

# SENATE BILL No. 1012

March 8, 2012, Introduced by Senators MARLEAU, KOWALL, ROBERTSON and BRANDENBURG  
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 2011 PA 266.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(a) A person in the service of ~~the~~ **THIS** state, a county, city, township, village, or school district, under any appointment, or contract of hire, express or implied, oral or written. A person employed by a contractor who has contracted with a county, city, township, village, school district, or the state, through its representatives, ~~shall not be considered~~ **IS NOT** an employee of the state, county, city, township, village, or school district that made the contract, if the contractor is subject to this act.

(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~~  
3 ~~considered~~ **ARE NOT** 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~~ **DOES NOT LIMIT,**  
15 **CHANGE, OR REPEAL** any of the provisions of a charter of a  
16 municipality or village of this state relating to benefits,  
17 compensation, pensions, or retirement independent of this act,  
18 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 if 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 is entitled to all the benefits of this act if  
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 are available to a safety patrol  
5 officer who is engaged in traffic regulation and management for and  
6 by authority of a county, city, village, or township, whether the  
7 officer is paid or unpaid, in the same manner as benefits are  
8 available to on-call members of a fire department under subdivision  
9 (d), upon the adoption by the legislative body of the county, city,  
10 village, or township of a resolution to that effect. A safety  
11 patrol officer or safety patrol force when used in this act  
12 includes all persons who volunteer and are registered with a school  
13 and assigned to patrol a public thoroughfare used by students of a  
14 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~~ **THIS** state or the political subdivision on whose  
20 permanent roster the employee is enrolled if 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~~ **THIS** 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 if 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 is entitled to all  
22 the benefits of this act if personally injured in the performance  
23 of his or her duties as an on-call member of a life support agency  
24 whether the on-call member of the life support agency is paid or  
25 unpaid. An on-call member of a life support agency 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 life

1 support agency 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 (j) If a member of an organization recognized by 1 or more  
7 counties, cities, villages, or townships within this state as an  
8 emergency rescue team is employed by a state, county, city,  
9 village, or township within this state as a police officer, fire  
10 fighter, emergency medical technician, or ambulance driver and is  
11 injured in the normal scope of duties including training, but  
12 excluding activation, as a member of the emergency rescue team, he  
13 or she shall be considered to be engaged in the performance of his  
14 or her normal duties for the state, county, city, village, or  
15 township. If the member of the emergency rescue team is not  
16 employed by a state, county, city, village, or township within this  
17 state as a police officer, fire fighter, emergency medical  
18 technician, or ambulance driver, and is injured in the normal scope  
19 of duties, including training, as a member of the emergency rescue  
20 team, he or she shall be considered to be an employee of the team.  
21 For the purpose of securing the payment of compensation under this  
22 act, on activation, each member of the team shall be considered to  
23 be covered by a policy obtained by the team unless the employer of  
24 a member of the team agrees in writing to provide coverage for that  
25 member under its policy. Members of an emergency rescue team shall  
26 be considered to be receiving the state average weekly wage at the  
27 time of injury, as last determined under section 355, from the team

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

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

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

27 (m) Every person engaged in a federally funded training

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

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



1 income tax is prima facie considered to perform service in  
2 employment under this act. If a business entity requests the  
3 Michigan administrative hearing system to determine whether 1 or  
4 more individuals performing service for the entity in this state  
5 are in covered employment, the Michigan administrative hearing  
6 system shall issue a determination of coverage of service performed  
7 by those individuals and any other individuals performing similar  
8 services under similar circumstances. **IN THE TRUCKING AND MESSENGER**  
9 **COURIER INDUSTRIES, AN INDIVIDUAL WHO IS NOT EXCLUDED UNDER THE**  
10 **FIRST SENTENCE OF THIS SUBDIVISION AND IS THE OPERATOR OF A VEHICLE**  
11 **OR VESSEL IS AN EMPLOYEE, UNLESS ALL OF THE FOLLOWING APPLY:**

12 (i) THE INDIVIDUAL OWNS THE VEHICLE OR VESSEL OR HOLDS IT UNDER  
13 A BONA FIDE LEASE ARRANGEMENT THAT IS NOT THROUGH AN ARRANGEMENT,  
14 LOAN, OR LOAN GUARANTEE WITH THE CONTRACTING ENTITY OR ANY  
15 AFFILIATE OF THE CONTRACTING ENTITY. THIS REQUIREMENT DOES NOT  
16 APPLY TO TEMPORARY REPLACEMENT LEASE AGREEMENTS.

17 (ii) THE INDIVIDUAL IS RESPONSIBLE FOR SUBSTANTIALLY ALL OF THE  
18 PRINCIPAL OPERATING COSTS OF THE VEHICLE OR VESSEL AND EQUIPMENT,  
19 INCLUDING MAINTENANCE, FUEL, REPAIRS, SUPPLIES, VEHICLE INSURANCE,  
20 AND PERSONAL EXPENSES. IF THE CONTRACTING ENTITY PAYS THE  
21 INDIVIDUAL ONLY THE CARRIER'S FUEL SURCHARGE AND INCIDENTAL COSTS,  
22 SUCH AS TOLLS, PERMITS, OR LUMPER FEES, THE INDIVIDUAL MEETS THE  
23 REQUIREMENTS OF THIS SUBPARAGRAPH.

24 (iii) THE INDIVIDUAL IS RESPONSIBLE FOR SUPPLYING THE NECESSARY  
25 SERVICES TO OPERATE THE VEHICLE OR VESSEL AND EQUIPMENT.

26 (iv) THE INDIVIDUAL'S COMPENSATION IS BASED ON FACTORS RELATED  
27 TO THE WORK PERFORMED, SUCH AS A MILEAGE-BASED RATE OR A PERCENTAGE

1 OF ANY SCHEDULE OF RATES, AND IS NOT SOLELY BASED ON HOURS OR TIME  
2 EXPENDED.

3 (v) THE INDIVIDUAL SUBSTANTIALLY CONTROLS THE MEANS AND MANNER  
4 OF PERFORMING SERVICES IN CONFORMANCE WITH REGULATORY REQUIREMENTS  
5 AND SPECIFICATIONS OF A SHIPPER.

6 (vi) THE CONTRACTING ENTITY AND THE INDIVIDUAL SIGN AND DATE AN  
7 AGREEMENT STATING THAT THE INDIVIDUAL SUBSTANTIALLY MEETS THE  
8 REQUIREMENTS OF SUBPARAGRAPHS (i) TO (v) AND THAT THE INDIVIDUAL  
9 AGREES TO BE AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE. THE  
10 AGREEMENT SHALL BE PRODUCED ON THE DEMAND OF THE DIRECTOR OR THE  
11 DIRECTOR'S AGENT.

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

18 (3) An employee who is subject to this act, including an  
19 employee covered pursuant to section 121, who is an employee of a  
20 limited liability company of not more than 10 members and who is  
21 also a manager and member, as defined in section 102 of the  
22 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,  
23 and who owns at least a 10% interest in that limited liability  
24 company, with the consent of the limited liability company as  
25 approved by a majority vote of the members, or if the limited  
26 liability company has more than 1 manager, all of the managers who  
27 are also members, except as otherwise provided in an operating

1 agreement, may elect to be individually excluded from this act by  
2 giving a notice of the election in writing to the carrier with the  
3 consent of the limited liability company endorsed on the notice.  
4 The exclusion remains in effect until revoked by the employee by  
5 giving notice in writing to the carrier. While the exclusion is in  
6 effect, section 141 does not apply to any action brought by the  
7 employee against the limited liability company.

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

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