

# HOUSE BILL No. 5783

September 9, 2014, Introduced by Rep. Lori 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 2012 PA 83.

**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~~**THIS** state, **OR OF** a county,  
3 city, township, village, or school district **OF THIS STATE**, under  
4 any appointment, or contract of hire, express or implied, oral or  
5 written. A person employed by a contractor who has contracted with  
6 a county, city, township, village, school district, or ~~the~~**THIS**  
7 state, through its representatives, ~~shall not be~~**IS NOT** considered  
8 an employee of ~~the~~**THIS** state, **OR OF THE** county, city, township,  
9 village, or school district that made the contract, if the  
10 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 USC 2452, ~~shall not be~~ **ARE NOT**  
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 are not entitled to like  
10 benefits from both the municipality or village and this act.  
11 However, this waiver does not prohibit those employees or their  
12 dependents from being reimbursed under section 315 for the medical  
13 expenses or portion of medical expenses that are not otherwise  
14 provided for by the municipality or village. This act shall not be  
15 construed as limiting, changing, or repealing any of the provisions  
16 of a charter of a municipality or village of this state relating to  
17 benefits, compensation, pensions, or retirement independent of this  
18 act, provided for employees.

19 (d) On-call members of a fire department of a county, city,  
20 village, or township ~~shall be~~ **ARE** 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~~ **ARE** 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~~ **IS** determined based  
6 on the member's average weekly wage.

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

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

6 (f) The benefits of this act are available to a safety patrol  
7 officer who is engaged in traffic regulation and management for and  
8 by authority of a county, city, village, or township, whether the  
9 officer is paid or unpaid, in the same manner as benefits are  
10 available to on-call members of a fire department under subdivision  
11 (d), upon the adoption by the legislative body of the county, city,  
12 village, or township of a resolution to that effect. A safety  
13 patrol officer or safety patrol force when used in this act  
14 includes all persons who volunteer and are registered with a school  
15 and assigned to patrol a public thoroughfare used by students of a  
16 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~~ **THIS**  
20 state or a political subdivision of ~~the~~ **THIS** state ~~shall be~~ **IS**  
21 considered to be an employee of ~~the~~ **THIS** state or the political  
22 subdivision on whose permanent roster the employee is enrolled if  
23 engaged in the performance of duty and ~~shall be~~ **IS** considered to be  
24 receiving the state average weekly wage at the time of injury, as  
25 last determined under section 355, from ~~the~~ **THIS** state or political  
26 subdivision for purposes of calculating the weekly rate of  
27 compensation provided 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~~ **IS** considered to be an employee of the county,  
6 city, village, or township and entitled to the benefits of this act  
7 if personally injured in the performance of duties as an on-call  
8 member of a life support agency whether ~~the on-call~~ **THAT** member of  
9 ~~the life support agency~~ is paid or unpaid. An on-call member of a  
10 life support agency ~~shall be~~ **IS** considered to be receiving the  
11 state average weekly wage at the time of injury, as last determined  
12 under 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~~ **IS**  
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 is entitled to all  
24 the benefits of this act if personally injured in the performance  
25 of his or her duties as an on-call member of a life support agency  
26 whether ~~the on-call~~ **THAT** member of ~~the life support agency~~ is paid  
27 or unpaid. An on-call member of a life support agency ~~shall be~~ **IS**

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

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

1 its policy. ~~Members~~ **A MEMBER** of an emergency rescue team ~~shall be~~  
2 **IS** 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~~ **IS**  
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 is not required to  
14 provide compensation insurance for a peace officer of the political  
15 subdivision with respect to the protection and compensation  
16 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 **ARE** considered the same as and have the same power to contract as  
25 adult employees. Any minor under 18 years of age whose employment  
26 at the time of injury is 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 that mandates the provision of  
5 appropriate worker's compensation for participants and that is  
6 sponsored by ~~the~~**THIS** state, a county, city, township, village, or  
7 school district **IN THIS STATE**, or an incorporated public board or  
8 public commission in ~~the~~**THIS** state authorized by law to hold  
9 property and to sue or be sued generally, or any consortium  
10 thereof, ~~shall be~~**IS** considered, for the purposes of this act, to  
11 be an employee of the sponsor and entitled to the benefits of this  
12 act. The sponsor ~~is responsible for the provision of~~**SHALL PROVIDE**  
13 worker's compensation and shall secure the payment of compensation  
14 by a method permitted under section 611. If a sponsor contracts  
15 with a public or private organization to operate a program, the  
16 sponsor may require the organization to secure the payment of  
17 compensation by a method 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. On and after January 1, 2013, services are  
24 employment if the services are performed by an individual whom the  
25 Michigan administrative hearing system determines to be in an  
26 employer-employee relationship using the 20-factor test announced  
27 by the internal revenue service of the United States department of



1 treasury in revenue ruling 87-41, 1 C.B. 296. An individual for  
2 whom an employer is required to withhold federal income tax is  
3 prima facie considered to perform service in employment under this  
4 act. If a business entity requests the Michigan administrative  
5 hearing system to determine whether 1 or more individuals  
6 performing service for the entity in this state are in covered  
7 employment, the Michigan administrative hearing system shall issue  
8 a determination of coverage of service performed by those  
9 individuals and any other individuals performing similar services  
10 under similar circumstances.

11 (o) An individual registered with the state of Michigan  
12 verification system described in 42 USC 247d-7b ~~shall be~~ **IS**  
13 considered an employee of ~~the state of Michigan~~ **THIS STATE** when  
14 engaged in the performance of duties or services as a registrant,  
15 or when training to provide those duties or services, except if  
16 another employer provides coverage for that individual specifically  
17 for duties and services arising from registration with this state.  
18 That individual ~~shall be~~ **IS** considered to be receiving the state  
19 average weekly wage at the time of injury or death, as last  
20 determined under section 355, from ~~the state of Michigan~~ **THIS STATE**  
21 for purposes of calculating the weekly rate of compensation  
22 provided under this act, except that if the individual's average  
23 weekly wage was greater than the state average weekly wage at the  
24 time of injury or death the individual's weekly rate of  
25 compensation ~~shall be~~ **IS** determined based upon the individual's  
26 weekly average wage. ~~The state of Michigan~~ **THIS STATE** shall  
27 exercise all the rights and obligations of an employer and carrier

1 as provided for under this act.

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

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

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

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

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

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

1 that election to the director upon a form prescribed by the  
2 director. The exclusion ~~shall remain~~ **REMAINS** in effect until  
3 revoked by giving written notice to the director.