

# HOUSE BILL No. 4346

February 18, 1997, Introduced by Reps. Dalman, McBryde, Jelinek, Scranton, Jansen, Bodem, Nye, Mans, Galloway and Perricone and referred to the Committee on Labor and Occupational 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 1995 PA  
206.

## 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, 22 U.S.C. 2452, shall not be considered employees  
4 under this act.

5 (C) AN OFFENDER ASSIGNED BY A COURT OF COMPETENT JURISDIC-  
6 TION IN THIS STATE TO PERFORM COMMUNITY SERVICE SHALL NOT BE CON-  
7 sidered AN EMPLOYEE FOR THE PURPOSES OF THIS ACT.

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

22 (E) ~~(d)~~ On-call members of a fire department of a county,  
23 city, village, or township shall be considered to be employees of  
24 the county, city, village, or township, and entitled to all the  
25 benefits of this act when personally injured in the performance  
26 of duties as on-call members of the fire department whether the  
27 on-call member of the fire department is paid or unpaid. On-call

1 members of a fire department of a county, city, village, or  
2 township shall be considered to be receiving the state average  
3 weekly wage at the time of injury, as last determined under sec-  
4 tion 355, from the county, village, city, or township for the  
5 purpose of calculating the weekly rate of compensation provided  
6 under this act except that if the member's average weekly wage  
7 was greater than the state average weekly wage at the time of the  
8 injury, the member's weekly rate of compensation shall be deter-  
9 mined based on the member's average weekly wage.

10 (F) ~~-(e)-~~ On-call members of a fire department that con-  
11 tracts with or receives reimbursement from 1 or more counties,  
12 cities, villages, or townships shall be entitled to all the bene-  
13 fits of this act when personally injured in the performance of  
14 their duties as on-call members of a fire department whether the  
15 on-call member of the fire department is paid or unpaid. On-call  
16 members of a fire department shall be considered to be receiving  
17 the state average weekly wage at the time of injury, as last  
18 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  
21 was greater than the state average weekly wage at the time of the  
22 injury, the member's weekly rate of compensation shall be deter-  
23 mined based on the member's average weekly wage.

24 (G) ~~-(f)-~~ The benefits of this act shall be available to a  
25 safety patrol officer who is engaged in traffic regulation and  
26 management for and by authority of a county, city, village, or  
27 township, whether the officer is paid or unpaid, in the same

1 manner as benefits are available to on-call members of a fire  
2 department under subdivision (d), upon the adoption by the legis-  
3 lative body of the county, city, village, or township of a reso-  
4 lution to that effect. A safety patrol officer or safety patrol  
5 force when used in this act includes all persons who volunteer  
6 and are registered with a school and assigned to patrol a public  
7 thoroughfare used by students of a school.

8 (H) ~~(g)~~ A volunteer civil defense worker who is a member  
9 of the civil defense forces as provided by law and is registered  
10 on the permanent roster of the civil defense organization of the  
11 state or a political subdivision of the state shall be considered  
12 to be an employee of the state or the political subdivision on  
13 whose permanent roster the employee is enrolled when engaged in  
14 the performance of duty and shall be considered to be receiving  
15 the state average weekly wage at the time of injury, as last  
16 determined under section 355, from the state or political subdi-  
17 vision for purposes of calculating the weekly rate of compensa-  
18 tion provided under this act.

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

1 township and entitled to the benefits of this act when personally  
2 injured in the performance of duties as an on-call member of a  
3 life support agency whether the on-call member of the life sup-  
4 port agency is paid or unpaid. An on-call member of a life sup-  
5 port agency shall be considered to be receiving the state average  
6 weekly wage at the time of injury, as last determined under sec-  
7 tion 355, from the county, city, village, or township for pur-  
8 poses of calculating the weekly rate of compensation provided  
9 under this act except that if the member's average weekly wage  
10 was greater than the state average weekly wage at the time of the  
11 injury, the member's weekly rate of compensation shall be deter-  
12 mined based on the member's average weekly wage.

13 (J) ~~(i)~~ A volunteer licensed under section 20950 or 20952  
14 of the public health code, ~~Act No. 368 of the Public Acts of~~  
15 ~~1978, being sections 333.20950 and 333.20952 of the Michigan~~  
16 ~~Compiled Laws~~ 1978 PA 368, MCL 333.20950 and 333.20952, who is  
17 an on-call member of a life support agency as defined under sec-  
18 tion 20906 of ~~Act No. 368 of the Public Acts of 1978, being sec-~~  
19 ~~tion 333.20906 of the Michigan Compiled Laws~~ THE PUBLIC HEALTH  
20 CODE, 1978 PA 368, MCL 333.20906, that contracts with or receives  
21 reimbursement from 1 or more counties, cities, villages, or town-  
22 ships shall be entitled to all the benefits of this act when per-  
23 sonally injured in the performance of his or her duties as an  
24 on-call member of a life support agency whether the on-call  
25 member of the life support agency is paid or unpaid. An on-call  
26 member of a life support agency shall be considered to be  
27 receiving the state average weekly wage at the time of injury, as

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

7 (K) ~~-(j)-~~ A political subdivision of this state shall not be  
8 required to provide compensation insurance for a peace officer of  
9 the political subdivision with respect to the protection and com-  
10 pensation provided by ~~Act No. 329 of the Public Acts of 1937,~~  
11 ~~being sections 419.101 to 419.104 of the Michigan Compiled Laws-~~  
12 1937 PA 329, MCL 419.101 TO 419.104.

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

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

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

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

1       (3) An employee who is subject to this act, including an  
2 employee covered pursuant to section 121, who is an employee of a  
3 limited liability company of not more than 10 members and who is  
4 also a manager and member, as defined in section 102 of the  
5 Michigan limited liability company act, ~~Act No. 23 of the Public~~  
6 ~~Acts of 1993, being section 450.4102 of the Michigan Compiled~~  
7 ~~Laws~~ 1993 PA 23, MCL 450.4102, and who owns at least a 10%  
8 interest in that limited liability company, with the consent of  
9 the limited liability company as approved by a majority vote of  
10 the members, or if the limited liability company has more than 1  
11 manager, all of the managers who are also members, except as oth-  
12 erwise provided in an operating agreement, may elect to be indi-  
13 vidually excluded from this act by giving a notice of the elec-  
14 tion in writing to the carrier with the consent of the limited  
15 liability company endorsed on the notice. The exclusion shall  
16 remain in effect until revoked by the employee by giving notice  
17 in writing to the carrier. While the exclusion is in effect,  
18 section 141 shall not apply to any action brought by the employee  
19 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 which has not more than 10 stockholders and who is  
23 also an officer and stockholder who owns at least 10% of the  
24 stock of that corporation, with the consent of the corporation as  
25 approved by its board of directors, may elect to be individually  
26 excluded from this act by giving a notice of the election in  
27 writing to the carrier with the consent of the corporation



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

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