

# HOUSE BILL No. 5107

(As passed the Senate, May 23, 2002)

October 2, 2001, Introduced by Reps. Vander Roest, Ehardt, Hager, Birkholz, Richardville, Patterson, DeWeese, Rich Brown, Vander Veen and Phillips and referred to the Committee on Employment Relations, Training and Safety.

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 1996 PA 460.

**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

8 state, county, city, township, village, or school district which

9 made the 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. 2452, shall not be con-  
4 sidered employees under this act.

5 (c) Police officers, fire fighters, or employees of the  
6 police or fire departments, or their dependents, in municipali-  
7 ties or villages of this state providing like benefits, may waive  
8 the provisions of this act and accept like benefits that are pro-  
9 vided by the municipality or village but shall not be entitled to  
10 like benefits from both the municipality or village and this act;  
11 however, this waiver shall not prohibit such employees or their  
12 dependents from being reimbursed under section 315 for the medi-  
13 cal expenses or portion of medical expenses that are not other-  
14 wise provided for by the municipality or village. This act shall  
15 not be construed as limiting, changing, or repealing any of the  
16 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 bene-  
22 fits of this act when personally injured in the performance of  
23 duties as on-call members of the fire department whether the  
24 on-call member of the fire department is paid or unpaid. On-call  
25 members of a fire department of a county, city, village, or town-  
26 ship 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 county, village, city, or township for the purpose of  
2 calculating the weekly rate of compensation provided under this  
3 act except that if the member's average weekly wage was greater  
4 than 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  
8 MEMBER OF A VOLUNTEER UNDERWATER DIVING TEAM that contracts with  
9 or receives reimbursement from 1 or more counties, cities, vil-  
10 lages, or townships shall be entitled to all the benefits of this  
11 act when personally injured in the performance of their duties as  
12 on-call members of a fire department OR AS AN ON-CALL MEMBER OF A  
13 VOLUNTEER UNDERWATER DIVING TEAM whether the on-call member of  
14 the fire department OR THE ON-CALL MEMBER OF THE VOLUNTEER UNDER-  
15 WATER DIVING TEAM is paid or unpaid. On-call members of a fire  
16 department shall be considered to be receiving the state average  
17 weekly wage at the time of injury, as last determined under sec-  
18 tion 355, from the fire department for the purpose of calculating  
19 the weekly rate of compensation provided under this act except  
20 that if the member's average weekly wage was greater than the  
21 state average weekly wage at the time of the injury, the member's  
22 weekly rate of compensation shall be determined based on the  
23 member's average weekly wage. ON-CALL MEMBERS OF A VOLUNTEER  
24 UNDERWATER DIVING TEAM SHALL BE CONSIDERED TO BE RECEIVING THE  
25 STATE AVERAGE WEEKLY WAGE AT THE TIME OF INJURY, AS LAST DETER-  
26 MINED UNDER SECTION 355, FROM THE FIRE DEPARTMENT FOR THE PURPOSE  
27 OF CALCULATING THE WEEKLY RATE OF COMPENSATION PROVIDED UNDER

1 THIS ACT EXCEPT THAT IF THE MEMBER'S AVERAGE WEEKLY WAGE WAS  
2 GREATER THAN THE STATE AVERAGE WEEKLY WAGE AT THE TIME OF THE  
3 INJURY, THE MEMBER'S WEEKLY RATE OF COMPENSATION SHALL BE DETER-  
4 MINED BASED ON THE MEMBER'S AVERAGE WEEKLY WAGE.

5 (f) The benefits of this act shall be available to a safety  
6 patrol officer who is engaged in traffic regulation and manage-  
7 ment for and by authority of a county, city, village, or town-  
8 ship, whether the officer is paid or unpaid, in the same manner  
9 as benefits are available to on-call members of a fire department  
10 under subdivision (d), upon the adoption by the legislative body  
11 of the county, city, village, or township of a resolution to that  
12 effect. A safety patrol officer or safety patrol force when used  
13 in this act includes all persons who volunteer and are registered  
14 with a school and assigned to patrol a public thoroughfare used  
15 by students of a 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 state  
19 or a political subdivision of the state shall be considered to be  
20 an employee of the state or the political subdivision on whose  
21 permanent roster the employee is enrolled when engaged in the  
22 performance of duty and shall be considered to be receiving the  
23 state average weekly wage at the time of injury, as last deter-  
24 mined under section 355, from the state or political subdivision  
25 for purposes of calculating the weekly rate of compensation pro-  
26 vided under this act.

1 (h) A volunteer licensed under section 20950 or 20952 of the  
2 public health code, ~~Act No. 368 of the Public Acts of 1978,~~  
3 ~~being sections 333.20950 and 333.20952 of the Michigan Compiled~~  
4 ~~Laws~~ 1978 PA 368, MCL 333.20950 AND 333.20952, who is an on-call  
5 member of a life support agency as defined under section 20906 of  
6 ~~Act No. 368 of the Public Acts of 1978, being section 333.20906~~  
7 ~~of the Michigan Compiled Laws~~ THE PUBLIC HEALTH CODE, 1978 PA  
8 368, MCL 333.20906, shall be considered to be an employee of the  
9 county, city, village, or township and entitled to the benefits  
10 of this act when personally injured in the performance of duties  
11 as an on-call member of a life support agency whether the on-call  
12 member of the life support agency is paid or unpaid. An on-call  
13 member of a life support agency shall be considered to be receiv-  
14 ing the state average weekly wage at the time of injury, as last  
15 determined under section 355, from the county, city, village, or  
16 township for purposes of calculating the weekly rate of compensa-  
17 tion provided under this act except that if the member's average  
18 weekly wage was greater than the state average weekly wage at the  
19 time of the injury, the member's weekly rate of compensation  
20 shall be determined based on the member's average weekly wage.

21 (i) A volunteer licensed under section 20950 or 20952 of the  
22 public health code, ~~Act No. 368 of the Public Acts of 1978,~~  
23 ~~being sections 333.20950 and 333.20952 of the Michigan Compiled~~  
24 ~~Laws~~ 1978 PA 368, MCL 333.20950 AND 333.20952, who is an on-call  
25 member of a life support agency as defined under section 20906 of  
26 ~~Act No. 368 of the Public Acts of 1978, being section 333.20906~~  
27 ~~of the Michigan Compiled Laws~~ THE PUBLIC HEALTH CODE, 1978 PA

1 368, MCL 333.20906, that contracts with or receives reimbursement  
2 from 1 or more counties, cities, villages, or townships shall be  
3 entitled to all the benefits of this act when personally injured  
4 in the performance of his or her duties as an on-call member of a  
5 life support agency whether the on-call member of the life sup-  
6 port agency is paid or unpaid. An on-call member of a life sup-  
7 port agency shall be considered to be receiving the state average  
8 weekly wage at the time of injury, as last determined under sec-  
9 tion 355, from the life support agency for the purpose of calcu-  
10 lating the weekly rate of compensation provided under this act  
11 except that if the member's average weekly wage was greater than  
12 the state average weekly wage at the time of the injury, the  
13 member's weekly rate of compensation shall be determined based on  
14 the member's average weekly wage.

15 (j) If a member of an organization recognized by 1 or more  
16 counties, cities, villages, or townships within this state as an  
17 emergency rescue team is employed by a state, county, city, vil-  
18 lage, or township within this state as a police officer, fire  
19 fighter, emergency medical technician, or ambulance driver and is  
20 injured in the normal scope of duties including training, but  
21 excluding activation, as a member of the emergency rescue team,  
22 he or she shall be considered to be engaged in the performance of  
23 his or her normal duties for the state, county, city, village, or  
24 township. If the member of the emergency rescue team is not  
25 employed by a state, county, city, village, or township within  
26 this state as a police officer, fire fighter, emergency medical  
27 technician, or ambulance driver, and is injured in the normal

1 scope of duties, including training, as a member of the emergency  
2 rescue team, he or she shall be considered to be an employee of  
3 the team. For the purpose of securing the payment of compensa-  
4 tion under this act, on activation, each member of the team shall  
5 be considered to be covered by a policy obtained by the team  
6 unless the employer of a member of the team agrees in writing to  
7 provide coverage for that member under its policy. Members of an  
8 emergency rescue team shall be considered to be receiving the  
9 state average weekly wage at the time of injury, as last deter-  
10 mined under section 355, from the team for the purpose of calcu-  
11 lating the weekly rate of compensation provided under this act  
12 except that if the member's average weekly wage was greater than  
13 the state average weekly wage at the time of the injury, the  
14 member's weekly rate of compensation shall be determined based on  
15 the member's average weekly wage. As used in this subdivision,  
16 "activation" means a request by the emergency management coordi-  
17 nator appointed pursuant to section 8 or 9 of the emergency man-  
18 agement act, ~~Act No. 390 of the Public Acts of 1976, being sec-~~  
19 ~~tions 30.408 and 30.409 of the Michigan Compiled Laws 1976 PA~~  
20 390, MCL 30.408 AND 30.409, made of and accepted by an emergency  
21 rescue team.

22 (k) A political subdivision of this state shall not be  
23 required to provide compensation insurance for a peace officer of  
24 the political subdivision with respect to the protection and com-  
25 pensation provided by ~~Act No. 329 of the Public Acts of 1937,~~  
26 ~~being sections 419.101 to 419.104 of the Michigan Compiled Laws~~  
27 1937 PA 329, MCL 419.101 TO 419.104.

1           (1) Every person in the service of another, under any  
2 contract of hire, express or implied, including aliens; a person  
3 regularly employed on a full-time basis by his or her spouse  
4 having specified hours of employment at a specified rate of pay;  
5 working members of partnerships receiving wages from the partner-  
6 ship irrespective of profits; a person insured for whom and to  
7 the extent premiums are paid based on wages, earnings, or prof-  
8 its; and minors, who shall be considered the same as and have the  
9 same power to contract as adult employees. Any minor under 18  
10 years of age whose employment at the time of injury shall be  
11 shown to be illegal, in the absence of fraudulent use of permits  
12 or certificates of age in which case only single compensation  
13 shall be paid, shall receive compensation double that provided in  
14 this act.

15           (m) Every person engaged in a federally funded training pro-  
16 gram or work experience program which mandates the provision of  
17 appropriate worker's compensation for participants and which is  
18 sponsored by the state, a county, city, township, village, or  
19 school district, or an incorporated public board or public com-  
20 mission in the state authorized by law to hold property and to  
21 sue or be sued generally, or any consortium thereof, shall be  
22 considered, for the purposes of this act, to be an employee of  
23 the sponsor and entitled to the benefits of this act. The spon-  
24 sor shall be responsible for the provision of worker's compensa-  
25 tion and shall secure the payment of compensation by a method  
26 permitted under section 611. If a sponsor contracts with a  
27 public or private organization to operate a program, the sponsor



1 may require the organization to secure the payment of  
2 compensation by a method permitted under section 611.

3 (n) Every person performing service in the course of the  
4 trade, business, profession, or occupation of an employer at the  
5 time of the injury, if the person in relation to this service  
6 does not maintain a separate business, does not hold himself or  
7 herself out to and render service to the public, and is not an  
8 employer subject to this act.

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

15 (3) An employee who is subject to this act, including an  
16 employee covered pursuant to section 121, who is an employee of a  
17 limited liability company of not more than 10 members and who is  
18 also a manager and member, as defined in section 102 of the  
19 Michigan limited liability company act, ~~Act No. 23 of the Public~~  
20 ~~Acts of 1993, being section 450.4102 of the Michigan Compiled~~  
21 ~~Laws~~ 1993 PA 23, MCL 450.4102, and who owns at least a 10%  
22 interest in that limited liability company, with the consent of  
23 the limited liability company as approved by a majority vote of  
24 the members, or if the limited liability company has more than 1  
25 manager, all of the managers who are also members, except as oth-  
26 erwise provided in an operating agreement, may elect to be  
27 individually excluded from this act by giving a notice of the

1 election in writing to the carrier with the consent of the  
2 limited liability company endorsed on the notice. The exclusion  
3 shall remain in effect until revoked by the employee by giving  
4 notice in writing to the carrier. While the exclusion is in  
5 effect, section 141 shall not apply to any action brought by the  
6 employee against the limited liability company.

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

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