

SENATE BILL No. 242

March 8, 2011, Introduced by Senator SCHUITMAKER and referred to the Committee on Economic Development.

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 2002 PA 427.

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

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

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

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

1 355, from the county, village, city, or township for the purpose of
2 calculating the weekly rate of compensation provided under this act
3 except that if the member's average weekly wage was greater than
4 the state average weekly wage at the time of the injury, the
5 member's weekly rate of compensation shall be determined based on
6 the member's average weekly wage.

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

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

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

26 (h) A volunteer licensed under section 20950 or 20952 of the
27 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who

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

16 (i) A volunteer licensed under section 20950 or 20952 of the
17 public health code, 1978 PA 368, MCL 333.20950 and 333.20952, who
18 is an on-call member of a life support agency as defined under
19 section 20906 of the public health code, 1978 PA 368, MCL
20 333.20906, that contracts with or receives reimbursement from 1 or
21 more counties, cities, villages, or townships shall be entitled to
22 all the benefits of this act when personally injured in the
23 performance of his or her duties as an on-call member of a life
24 support agency whether the on-call member of the life support
25 agency is paid or unpaid. An on-call member of a life support
26 agency shall be considered to be receiving the state average weekly
27 wage at the time of injury, as last determined under section 355,

1 from the life support agency for the purpose of calculating the
2 weekly rate of compensation provided under this act except that if
3 the member's average weekly wage was greater than the state average
4 weekly wage at the time of the injury, the member's weekly rate of
5 compensation shall be determined based on the member's average
6 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, county, city,
10 village, or township within this state as a police officer, fire
11 fighter, emergency medical technician, or ambulance driver and is
12 injured in the normal scope of duties including training, but
13 excluding activation, as a member of the emergency rescue team, he
14 or she shall be considered to be engaged in the performance of his
15 or her normal duties for the state, county, city, village, or
16 township. If the member of the emergency rescue team is not
17 employed by a state, county, city, village, or township within this
18 state as a police officer, fire fighter, emergency medical
19 technician, or ambulance driver, and is injured in the normal scope
20 of duties, including training, as a member of the emergency rescue
21 team, he or she shall be considered to be an employee of the team.
22 For the purpose of securing the payment of compensation under this
23 act, on activation, each member of the team shall be considered to
24 be covered by a policy obtained by the team unless the employer of
25 a member of the team agrees in writing to provide coverage for that
26 member under its policy. Members of an emergency rescue team shall
27 be considered to be receiving the state average weekly wage at the

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

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

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

1 (m) Every person engaged in a federally funded training
2 program or work experience program ~~which~~**THAT** mandates the
3 provision of appropriate worker's compensation for participants and
4 ~~which~~**THAT** 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 sponsor
10 shall be responsible for the provision of worker's compensation and
11 shall secure the payment of compensation by a method permitted
12 under section 611. If a sponsor contracts with a public or private
13 organization to operate a program, the sponsor may require the
14 organization to secure the payment of compensation by a method
15 permitted under section 611.

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

22 **(O) A RESERVE OR AUXILIARY OFFICER SHALL BE CONSIDERED AN**
23 **EMPLOYEE OF THE STATE OF MICHIGAN WHEN ENGAGED IN THE PERFORMANCE**
24 **OF DUTY OR SERVICES AS A RESERVE OR AUXILIARY OFFICER, OR WHEN**
25 **TRAINING TO PROVIDE THOSE DUTIES OR SERVICES, EXCEPT IF THE**
26 **INDIVIDUAL IS OTHERWISE ELIGIBLE FOR BENEFITS FOR INJURY OR DEATH**
27 **UNDER COVERAGE PROVIDED BY ANOTHER EMPLOYER. THAT INDIVIDUAL SHALL**

1 BE CONSIDERED TO BE RECEIVING THE STATE AVERAGE WEEKLY WAGE AT THE
2 TIME OF INJURY OR DEATH, AS LAST DETERMINED UNDER SECTION 355, FROM
3 THE STATE OF MICHIGAN FOR PURPOSES OF CALCULATING THE WEEKLY RATE
4 OF COMPENSATION PROVIDED UNDER THIS ACT, EXCEPT THAT IF THE
5 INDIVIDUAL'S AVERAGE WEEKLY WAGE WAS GREATER THAN THE STATE AVERAGE
6 WEEKLY WAGE AT THE TIME OF INJURY OR DEATH THE INDIVIDUAL'S WEEKLY
7 RATE OF COMPENSATION SHALL BE DETERMINED BASED UPON THE
8 INDIVIDUAL'S WEEKLY AVERAGE WAGE. THE STATE OF MICHIGAN SHALL
9 EXERCISE ALL THE RIGHTS AND OBLIGATIONS OF AN EMPLOYER AND CARRIER
10 AS PROVIDED FOR UNDER THIS ACT. AS USED IN THIS SUBDIVISION,
11 "RESERVE OR AUXILIARY OFFICER" MEANS AN INDIVIDUAL AUTHORIZED ON A
12 VOLUNTARY OR IRREGULAR BASIS BY A DULY AUTHORIZED POLICE AGENCY OF
13 THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE TO ACT AS A LAW
14 ENFORCEMENT OFFICER, WHO IS RESPONSIBLE FOR THE PRESERVATION OF THE
15 PEACE, THE PREVENTION AND DETECTION OF CRIME, AND THE ENFORCEMENT
16 OF THE GENERAL CRIMINAL LAWS OF THIS STATE.

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 family.
20 A person excluded pursuant to this subsection shall not be subject
21 to this act and shall not be considered an employee for the
22 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, as defined in section 102 of the
27 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,

1 and who owns at least a 10% interest in that limited liability
2 company, with the consent of the limited liability company as
3 approved by a majority vote of the members, or if the limited
4 liability company has more than 1 manager, all of the managers who
5 are also members, except as otherwise provided in an operating
6 agreement, may elect to be individually excluded from this act by
7 giving a notice of the election in writing to the carrier with the
8 consent of the limited liability company endorsed on the notice.
9 The exclusion shall remain in effect until revoked by the employee
10 by giving notice in writing to the carrier. While the exclusion is
11 in effect, section 141 shall not apply to any action brought by the
12 employee against the limited liability company.

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

25 (5) If the persons to be excluded from coverage under this act
26 pursuant to subsections (2) to (4) comprise all of the employees of
27 the employer, those persons may elect to be excluded from being

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