



HOUSE BILL No. 5536

January 31, 1996, Introduced by Reps. DeLange, Perricone, Goschka, Oxender, Freeman, Gernaat, Murphy, Geiger, Cherry, LaForge, Nye, Llewellyn, Munsell, Prusi, Voorhees and Kukuk and referred to the Committee on Human Resources and Labor.

A bill to amend section 161 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," as amended by Act No. 206 of the Public Acts of 1995, being section 418.161 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 161 of Act No. 317 of the Public Acts of
2 1969, as amended by Act No. 206 of the Public Acts of 1995, being
3 section 418.161 of the Michigan Compiled Laws, is amended to read
4 as follows:

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

6 (a) A person in the service of the state, a county, city,
7 township, village, or school district, under any appointment, or
8 contract of hire, express or implied, oral or written. A person
9 employed by a contractor who has contracted with a county, city,

1 township, village, school district, or the state, through its
2 representatives, shall not be considered an employee of the
3 state, county, city, township, village, or school district which
4 made the contract, when the contractor is subject to this act.

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

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

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

1 on-call member of the fire department is paid or unpaid. On-call
2 members of a fire department of a county, city, village, or town-
3 ship shall be considered to be receiving the state average weekly
4 wage at the time of injury, as last determined under section 355,
5 from the county, village, city, or township for the purpose of
6 calculating the weekly rate of compensation provided under this
7 act except that if the member's average weekly wage was greater
8 than the state average weekly wage at the time of the injury, the
9 member's weekly rate of compensation shall be determined based on
10 the member's average weekly wage.

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

25 (f) The benefits of this act shall be available to a safety
26 patrol officer who is engaged in traffic regulation and
27 management for and by authority of a county, city, village, or

1 township, whether the officer is paid or unpaid, in the same
2 manner as benefits are available to on-call members of a fire
3 department under subdivision (d), upon the adoption by the legis-
4 lative body of the county, city, village, or township of a reso-
5 lution to that effect. A safety patrol officer or safety patrol
6 force when used in this act includes all persons who volunteer
7 and are registered with a school and assigned to patrol a public
8 thoroughfare used by students of a school.

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

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

1 injured in the performance of duties as an on-call member of a
2 life support agency whether the on-call member of the life sup-
3 port agency is paid or unpaid. An on-call member of a life sup-
4 port agency shall be considered to be receiving the state average
5 weekly wage at the time of injury, as last determined under sec-
6 tion 355, from the county, city, village, or township for pur-
7 poses of calculating the weekly rate of compensation provided
8 under this act except that if the member's average weekly wage
9 was greater than the state average weekly wage at the time of the
10 injury, the member's weekly rate of compensation shall be deter-
11 mined based on the member's average weekly wage.

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

5 (J) A VOLUNTEER MEMBER OF A NONPROFIT ORGANIZATION RECOG-
6 NIZED BY 1 OR MORE COUNTIES, CITIES, VILLAGES, OR TOWNSHIPS
7 WITHIN THIS STATE AS AN AUTHORIZED EMERGENCY RESCUE TEAM SHALL BE
8 CONSIDERED TO BE AN EMPLOYEE OF THE COUNTY, CITY, VILLAGE, OR
9 TOWNSHIP THAT REQUESTS THE ACTIVATION OF THE TEAM WHEN INJURED IN
10 THE PERFORMANCE OF DUTIES AS A MEMBER OF THE TEAM. HOWEVER, IF
11 THE VOLUNTEER MEMBER OF THE AUTHORIZED EMERGENCY RESCUE TEAM IS
12 EMPLOYED BY A COUNTY, CITY, VILLAGE, OR TOWNSHIP WITHIN THIS
13 STATE AS A POLICE OFFICER, FIRE FIGHTER, EMERGENCY MEDICAL TECH-
14 NICIAN, OR OTHER EMERGENCY RESPONSE ROLE AND IS INJURED IN THE
15 PERFORMANCE OF DUTIES AS A VOLUNTEER MEMBER OF THE AUTHORIZED
16 EMERGENCY RESCUE TEAM OTHER THAN THOSE DUTIES CONNECTED WITH
17 ACTIVATION OF THE TEAM, HE OR SHE SHALL BE CONSIDERED TO BE
18 ENGAGED IN THE PERFORMANCE OF HIS OR HER NORMAL DUTIES FOR THE
19 COUNTY, CITY, VILLAGE, OR TOWNSHIP. IF THE VOLUNTEER MEMBER OF
20 THE AUTHORIZED EMERGENCY RESCUE TEAM IS NOT EMPLOYED BY A COUNTY,
21 CITY, VILLAGE, OR TOWNSHIP WITHIN THIS STATE AS A POLICE OFFICER,
22 FIRE FIGHTER, EMERGENCY MEDICAL TECHNICIAN, OR OTHER EMERGENCY
23 RESPONSE ROLE, AND IS INJURED IN THE PERFORMANCE OF DUTIES AS A
24 VOLUNTEER MEMBER OF THE AUTHORIZED EMERGENCY RESCUE TEAM OTHER
25 THAN DUTIES PERFORMED DURING THE ACTIVATION OF THE TEAM, HE OR
26 SHE SHALL BE CONSIDERED TO BE AN EMPLOYEE OF THE TEAM. MEMBERS
27 OF AN EMERGENCY RESCUE TEAM SHALL BE CONSIDERED TO BE RECEIVING

1 THE STATE AVERAGE WEEKLY WAGE AT THE TIME OF INJURY, AS LAST
2 DETERMINED UNDER SECTION 355, FROM THE TEAM FOR THE PURPOSE OF
3 CALCULATING THE WEEKLY RATE OF COMPENSATION PROVIDED UNDER THIS
4 ACT EXCEPT THAT IF THE MEMBER'S AVERAGE WEEKLY WAGE WAS GREATER
5 THAN THE STATE AVERAGE WEEKLY WAGE AT THE TIME OF THE INJURY, THE
6 MEMBER'S WEEKLY RATE OF COMPENSATION SHALL BE DETERMINED BASED ON
7 THE MEMBER'S AVERAGE WEEKLY WAGE.

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

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

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

16 (N) ~~(M)~~ Every person performing service in the course of
17 the trade, business, profession, or occupation of an employer at
18 the time of the injury, if the person in relation to this service
19 does not maintain a separate business, does not hold himself or
20 herself out to and render service to the public, and is not an
21 employer subject to this act.

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

1 (3) An employee who is subject to this act, including an
2 employee covered pursuant to section 121, who is an employee of a
3 limited liability company of not more than 10 members and who is
4 also a manager and member, as defined in section 102 of the
5 Michigan limited liability company act, Act No. 23 of the Public
6 Acts of 1993, being section 450.4102 of the Michigan Compiled
7 Laws, and who owns at least a 10% interest in that limited
8 liability company, with the consent of the limited liability com-
9 pany as approved by a majority vote of the members, or if the
10 limited liability company has more than 1 manager, all of the
11 managers who are also members, except as otherwise provided in an
12 operating agreement, may elect to be individually excluded from
13 this act by giving a notice of the election in writing to the
14 carrier with the consent of the limited liability company
15 endorsed on the notice. The exclusion shall remain in effect
16 until revoked by the employee by giving notice in writing to the
17 carrier. While the exclusion is in effect, section 141 shall not
18 apply to any action brought by the employee against the limited
19 liability company.

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

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

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