

Act No. 97  
Public Acts of 1994  
Approved by the Governor  
April 12, 1994  
Filed with the Secretary of State  
April 13, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

Introduced by Senator Honigman

**ENROLLED SENATE BILL No. 656**

AN ACT to amend sections 161 531 and 861a of Act No 317 of the Public Acts of 1969 entitled as amended An act to revise and consolidate the laws relating to worker's disability compensation to increase the administrative efficiency of the adjudicative processes of the worker's compensation system to improve the qualifications of the persons having adjudicative functions within the worker's compensation system to prescribe certain powers and duties to create the board of worker's compensation magistrates and the worker's compensation appellate commission to create certain other boards to provide certain procedures for the resolution of claims including mediation and arbitration to prescribe certain benefits for persons suffering a personal injury under the act to prescribe certain limitations on obtaining benefits under the act to create and provide for the transfer of certain funds to prescribe certain fees to prescribe certain remedies and penalties to repeal certain parts of this act on specific dates and to repeal certain acts and parts of acts section 161 as amended and section 861a as added by Act No 103 of the Public Acts of 1985 and section 531 as amended by Act No 98 of the Public Acts of 1984 being sections 418 161 418 531 and 418 861a of the Michigan Compiled Laws

*The People of the State of Michigan enact*

Section 1 Sections 161 531 and 861a of Act No 317 of the Public Acts of 1969 section 161 as amended and section 861a as added by Act No 103 of the Public Acts of 1985 and section 531 as amended by Act No 98 of the Public Acts of 1984 being sections 418 161 418 531 and 418 861a of the Michigan Compiled Laws are amended to read as follows

Sec 161 (1) As used in this act employee means

(a) A person in the service of the state a county city township village or school district under any appointment or contract of hire express or implied oral or written A person employed by a contractor who has contracted with a county city township village school district or the state through its representatives shall not be considered an employee of the state county city township village or school district which made the contract when the contractor is subject to this act

(b) Nationals of foreign countries employed pursuant to section 102(a)(1) of the mutual educational and cultural exchange act of 1961 22 U S C 2452 shall not be considered employees under this act

(c) Police officers fire fighters or employees of the police or fire departments or their dependents in municipalities or villages of this state providing like benefits may waive the provisions of this act and accept like benefits that are provided by the municipality or village but shall not be entitled to like benefits from both the municipality or village and this act however this waiver shall not prohibit such employees or their dependents from being reimbursed under section 315 for the medical expenses or portion of medical expenses that are not otherwise provided for by the municipality or village This act shall not be construed as limiting changing or repealing any of the provisions of a charter of a municipality or village of this state relating to benefits compensation pensions or retirement independent of this act provided for employees

(d) Members of a volunteer fire department of a county city village or township shall be considered to be employees of the county city village or township and entitled to all the benefits of this act when personally injured in the performance of duties as members of the volunteer fire department Members of a volunteer fire department of a county city village or township shall be considered to be receiving the state average weekly wage at the time of injury as last determined under section 355 from the county village city or township for the purpose of calculating the weekly rate of compensation provided under this act

(e) Members of a volunteer fire department that contracts with or receives reimbursement from 1 or more counties cities villages or townships shall be entitled to all the benefits of this act when personally injured in the performance of their duties as members of a volunteer fire department Members of a volunteer fire department shall be considered to be receiving the state average weekly wage at the time of injury as last determined under section 355 from the fire department for the purpose of calculating the weekly rate of compensation provided under this act

(f) The benefits of this act shall be available to a safety patrol officer who is engaged in traffic regulation and management for and by authority of a county city village or township whether the officer is paid or unpaid in the same manner as benefits are available to volunteer fire fighters under subdivision (d) upon the adoption by the legislative body of the county city village or township of a resolution to that effect A safety patrol officer or safety patrol force when used in this act includes all persons who volunteer and are registered with a school and assigned to patrol a public thoroughfare used by students of a school

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

(h) A volunteer licensed under section 20950 or 20952 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 20950 and 333 20952 of the Michigan Compiled Laws who is a member of a life support agency as defined under section 20906 of Act No 368 of the Public Acts of 1978 being section 333 20906 of the Michigan Compiled Laws shall be considered to be an employee of the county city village or township and entitled to the benefits of this act when personally injured in the performance of duties as a volunteer member of a life support agency and shall be considered to be receiving the state average weekly wage at the time of injury as last determined under section 355 from the county city village or township for purposes of calculating the weekly rate of compensation provided under this act

(i) A volunteer licensed under section 20950 or 20952 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 20950 and 333 20952 of the Michigan Compiled Laws who is a member of a life support agency as defined under section 20906 of Act No 368 of the Public Acts of 1978 being section 333 20906 of the Michigan Compiled Laws that contracts with or receives reimbursement from 1 or more counties cities villages or townships shall be entitled to all the benefits of this act when personally injured in the performance of their duties as a volunteer member of a life support agency and shall be considered to be receiving the state average weekly wage at the time of injury as last determined under section 355 from the life support agency for the purpose of calculating the weekly rate of compensation provided under this act

(j) A political subdivision of this state shall not be required to provide compensation insurance for a peace officer of the political subdivision with respect to the protection and compensation provided by Act No 329 of the Public Acts of 1937 as amended being sections 419 101 to 419 104 of the Michigan Compiled Laws

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

(l) Every person engaged in a federally funded training program or work experience program which mandates the provision of appropriate worker s compensation for participants and which is sponsored by the state a county city

township village or school district or an incorporated public board or public commission in the state authorized by law to hold property and to sue or be sued generally or any consortium thereof shall be considered for the purposes of this act to be an employee of the sponsor and entitled to the benefits of this act The sponsor shall be responsible for the provision of worker s compensation and shall secure the payment of compensation by a method permitted under section 611 If a sponsor contracts with a public or private organization to operate a program the sponsor may require the organization to secure the payment of compensation by a method permitted under section 611

(m) Every person performing service in the course of the trade business profession or occupation of an employer at the time of the injury if the person in relation to this service does not maintain a separate business does not hold himself or herself out to and render service to the public and is not an employer subject to this act

(2) A policy or contract of worker s compensation insurance by endorsement may exclude coverage as to any 1 or more named partners or the spouse child or parent in the employer s family A person excluded pursuant to this subsection shall not be subject to this act and shall not be considered an employee for the purposes of section 115

(3) An employee who is subject to this act including an employee covered pursuant to section 121 who is an employee of a corporation which has not more than 10 stockholders and who is also an officer and stockholder who owns at least 10% of the stock of that corporation with the consent of the corporation as approved by its board of directors may elect to be individually excluded from this act by giving a notice of the election in writing to the carrier with the consent of the corporation endorsed on the notice The exclusion shall remain in effect until revoked by the employee by giving a notice in writing to the carrier While the exclusion is in effect section 141 shall not apply to any action brought by the employee against the corporation

(4) If the persons to be excluded from coverage under this act pursuant to subsection (2) or (3) comprise all of the employees of the employer those persons may elect to be excluded from being considered employees under this act by submitting written notice of that election to the director upon a form prescribed by the director The exclusion shall remain in effect until revoked by giving written notice to the director

Sec 531 (1) In each case in which a carrier including a self insurer has paid or causes to be paid compensation for disability or death from silicosis or other dust disease or for disability or death arising out of and in the course of employment in the logging industry to the employee the carrier including a self insurer shall be reimbursed from the silicosis dust disease and logging industry compensation fund for all sums paid in excess of \$12 500 00 for personal injury dates before July 1 1985 and for all compensation paid in excess of \$25 000 00 or 104 weeks of weekly compensation whichever is greater for personal injury dates after June 30 1985 excluding payments made pursuant to sections 315 319 345 and 801(2) (5) and (6) which have been paid by the carrier including a self insurer as a portion of its liability

(2) A benefit paid as a result of disability or death caused contributed to or aggravated by previous exposure to polybrominated biphenyl shall entitle a carrier including a self insurer to reimbursement from the silicosis dust disease and logging industry compensation fund pursuant to this act if the exposure occurred before July 24 1979 and arose out of and in the course of employment by an employer located in this state engaged in the manufacture of polybrominated biphenyl To be reimbursable the disability or death shall have occurred or become known after July 24 1979

(3) All of the funds under this chapter shall have a right to commence an action and obtain recovery under section 827

Sec 861a (1) Any matter for which a claim for review under section 859a has been filed shall be heard and decided by the appellate commission

(2) Until October 1 1986 findings of fact made by a worker s compensation magistrate shall be considered conclusive by the commission if supported by competent material and a preponderance of the evidence on the whole record

(3) Beginning October 1 1986 findings of fact made by a worker s compensation magistrate shall be considered conclusive by the commission if supported by competent material and substantial evidence on the whole record As used in this subsection substantial evidence means such evidence considering the whole record as a reasonable mind will accept as adequate to justify the conclusion

(4) As used in subsections (2) and (3) whole record means the entire record of the hearing including all of the evidence in favor and all the evidence against a certain determination

(5) A party filing a claim for review under section 859a shall file a copy of the transcript of the hearing within 60 days of filing the claim for review and shall file its brief with the commission and provide any opposing party with a copy of the transcript and its brief not more than 30 days after filing the transcript For sufficient cause shown the commission may grant further time in which to file a transcript

(6) Not more than 30 days after receiving a copy of the transcript and brief of the appealing party an opposing party shall file its reply brief with the commission and provide a copy of the brief to the appealing party In addition to filing

its reply brief within the 30 days the opposing party may file a cross appeal and brief in support thereof specifying the findings of fact and conclusions of law contained in the record that support the position of the party

(7) A party responding to a cross appeal shall have 30 days after receiving a copy of the brief in support of the cross appeal to file its reply brief with the commission. The reply brief shall specify the findings of facts and conclusions of law in the record that support that party's position.

(8) A party filing a claim for review under section 859a shall specify to the commission those portions of the record that support that party's claim and any party opposing such claim shall specify those portions of the record that support that party's position.

(9) Not more than 15 days after all briefs have been filed with the commission the matter shall be referred for review and decision to either a panel of the commission or the entire commission as provided for under section 274.

(10) The commission or a panel of the commission may adopt in whole or in part the order and opinion of the worker's compensation magistrate as the order and opinion of the commission.

(11) The commission or a panel of the commission shall review only those specific findings of fact or conclusions of law that the parties have requested be reviewed.

(12) The commission or a panel of the commission may remand a matter to a worker's compensation magistrate for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review.

(13) A review of the evidence pursuant to this section shall include both a qualitative and quantitative analysis of that evidence in order to ensure a full, thorough, and fair review.

(14) The findings of fact made by the commission acting within its powers in the absence of fraud shall be conclusive. The court of appeals and the supreme court shall have the power to review questions of law involved with any final order of the commission if application is made by the aggrieved party within 30 days after the order by any method permissible under the Michigan court rules.

(15) If the parties stipulate within 30 days after the decision is rendered to modify or correct errors in the decision the commission shall modify or correct errors in the decision in accordance with the stipulations. Stipulations shall otherwise comply with the provisions of this act.

This act is ordered to take immediate effect.

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor