



# HOUSE BILL No. 4848

May 16, 1995, Introduced by Reps. DeLange, Nye, Freeman, Sikkema and Munsell and referred to the Committee on Human Resources and Labor.

A bill to amend sections 151, 161, and 647 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," section 151 as amended by Act No. 103 of the Public Acts of 1985 and section 161 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.151, 418.161, and 418.647 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 151, 161, and 647 of Act No. 317 of the  
2 Public Acts of 1969, section 151 as amended by Act No. 103 of the  
3 Public Acts of 1985 and section 161 as amended by Act No. 271 of  
4 the Public Acts of 1994, being sections 418.151, 418.161, and  
5 418.647 of the Michigan Compiled Laws, are amended to read as  
6 follows:

1       Sec. 151. ~~(+)~~ The following constitutes employers subject  
2 to this act:

3       (a) The state; each county, city, township, incorporated  
4 village, and school district; each incorporated public board or  
5 public commission in this state authorized by law to hold prop-  
6 erty and to sue or be sued generally; and any library in a county  
7 with a population less than 600,000 established under Act No. 138  
8 of the Public Acts of 1917, ~~as amended,~~ being sections 397.301  
9 to 397.305 of the Michigan Compiled Laws, if the library board by  
10 resolution expresses its intention to be considered as a separate  
11 employer from the county where it is located for purposes of this  
12 act.

13       (b) Every person, firm, LIMITED LIABILITY COMPANY, LIMITED  
14 LIABILITY PARTNERSHIP, and private corporation, including any  
15 public service corporation, who has any person in service under  
16 any contract of hire, express or implied, oral or written, unless  
17 those employees excluded according to the provisions of section  
18 161(4) comprise all of the employees of the person, firm, LIMITED  
19 LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, or  
20 corporation.

21       Sec. 161. (1) As used in this act, "employee" means:

22       (a) A person in the service of the state, a county, city,  
23 township, village, or school district, under any appointment, or  
24 contract of hire, express or implied, oral or written. A person  
25 employed by a contractor who has contracted with a county, city,  
26 township, village, school district, or the state, through its  
27 representatives, shall not be considered an employee of the

1 state, county, city, township, village, or school district which  
2 made the contract, when the contractor is subject to this act.

3 (b) Nationals of foreign countries employed pursuant to sec-  
4 tion 102(a)(1) of the mutual educational and cultural exchange  
5 act of 1961, 22 U.S.C. 2452, shall not be considered employees  
6 under this act.

7 (c) Police officers, fire fighters, or employees of the  
8 police or fire departments, or their dependents, in municipali-  
9 ties or villages of this state providing like benefits, may waive  
10 the provisions of this act and accept like benefits that are pro-  
11 vided by the municipality or village but shall not be entitled to  
12 like benefits from both the municipality or village and this act;  
13 however, this waiver shall not prohibit such employees or their  
14 dependents from being reimbursed under section 315 for the medi-  
15 cal expenses or portion of medical expenses that are not other-  
16 wise provided for by the municipality or village. This act shall  
17 not be construed as limiting, changing, or repealing any of the  
18 provisions of a charter of a municipality or village of this  
19 state relating to benefits, compensation, pensions, or retirement  
20 independent of this act, provided for employees.

21 (d) On-call members of a fire department of a county, city,  
22 village, or township shall be considered to be employees of the  
23 county, city, village, or township, and entitled to all the bene-  
24 fits of this act when personally injured in the performance of  
25 duties as on-call members of the fire department whether the  
26 on-call member of the fire department is paid or unpaid. On-call  
27 members of a fire department of a county, city, village, or

1 township shall be considered to be receiving the state average  
2 weekly wage at the time of injury, as last determined under sec-  
3 tion 355, from the county, village, city, or township for the  
4 purpose of calculating the weekly rate of compensation provided  
5 under this act except that if the member's average weekly wage  
6 was greater than the state average weekly wage at the time of the  
7 injury, the member's weekly rate of compensation shall be deter-  
8 mined based on the member's average weekly wage.

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

23 (f) The benefits of this act shall be available to a safety  
24 patrol officer who is engaged in traffic regulation and manage-  
25 ment for and by authority of a county, city, village, or town-  
26 ship, whether the officer is paid or unpaid, in the same manner  
27 as benefits are available to ~~volunteer fire fighters~~ ON-CALL

1 MEMBERS OF A FIRE DEPARTMENT under subdivision (d), upon the  
2 adoption by the legislative body of the county, city, village, or  
3 township of a resolution to that effect. A safety patrol officer  
4 or safety patrol force when used in this act includes all persons  
5 who volunteer and are registered with a school and assigned to  
6 patrol a public thoroughfare used by students of a school.

7 (g) A volunteer civil defense worker who is a member of the  
8 civil defense forces as provided by law and is registered on the  
9 permanent roster of the civil defense organization of the state  
10 or a political subdivision of the state shall be considered to be  
11 an employee of the state or the political subdivision on whose  
12 permanent roster the employee is enrolled when engaged in the  
13 performance of duty and shall be considered to be receiving the  
14 state average weekly wage at the time of injury, as last deter-  
15 mined under section 355, from the state or political subdivision  
16 for purposes of calculating the weekly rate of compensation pro-  
17 vided under this act.

18 (h) A volunteer licensed under section 20950 or 20952 of the  
19 public health code, Act No. 368 of the Public Acts of 1978, being  
20 sections 333.20950 and 333.20952 of the Michigan Compiled Laws,  
21 who is an on-call member of a life support agency as defined  
22 under section 20906 of Act No. 368 of the Public Acts of 1978,  
23 being section 333.20906 of the Michigan Compiled Laws, shall be  
24 considered to be an employee of the county, city, village, or  
25 township and entitled to the benefits of this act when personally  
26 injured in the performance of duties as an on-call member of a  
27 life support agency whether the on-call member of the life

1 support agency is paid or unpaid. An on-call member of a life  
2 support agency shall be considered to be receiving the state  
3 average weekly wage at the time of injury, as last determined  
4 under section 355, from the county, city, village, or township  
5 for purposes of calculating the weekly rate of compensation pro-  
6 vided under this act except that if the member's average weekly  
7 wage was greater than the state average weekly wage at the time  
8 of the injury, the member's weekly rate of compensation shall be  
9 determined based on the member's average weekly wage.

10 (i) A volunteer licensed under section 20950 or 20952 of the  
11 public health code, Act No. 368 of the Public Acts of 1978, being  
12 sections 333.20950 and 333.20952 of the Michigan Compiled Laws,  
13 who is an on-call member of a life support agency as defined  
14 under section 20906 of Act No. 368 of the Public Acts of 1978,  
15 being section 333.20906 of the Michigan Compiled Laws, that con-  
16 tracts with or receives reimbursement from 1 or more counties,  
17 cities, villages, or townships shall be entitled to all the bene-  
18 fits of this act when personally injured in the performance of  
19 his or her duties as an on-call member of a life support agency  
20 whether the on-call member of the life support agency is paid or  
21 unpaid. An on-call member of a life support agency shall be con-  
22 sidered to be receiving the state average weekly wage at the time  
23 of injury, as last determined under section 355, from the life  
24 support agency for the purpose of calculating the weekly rate of  
25 compensation provided under this act except that if the member's  
26 average weekly wage was greater than the state average weekly  
27 wage at the time of the injury, the member's weekly rate of

1 compensation shall be determined based on the member's average  
2 weekly wage.

3 (j) A political subdivision of this state shall not be  
4 required to provide compensation insurance for a peace officer of  
5 the political subdivision with respect to the protection and com-  
6 pensation provided by Act No. 329 of the Public Acts of 1937, ~~as~~  
7 ~~amended,~~ being sections 419.101 to 419.104 of the Michigan  
8 Compiled Laws.

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

23 (l) Every person engaged in a federally funded training pro-  
24 gram or work experience program which mandates the provision of  
25 appropriate worker's compensation for participants and which is  
26 sponsored by the state, a county, city, township, village, or  
27 school district, or an incorporated public board or public

1 commission in the state authorized by law to hold property and to  
2 sue or be sued generally, or any consortium thereof, shall be  
3 considered, for the purposes of this act, to be an employee of  
4 the sponsor and entitled to the benefits of this act. The spon-  
5 sor shall be responsible for the provision of worker's compensa-  
6 tion and shall secure the payment of compensation by a method  
7 permitted under section 611. If a sponsor contracts with a  
8 public or private organization to operate a program, the sponsor  
9 may require the organization to secure the payment of compensa-  
10 tion by a method permitted under section 611.

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

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

23 (3) AN EMPLOYEE WHO IS SUBJECT TO THIS ACT, INCLUDING AN  
24 EMPLOYEE COVERED PURSUANT TO SECTION 121, WHO IS AN EMPLOYEE OF A  
25 LIMITED LIABILITY COMPANY OF NOT MORE THAN 10 MEMBERS AND WHO IS  
26 ALSO A MANAGER AND MEMBER WHO OWNS AT LEAST A 10% INTEREST IN  
27 THAT LIMITED LIABILITY COMPANY, WITH THE CONSENT OF THE LIMITED

1 LIABILITY COMPANY AS APPROVED BY A MAJORITY VOTE OF THE MEMBERS,  
2 OR IF THE LIMITED LIABILITY COMPANY HAS MORE THAN 1 MANAGER, ALL  
3 OF THE MANAGERS, EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING  
4 AGREEMENT, MAY ELECT TO BE INDIVIDUALLY EXCLUDED FROM THIS ACT BY  
5 GIVING A NOTICE OF THE ELECTION IN WRITING TO THE CARRIER WITH  
6 THE CONSENT OF THE LIMITED LIABILITY COMPANY ENDORSED ON THE  
7 NOTICE. THE EXCLUSION SHALL REMAIN IN EFFECT UNTIL REVOKED BY  
8 THE EMPLOYEE BY GIVING NOTICE IN WRITING TO THE CARRIER. WHILE  
9 THE EXCLUSION IS IN EFFECT, SECTION 141 SHALL NOT APPLY TO ANY  
10 ACTION BROUGHT BY THE EMPLOYEE AGAINST THE LIMITED LIABILITY  
11 COMPANY.

12 (4) ~~-(3)-~~ An employee who is subject to this act, including  
13 an employee covered pursuant to section 121, who is an employee  
14 of a corporation which has not more than 10 stockholders and who  
15 is also an officer and stockholder who owns at least 10% of the  
16 stock of that corporation, with the consent of the corporation as  
17 approved by its board of directors, may elect to be individually  
18 excluded from this act by giving a notice of the election in  
19 writing to the carrier with the consent of the corporation  
20 endorsed on the notice. The exclusion shall remain in effect  
21 until revoked by the employee by giving a notice in writing to  
22 the carrier. While the exclusion is in effect, section 141 shall  
23 not apply to any action brought by the employee against the  
24 corporation.

25 (5) ~~-(4)-~~ If the persons to be excluded from coverage under  
26 this act pursuant to ~~subsection~~ SUBSECTIONS (2) ~~or (3)~~ TO (4)  
27 comprise all of the employees of the employer, those persons may

1 elect to be excluded from being considered employees under this  
2 act by submitting written notice of that election to the director  
3 upon a form prescribed by the director. The exclusion shall  
4 remain in effect until revoked by giving written notice to the  
5 director.

6       Sec. 647. (1) If compensation is awarded under ~~the provi-~~  
7 ~~sions of~~ this act against any employer who at the time of the  
8 injury has not complied with ~~the provisions of~~ section 611, the  
9 employer shall not be entitled as to any judgment entered upon  
10 the award, to any of the exemptions of property from seizure and  
11 sale on execution allowed by statute.

12       (2) If the employer is a corporation, the officers and  
13 directors ~~thereof~~ OF THE CORPORATION shall be individually and  
14 jointly and severally liable for any portion of ~~any such~~ THE  
15 judgment ~~as is~~ returned unsatisfied after execution against the  
16 corporation. IF THE EMPLOYER IS A LIMITED LIABILITY COMPANY, THE  
17 MANAGERS AND MEMBERS SHALL BE INDIVIDUALLY AND JOINTLY AND SEVER-  
18 ALLY LIABLE FOR ANY PORTION OF THE JUDGMENT RETURNED UNSATISFIED  
19 AFTER EXECUTION AGAINST THE COMPANY. IF THE EMPLOYER IS A  
20 LIMITED LIABILITY PARTNERSHIP, THE PARTNERS SHALL BE INDIVIDUALLY  
21 AND JOINTLY AND SEVERALLY LIABLE FOR ANY PORTION OF THE JUDGMENT  
22 RETURNED UNSATISFIED AFTER EXECUTION AGAINST THE COMPANY.