

HOUSE BILL No. 4552

April 13, 2011, Introduced by Reps. Kurtz, Opsommer, Roy Schmidt, Bledsoe, Gilbert, Rendon and Womack and referred to the Committee on Commerce.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending sections 161 and 372 (MCL 418.161 and 418.372), section
161 as amended by 2002 PA 427 and section 372 as added by 1980 PA
357.

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,

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

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

7 (c) Police officers, fire fighters, or employees of the police
8 or fire departments, or their dependents, in municipalities or
9 villages of this state providing like benefits, may waive the
10 provisions of this act and accept like benefits that are provided
11 by the municipality or village but shall not be entitled to like
12 benefits from both the municipality or village and this act. +
13 ~~however,~~ **HOWEVER**, this waiver shall not prohibit such employees or
14 their dependents from being reimbursed under section 315 for the
15 medical expenses or portion of medical expenses that are not
16 otherwise provided for by the municipality or village. This act
17 shall not be construed as limiting, changing, or repealing any of
18 the 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
24 benefits of this act when personally injured in the performance of
25 duties as on-call members of the fire department whether the on-
26 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 section
3 355, from the county, village, city, or township for the purpose of
4 calculating the weekly rate of compensation provided under this act
5 except that if the member's average weekly wage was greater than
6 the state average weekly wage at the time of the injury, the
7 member's weekly rate of compensation shall be determined based on
8 the member's average weekly wage.

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

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

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

1 (h) A volunteer licensed under section 20950 or 20952 of the
2 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who
3 is an on-call member of a life support agency as defined under
4 section 20906 of the public health code, 1978 PA 368, MCL
5 333.20906, shall be considered to be an employee of the county,
6 city, village, or township and entitled to the benefits of this act
7 when personally injured in the performance of duties as an on-call
8 member of a life support agency whether the on-call member of the
9 life support agency is paid or unpaid. An on-call member of a life
10 support agency shall be considered to be receiving the state
11 average weekly wage at the time of injury, as last determined under
12 section 355, from the county, city, village, or township for
13 purposes of calculating the weekly rate of compensation provided
14 under this act except that if the member's average weekly wage was
15 greater than the state average weekly wage at the time of the
16 injury, the member's weekly rate of compensation shall be
17 determined based on the member's average weekly wage.

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

1 agency shall be considered to be receiving the state average weekly
2 wage at the time of injury, as last determined under section 355,
3 from the life support agency for the purpose of calculating the
4 weekly rate of compensation provided under this act except that if
5 the member's average weekly wage was greater than the state average
6 weekly wage at the time of the injury, the member's weekly rate of
7 compensation shall be determined based on the member's average
8 weekly wage.

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

1 member under its policy. Members of an emergency rescue team shall
2 be considered to be receiving the state average weekly wage at the
3 time of injury, as last determined under section 355, from the team
4 for the purpose of calculating the weekly rate of compensation
5 provided under this act except that if the member's average weekly
6 wage was greater than the state average weekly wage at the time of
7 the injury, the member's weekly rate of compensation shall be
8 determined based on the member's average weekly wage. As used in
9 this subdivision, "activation" means a request by the emergency
10 management coordinator appointed pursuant to section 8 or 9 of the
11 emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made
12 of and accepted by an emergency rescue team.

13 (k) A political subdivision of this state ~~shall~~**IS** not be
14 required to provide compensation insurance for a peace officer of
15 the political subdivision with respect to the protection and
16 compensation provided by 1937 PA 329, MCL 419.101 to 419.104.

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

1 single compensation shall be paid, shall receive compensation
2 double that provided in this act.

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

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

24 **(O) AN INDIVIDUAL REGISTERED WITH THE STATE OF MICHIGAN**
25 **VERIFICATION SYSTEM DESCRIBED IN 42 USC 247D-7B SHALL BE CONSIDERED**
26 **AN EMPLOYEE OF THE STATE OF MICHIGAN WHEN ENGAGED IN THE**
27 **PERFORMANCE OF DUTIES OR SERVICES AS A REGISTRANT, OR WHEN TRAINING**

1 TO PROVIDE THOSE DUTIES OR SERVICES, EXCEPT IF THE INDIVIDUAL IS
2 OTHERWISE ELIGIBLE FOR BENEFITS FOR INJURY OR DEATH UNDER COVERAGE
3 PROVIDED BY ANOTHER EMPLOYER. THAT INDIVIDUAL SHALL BE CONSIDERED
4 TO BE RECEIVING THE STATE AVERAGE WEEKLY WAGE AT THE TIME OF INJURY
5 OR DEATH, AS LAST DETERMINED UNDER SECTION 355, FROM THE STATE OF
6 MICHIGAN FOR PURPOSES OF CALCULATING THE WEEKLY RATE OF
7 COMPENSATION PROVIDED UNDER THIS ACT, EXCEPT THAT IF THE
8 INDIVIDUAL'S AVERAGE WEEKLY WAGE WAS GREATER THAN THE STATE AVERAGE
9 WEEKLY WAGE AT THE TIME OF INJURY OR DEATH THE INDIVIDUAL'S WEEKLY
10 RATE OF COMPENSATION SHALL BE DETERMINED BASED UPON THE
11 INDIVIDUAL'S WEEKLY AVERAGE WAGE. THE STATE OF MICHIGAN SHALL
12 EXERCISE ALL THE RIGHTS AND OBLIGATIONS OF AN EMPLOYER AND CARRIER
13 AS PROVIDED FOR UNDER THIS ACT.

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

20 (3) An employee who is subject to this act, including an
21 employee covered pursuant to section 121, who is an employee of a
22 limited liability company of not more than 10 members and who is
23 also a manager and member, as defined in section 102 of the
24 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,
25 and who owns at least a 10% interest in that limited liability
26 company, with the consent of the limited liability company as
27 approved by a majority vote of the members, or if the limited

1 liability company has more than 1 manager, all of the managers who
2 are also members, except as otherwise provided in an operating
3 agreement, may elect to be individually excluded from this act by
4 giving a notice of the election in writing to the carrier with the
5 consent of the limited liability company endorsed on the notice.
6 The exclusion shall remain in effect until revoked by the employee
7 by giving notice in writing to the carrier. While the exclusion is
8 in effect, section 141 shall not apply to any action brought by the
9 employee against the limited liability company.

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

22 (5) If the persons to be excluded from coverage under this act
23 pursuant to subsections (2) to (4) comprise all of the employees of
24 the employer, those persons may elect to be excluded from being
25 considered employees under this act by submitting written notice of
26 that election to the director upon a form prescribed by the
27 director. The exclusion shall remain in effect until revoked by

1 giving written notice to the director.

2 Sec. 372. (1) If an employee was engaged in more than 1
3 employment at the time of a personal injury or a personal injury
4 resulting in death, the employer in whose employment the injury or
5 injury resulting in death occurred is liable for all the injured
6 employee's medical, rehabilitation, and burial benefits. Weekly
7 benefits shall be apportioned as follows:

8 (a) If the employment which caused the personal injury or
9 death provided more than 80% of the injured employee's average
10 weekly wages at the time of the personal injury or death, the
11 insurer or self-insurer is liable for all of the weekly benefits.

12 (b) If the employment which caused the personal injury or
13 death provided 80% or less of the employee's average weekly wage at
14 the time of the personal injury or death, the insurer or self-
15 insurer is liable for that portion of the employee's weekly
16 benefits as bears the same ratio to his or her total weekly
17 benefits as the average weekly wage from the employment which
18 caused the personal injury or death bears to his or her total
19 weekly wages. The second injury fund is separately but dependently
20 liable for the remainder of the weekly benefits. The insurer or
21 self-insurer has the obligation to pay the employee or the
22 employee's dependents at the full rate of compensation. The second
23 injury fund shall reimburse the insurer or self-insurer quarterly
24 for the second injury fund's portion of the benefits due the
25 employee or the employee's dependents.

26 (2) For purposes of apportionment under this section, only
27 wages ~~which~~**THAT** were reported to the internal revenue service

1 shall be considered, and the reports of wages to the internal
2 revenue service are conclusive for the purpose of apportionment
3 under this section.

4 (3) This section does not apply to ~~volunteer public employees~~
5 **INDIVIDUALS** entitled to benefits under section ~~161(1)(a)~~ **161(1)(D),**
6 **(E), (F), (G), (H), (I), (J), AND (O).**