of and accepted by an emergency rescue team.

10 (k) A political subdivision of this state is not required to
11 provide compensation insurance for a peace officer of the political
12 subdivision with respect to the protection and compensation
13 provided by 1937 PA 329, MCL 419.101 to 419.104.

14 (l) Every person in the service of another, under any contract
15 of hire, express or implied, including aliens; a person regularly
16 employed on a full-time basis by his or her spouse having specified
17 hours of employment at a specified rate of pay; working members of
18 partnerships receiving wages from the partnership irrespective of
19 profits; a person insured for whom and to the extent premiums are
20 paid based on wages, earnings, or profits; and minors, who shall be
21 considered the same as and have the same power to contract as adult
22 employees. Any minor under 18 years of age whose employment at the
23 time of injury is shown to be illegal, in the absence of fraudulent
24 use of permits or certificates of age in which case only single
25 compensation shall be paid, shall receive compensation double that
26 provided in this act.

27 (m) Every person engaged in a federally funded training

1 program or work experience program that mandates the provision of
2 appropriate worker's compensation for participants and that is
3 sponsored by the state, a county, city, township, village, or
4 school district, or an incorporated public board or public
5 commission in the state authorized by law to hold property and to
6 sue or be sued generally, or any consortium thereof, shall be
7 considered, for the purposes of this act, to be an employee of the
8 sponsor and entitled to the benefits of this act. The sponsor is
9 responsible for the provision of worker's compensation and shall
10 secure the payment of compensation by a method permitted under
11 section 611. If a sponsor contracts with a public or private
12 organization to operate a program, the sponsor may require the
13 organization to secure the payment of compensation by a method
14 permitted under section 611.

15 (n) Every person performing service in the course of the
16 trade, business, profession, or occupation of an employer at the
17 time of the injury, if the person in relation to this service does
18 not maintain a separate business, does not hold himself or herself
19 out to and render service to the public, and is not an employer
20 subject to this act. On and after January 1, 2013, services are
21 employment if the services are performed by an individual whom the
22 Michigan administrative hearing system determines to be in an
23 employer-employee relationship using the 20-factor test announced
24 by the internal revenue service of the United States ~~department of~~
25 ~~treasury~~ **DEPARTMENT OF TREASURY** in revenue ruling 87-41, 1 C.B.
26 296. An individual for whom an employer is required to withhold
27 federal income tax is prima facie considered to perform service in

1 employment under this act. If a business entity requests the
2 Michigan administrative hearing system to determine whether 1 or
3 more individuals performing service for the entity in this state
4 are in covered employment, the Michigan administrative hearing
5 system shall issue a determination of coverage of service performed
6 by those individuals and any other individuals performing similar
7 services under similar circumstances.

8 (o) An individual registered with the state of Michigan
9 verification system described in 42 USC 247d-7b shall be considered
10 an employee of the state of Michigan when engaged in the
11 performance of duties or services as a registrant, or when training
12 to provide those duties or services, except if another employer
13 provides coverage for that individual specifically for duties and
14 services arising from registration with this state. That individual
15 shall be considered to be receiving the state average weekly wage
16 at the time of injury or death, as last determined under section
17 355, from the state of Michigan for purposes of calculating the
18 weekly rate of compensation provided under this act, except that if
19 the individual's average weekly wage was greater than the state
20 average weekly wage at the time of injury or death the individual's
21 weekly rate of compensation shall be determined based upon the
22 individual's weekly average wage. The state of Michigan shall
23 exercise all the rights and obligations of an employer and carrier
24 as provided for under this act.

25 (2) A policy or contract of worker's compensation insurance,
26 by endorsement, may exclude coverage as to any 1 or more named
27 partners or the spouse, child, or parent in the employer's family.

1 A person excluded pursuant to this subsection is not subject to
2 this act and shall not be considered an employee for the purposes
3 of section 115.

4 (3) An employee who is subject to this act, including an
5 employee covered pursuant to section 121, who is an employee of a
6 limited liability company of not more than 10 members and who is
7 also a manager and member, as defined in section 102 of the
8 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,
9 and who owns at least a 10% interest in that limited liability
10 company, with the consent of the limited liability company as
11 approved by a majority vote of the members, or if the limited
12 liability company has more than 1 manager, all of the managers who
13 are also members, except as otherwise provided in an operating
14 agreement, may elect to be individually excluded from this act by
15 giving a notice of the election in writing to the carrier with the
16 consent of the limited liability company endorsed on the notice.
17 The exclusion remains in effect until revoked by the employee by
18 giving notice in writing to the carrier. While the exclusion is in
19 effect, section 141 does not apply to any action brought by the
20 employee against the limited liability company.

21 (4) An employee who is subject to this act, including an
22 employee covered pursuant to section 121, who is an employee of a
23 corporation that has not more than 10 stockholders and who is also
24 an officer and stockholder who owns at least 10% of the stock of
25 that corporation, with the consent of the corporation as approved
26 by its board of directors, may elect to be individually excluded
27 from this act by giving a notice of the election in writing to the

1 carrier with the consent of the corporation endorsed on the notice.
2 The exclusion remains in effect until revoked by the employee by
3 giving a notice in writing to the carrier. While the exclusion is
4 in effect, section 141 does not apply to any action brought by the
5 employee against the corporation.

6 (5) If the persons to be excluded from coverage under this act
7 pursuant to subsections (2) to (4) comprise all of the employees of
8 the employer, those persons may elect to be excluded from being
9 considered employees under this act by submitting written notice of
10 that election to the director upon a form prescribed by the
11 director. The exclusion shall remain in effect until revoked by
12 giving written notice to the director.

13 **(6) AN INDIVIDUAL REGULARLY ENGAGED IN WOOD PRODUCTS**
14 **MANUFACTURING FOR MORE THAN 20 HOURS PER WEEK AT A SINGLE LOCATION**
15 **WHO MIGHT OTHERWISE HAVE BEEN CLASSIFIED AND EXCLUDED FROM COVERAGE**
16 **SHALL, FOR PURPOSES OF THIS ACT, BE CONSIDERED AN EMPLOYEE OF THE**
17 **WOOD PRODUCTS FACILITY THAT OPERATES AT THE LOCATION WHERE THE**
18 **INDIVIDUAL PROVIDES THOSE SERVICES. AS USED IN THIS SUBSECTION,**
19 **"WOOD PRODUCTS MANUFACTURING FACILITY" MEANS AN OPERATION THAT**
20 **MANUFACTURES WOOD PRODUCTS BY CUTTING LUMBER, SHINGLES, TIMBER**
21 **PICKETS, WOODEN POSTS, LOGS, OR SPARS, OR BY CONSTRUCTING WOODEN**
22 **PALLETS.**

23 Enacting section 1. This amendatory act takes effect 90 days
24 after the date it is enacted into law.