

HOUSE BILL No. 5371

February 8, 2012, Introduced by Reps. Poleski, Lori, Haveman and O'Brien and referred to the Committee on Commerce.

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 2011 PA 266.

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~~ **IS NOT** considered an employee of the
- 8 state, county, city, township, village, or school district that
- 9 made the contract, if the contractor is subject to this act.
- 10 (b) Nationals of foreign countries employed pursuant to

1 section 102(a)(1) of the mutual educational and cultural exchange
2 act of 1961, Public Law 87-256, 22 USC 2452, ~~shall not be~~ **ARE NOT**
3 considered employees under this act.

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

18 (d) On-call members of a fire department of a county, city,
19 village, or township ~~shall be~~ **ARE** considered to be employees of the
20 county, city, village, or township, and entitled to all the
21 benefits of this act if personally injured in the performance of
22 duties as on-call members of the fire department whether the on-
23 call member of the fire department is paid or unpaid. On-call
24 members of a fire department of a county, city, village, or
25 township ~~shall be~~ **ARE** considered to be receiving the state average
26 weekly wage at the time of injury, as last determined under section
27 355, from the county, village, city, or township for the purpose of

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

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

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

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

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

27 (h) A volunteer licensed under section 20950 or 20952 of the

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

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

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

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

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

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

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

1 double that provided in this act.

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

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

1 whom an employer is required to withhold federal income tax is
2 prima facie considered to perform service in employment under this
3 act. If a business entity requests the Michigan administrative
4 hearing system to determine whether 1 or more individuals
5 performing service for the entity in this state are in covered
6 employment, the Michigan administrative hearing system shall issue
7 a determination of coverage of service performed by those
8 individuals and any other individuals performing similar services
9 under similar circumstances.

10 (O) AN INDIVIDUAL IS NOT AN EMPLOYEE SUBJECT TO THIS ACT IF HE
11 OR SHE IS A MEMBER OF A RELIGIOUS SECT OR DIVISION THAT IS AN
12 ADHERENT OF ESTABLISHED TENETS OR TEACHINGS BY REASON OF WHICH
13 MEMBERS ARE CONSCIENTIOUSLY OPPOSED TO ACCEPTING THE BENEFITS OF
14 ANY PUBLIC OR PRIVATE INSURANCE THAT MAKES PAYMENTS IN THE EVENT OF
15 DEATH, DISABILITY, OLD AGE, OR RETIREMENT OR MAKES PAYMENTS TOWARD
16 THE COST OF, OR PROVIDES SERVICES FOR, MEDICAL BILLS, INCLUDING THE
17 BENEFITS OF ANY INSURANCE SYSTEM ESTABLISHED BY THE SOCIAL SECURITY
18 ACT, 42 USC 301 TO 1397MM, AND HAS THE PRACTICE ESTABLISHED FOR 10
19 OR MORE YEARS, FOR MEMBERS OF THE SECT OR DIVISION TO MAKE
20 REASONABLE PROVISION FOR THEIR DEPENDENT MEMBERS. AN EMPLOYER SHALL
21 RETAIN A COPY OF THE EMPLOYEE'S INTERNAL REVENUE SERVICE FORM 4029
22 THAT HAS BEEN APPROVED BY THE FEDERAL SOCIAL SECURITY
23 ADMINISTRATION TO ASSERT AN EXEMPTION UNDER THIS SUBDIVISION.

24 (2) A policy or contract of worker's compensation insurance,
25 by endorsement, may exclude coverage as to any 1 or more named
26 partners or the spouse, child, or parent in the employer's family.
27 A person excluded pursuant to this subsection is not subject to

1 this act and ~~shall not be~~ **IS NOT** considered an employee for the
2 purposes of section 115.

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

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

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