

HOUSE BILL No. 5962

March 17, 2010, Introduced by Rep. Kandrevas and referred to the Committee on Labor.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 171 (MCL 418.171), as amended by 1985 PA 103,
and by adding section 172.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 171. (1) If any employer subject to the provisions of
2 this act, in this section referred to as the principal, contracts
3 with any other person, in this section referred to as the
4 contractor, who is not subject to this act or who has not complied
5 with the provisions of section 611, and who does not become subject
6 to this act or comply with the provisions of section 611 prior to
7 the date of the injury or death for which claim is made for the
8 execution by or under the contractor of the whole or any part of
9 any work undertaken by the principal, the principal shall be liable

1 to pay to any person employed in the execution of the work any
2 compensation under this act which he or she would have been liable
3 to pay if that person had been immediately employed by the
4 principal. If compensation is claimed from or proceedings are taken
5 against the principal, then ~~, in the application of this act,~~
6 reference to the principal shall be substituted for reference to
7 the employer, except that the amount of compensation shall be
8 calculated with reference to the earnings of the person under the
9 employer by whom he or she is immediately employed. A contractor
10 ~~shall be deemed~~ **IS CONSIDERED** to include subcontractors in all
11 cases where the principal gives permission that the work or any
12 part thereof be performed under subcontract.

13 (2) If the principal is liable to pay compensation under this
14 section, he or she shall ~~be entitled to be~~ indemnified by the
15 contractor or subcontractor. The employee ~~shall~~ **IS** not ~~be entitled~~
16 to recover at common law against the contractor for any damages
17 arising from ~~such~~ **THAT** injury if he or she takes compensation from
18 ~~such~~ **THAT** principal. The principal, in case he or she pays
19 compensation to the employee of ~~such~~ **THE** contractor, may recover
20 the amount so paid in an action against ~~such~~ **THAT** contractor.

21 (3) This section ~~shall apply~~ **APPLIES** to a principal and
22 contractor only if the contractor engages persons to work other
23 than persons who would not be considered employees under section
24 161(1) (d).

25 (4) Principals willfully acting to circumvent the provisions
26 of this section or section 611 by using coercion, intimidation,
27 deceit, or other means to encourage persons who would otherwise be

1 considered employees within the meaning of this act to pose as
2 contractors for the purpose of evading this section or the
3 requirements of section 611 ~~shall be~~ **ARE** liable subject to the
4 provisions of section 641. ~~Nothing in this~~ **THIS** section shall **NOT**
5 be construed to prohibit an employee from becoming a contractor
6 subject to the provisions of section 151. A principal may demand
7 that the contractor enter into a written agreement with the
8 principal agreeing to reimburse the principal for any loss incurred
9 under this section due to a claim filed pursuant to this act for
10 compensation and other benefits.

11 (5) **IN THE CASE OF PRINCIPALS AND CONTRACTORS IN THE**
12 **COMMERCIAL CARRIER AND CONSTRUCTION INDUSTRIES, A CONTRACTOR IS**
13 **CONSIDERED TO BE CLASSIFIED AN EMPLOYEE OF THE PRINCIPAL, AND SHALL**
14 **BE TREATED AS AN EMPLOYEE UNDER THIS ACT, UNLESS THE PRINCIPAL**
15 **DEMONSTRATES THE FOLLOWING TO THE SATISFACTION OF THE DIRECTOR:**

16 (A) **THE CONTRACTOR, ENCOMPASSING ALL PROVISIONS OF SECTION**
17 **161(1)(N), IS NOT AN EMPLOYEE.**

18 (B) **THE CONTRACTOR HAS BEEN AND WILL CONTINUE TO BE FREE FROM**
19 **DIRECTION AND CONTROL OF THE PRINCIPAL, BOTH IN FACT AND PURSUANT**
20 **TO THE CONTRACT, EXPRESS OR IMPLIED, BETWEEN THE PARTIES.**

21 (6) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, A**
22 **PRINCIPAL THAT FAILS TO PROPERLY CLASSIFY AN INDIVIDUAL AS AN**
23 **EMPLOYEE AND THAT FAILS TO PAY BENEFITS OR OTHER CONTRIBUTIONS**
24 **REQUIRED BY THIS ACT AND UNDER LAW IS GUILTY OF THE FOLLOWING:**

25 (A) **FOR KNOWINGLY VIOLATING THIS SUBSECTION, A FELONY**
26 **PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 18 MONTHS OR A FINE OF**
27 **NOT MORE THAN \$15,000.00, OR BOTH, FOR A FIRST OFFENSE, AND**

1 IMPRISONMENT FOR NOT MORE THAN 7 YEARS OR A FINE OF NOT MORE THAT
2 \$30,000.00, OR BOTH, FOR A SECOND OR SUBSEQUENT OFFENSE.

3 (B) FOR UNINTENTIONALLY VIOLATING THIS SUBSECTION, A
4 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 6 MONTHS
5 OR A FINE OF NOT MORE THAN \$2,500.00, OR BOTH, FOR A FIRST OFFENSE,
6 AND IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
7 THAT \$5,000.00, OR BOTH, FOR A SECOND OR SUBSEQUENT OFFENSE.

8 (7) IF THE DIRECTOR DETERMINES THAT A VIOLATION OF SUBSECTION
9 (5) HAS OCCURRED, THE DIRECTOR MAY ISSUE A STOP-WORK ORDER
10 REQUIRING THE CESSATION OF ALL BUSINESS OPERATIONS WITHIN 72 HOURS
11 OF THE DETERMINATION. THE STOP-WORK ORDER TAKES EFFECT WHEN SERVED
12 UPON THE EMPLOYER OR, FOR A PARTICULAR EMPLOYER WORKSITE, WHEN
13 SERVED AT THE WORKSITE. THE STOP-WORK ORDER REMAINS IN EFFECT UNTIL
14 THE DIRECTOR ISSUES AN ORDER RELEASING THE STOP-WORK ORDER OR UPON
15 FINDING THAT THE EMPLOYER HAS PROPERLY CLASSIFIED THE INDIVIDUAL AS
16 AN EMPLOYEE. THE DIRECTOR MAY IMPOSE A PROBATIONARY PERIOD NOT TO
17 EXCEED 2 YEARS IN DURATION AND SHALL REQUIRE THE EMPLOYER TO FILE
18 WITH THE DEPARTMENT PERIODIC REPORTS DEMONSTRATING THE EMPLOYER'S
19 CONTINUED COMPLIANCE WITH REQUIREMENTS OF THIS SECTION. THE
20 DEPARTMENT SHALL PROMULGATE RULES UNDER THE ADMINISTRATIVE
21 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, TO
22 DETERMINE FILING TIMES AND REPORT REQUIREMENTS. A STOP-WORK ORDER
23 AND PENALTY ISSUED UNDER THIS SUBSECTION ARE EFFECTIVE AGAINST ANY
24 SUCCESSOR CORPORATION OR BUSINESS ENTITY THAT HAS 1 OR MORE OF THE
25 SAME PRINCIPALS OR OFFICERS AS THE EMPLOYER AGAINST WHOM THE STOP-
26 WORK ORDER WAS ISSUED AND THAT IS ENGAGED IN THE SAME OR EQUIVALENT
27 TRADE OR ACTIVITY. THE DIRECTOR SHALL ASSESS AN ADMINISTRATIVE

1 PENALTY OF \$1,000.00 PER DAY AGAINST AN EMPLOYER FOR EACH DAY THAT
2 THE EMPLOYER CONDUCTS BUSINESS OPERATIONS THAT ARE IN VIOLATION OF
3 A STOP-WORK ORDER ISSUED UNDER THIS SUBSECTION.

4 (8) A CONTRACTOR IMPROPERLY CLASSIFIED AS A CONTRACTOR, OR AN
5 ORGANIZATION OR UNION REPRESENTING THE EMPLOYEE, MAY BRING A CIVIL
6 ACTION, INCLUDING A CLASS ACTION, IN A COURT OF COMPETENT
7 JURISDICTION TO ENFORCE THE CLASSIFICATION. AN INDIVIDUAL'S
8 REPRESENTATIVE, INCLUDING A LABOR ORGANIZATION, HAS STANDING TO
9 BRING THE ACTION ON BEHALF OF THE INDIVIDUAL OR ON BEHALF OF A
10 CLASS OF INDIVIDUALS. UPON PREVAILING IN AN ACTION BROUGHT UNDER
11 THIS SUBSECTION, THE COURT MAY AWARD ATTORNEY FEES AND OTHER COSTS
12 OF THE ACTION IN ADDITION TO DAMAGES TO AN INDIVIDUAL OR CLASS OF
13 INDIVIDUALS WHO HAVE NOT BEEN PROPERLY CLASSIFIED AS EMPLOYEES IN
14 VIOLATION OF THIS SECTION.

15 (9) THE REMEDIES UNDER THIS SECTION ARE CUMULATIVE AND DO NOT
16 PROHIBIT THE BRINGING OF ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL
17 ACTION UNDER THIS ACT OR AS PROVIDED BY LAW IF NOT OTHERWISE
18 PROHIBITED BY LAW. THE DIRECTOR MAY PROMULGATE RULES UNDER THE
19 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
20 24.328, TO ENFORCE THIS SECTION.

21 SEC. 172. (1) IF THE DIRECTOR RECEIVES INFORMATION INDICATING
22 THAT AN EMPLOYER, OR OFFICER OR AGENT OF THE EMPLOYER, HAS
23 KNOWINGLY AND INTENTIONALLY VIOLATED THIS ACT, OR HAS BEEN
24 CONVICTED OF A VIOLATION OF THIS ACT, THE DIRECTOR SHALL ISSUE AN
25 ORDER TO SHOW CAUSE WHY THE INDIVIDUAL SHOULD NOT BE FOUND IN
26 VIOLATION OF THIS ACT AND SUBJECT TO DEBARMENT. AN INDIVIDUAL
27 SERVED WITH AN ORDER TO SHOW CAUSE SHALL HAVE A PERIOD OF 14 DAYS

1 FROM THE DATE THE ORDER IS SERVED TO FILE AN ANSWER IN WRITING. IF
2 THE INDIVIDUAL FAILS TO FILE A TIMELY AND ADEQUATE ANSWER TO THE
3 ORDER TO SHOW CAUSE, THE DIRECTOR SHALL ISSUE AN IMMEDIATE
4 DEBARMENT ORDER OR IMMEDIATELY ASSESS ADMINISTRATIVE PENALTIES AS
5 PROVIDED IN THIS SECTION, OR BOTH. THE DIRECTOR SHALL NOTIFY ALL
6 PUBLIC BODIES IN THIS STATE OF THE NAME OF THE EMPLOYER, AND NO
7 CONTRACT SHALL BE AWARDED TO THE EMPLOYER OR TO ANY FIRM,
8 CORPORATION, OR PARTNERSHIP IN WHICH THE EMPLOYER HAS AN INTEREST
9 UNTIL A PERIOD OF UP TO 3 YEARS, AS DETERMINED BY THE DIRECTOR,
10 AFTER THE DATE OF ISSUANCE OF THE NOTICE OF THE DEBARMENT ORDER.

11 (2) AS AN ALTERNATIVE TO OR IN ADDITION TO ANY OTHER SANCTIONS
12 PROVIDED BY LAW FOR A VIOLATION OF THIS ACT, WHEN THE DIRECTOR
13 FINDS THAT AN EMPLOYER HAS VIOLATED THIS ACT, THE DIRECTOR IS
14 AUTHORIZED TO ASSESS AND COLLECT ADMINISTRATIVE PENALTIES UP TO A
15 MAXIMUM OF \$2,500.00 FOR THE FIRST VIOLATION AND UP TO A MAXIMUM OF
16 \$5,000.00 FOR EACH SUBSEQUENT VIOLATION. WHEN DETERMINING THE
17 AMOUNT OF THE ADMINISTRATIVE PENALTY IMPOSED DUE TO A VIOLATION,
18 THE DIRECTOR SHALL CONSIDER FACTORS THAT INCLUDE THE HISTORY OF
19 PREVIOUS VIOLATIONS BY THE EMPLOYER, THE SERIOUSNESS OF THE
20 VIOLATION, THE GOOD FAITH OF THE EMPLOYER, AND THE SIZE OF THE
21 EMPLOYER'S BUSINESS.

22 (3) THE DEPARTMENT MAY SUBPOENA WITNESSES, ADMINISTER OATHS,
23 EXAMINE WITNESSES, TAKE TESTIMONY, AND COMPEL THE PRODUCTION OF
24 DOCUMENTS. UPON APPLICATION OF AN ATTORNEY REPRESENTING THE STATE,
25 THE DEPARTMENT MAY ISSUE A SUBPOENA TO COMPEL THE PRODUCTION OF THE
26 DOCUMENTS, COMPUTER RECORDS, AND INFORMATION RELATING TO COMPLIANCE
27 WITH THIS ACT. THE DIRECTOR MAY SEEK ENFORCEMENT IN THE CIRCUIT

1 COURT OF ANY ORDER OR SUBPOENA ISSUED BY THE DEPARTMENT.

2 (4) AN EMPLOYER OR ANY OTHER PARTY SHALL NOT DISCRIMINATE IN
3 ANY MANNER, OR TAKE ADVERSE ACTION AGAINST, A PERSON IN RETALIATION
4 FOR EXERCISING RIGHTS PROTECTED UNDER THIS ACT. RIGHTS PROTECTED
5 UNDER THIS ACT INCLUDE, BUT ARE NOT LIMITED TO, THE RIGHT TO FILE A
6 COMPLAINT OR INFORM ANY PERSON ABOUT AN EMPLOYER'S NONCOMPLIANCE
7 WITH THIS ACT AND THE RIGHT TO INFORM ANY PERSON OF THE PERSON'S
8 POTENTIAL RIGHTS AND TO ASSIST THE PERSON IN ASSERTING THOSE
9 RIGHTS.

10 (5) A PERSON WHO, IN GOOD FAITH, ALLEGES NONCOMPLIANCE WITH
11 THIS ACT IS AFFORDED THE RIGHTS PROVIDED BY THIS ACT,
12 NOTWITHSTANDING THE PERSON'S FAILURE TO PREVAIL ON THE MERITS.
13 TAKING ADVERSE ACTION AGAINST A PERSON WITHIN 90 DAYS AFTER THE
14 PERSON'S EXERCISE OF RIGHTS CREATES A REBUTTABLE PRESUMPTION OF
15 HAVING DONE SO IN RETALIATION FOR THE EXERCISE OF THOSE RIGHTS. A
16 PERSON ALLEGING A VIOLATION OF THIS SUBSECTION MAY BRING AN ACTION
17 IN A COURT OF COMPETENT JURISDICTION TO SEEK COMPENSATION FOR
18 ECONOMIC AND NONECONOMIC LOSSES, INCLUDING THE ASSESSMENT OF
19 PUNITIVE DAMAGES.

20 (6) ANY ASSESSMENTS AND ADMINISTRATIVE PENALTIES COLLECTED
21 UNDER THIS ACT SHALL BE PLACED IN THE WORKER'S COMPENSATION
22 ADMINISTRATIVE REVOLVING FUND CREATED IN SECTION 835A AND APPLIED
23 IN THE MANNER PROVIDED FOR IN SECTION 835(5).