

SUBSTITUTE FOR
HOUSE BILL NO. 4552

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending sections 161, 372, 625, and 891 (MCL 418.161, 418.372,
418.625, and 418.891), sections 161 and 625 as amended by 2011 PA
266 and section 372 as added by 1980 PA 357.

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 state,

1 county, city, township, village, or school district that made the
2 contract, if the contractor is subject to this act.

3 (b) Nationals of foreign countries employed pursuant to
4 section 102(a)(1) of the mutual educational and cultural exchange
5 act of 1961, Public Law 87-256, 22 USC 2452, shall not be
6 considered employees under this act.

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

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

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

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

1 department 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 (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 state or
20 a political subdivision of the state shall be considered to be an
21 employee of the state or the political subdivision on whose
22 permanent roster the employee is enrolled if engaged in the
23 performance of duty and shall be considered to be receiving the
24 state average weekly wage at the time of injury, as last determined
25 under section 355, from the state or political subdivision for
26 purposes of calculating the weekly rate of compensation provided
27 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 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 member of the
9 life support agency is paid or unpaid. An on-call member of a life
10 support agency shall be considered to be receiving the state
11 average weekly wage at the time of injury, as last determined under
12 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
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 member of the life support agency is paid or
27 unpaid. An on-call member of a life support agency shall be

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 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, county, city,
11 village, or township within this state as a police officer, fire
12 fighter, emergency medical technician, or ambulance driver and is
13 injured in the normal scope of duties including training, but
14 excluding activation, as a member of the emergency rescue team, he
15 or she shall be considered to be engaged in the performance of his
16 or her normal duties for the state, county, city, village, or
17 township. If the member of the emergency rescue team is not
18 employed by a state, county, city, village, or township within this
19 state as a police officer, fire fighter, emergency medical
20 technician, or ambulance driver, and is injured in the normal scope
21 of duties, including training, as a member of the emergency rescue
22 team, he or she shall be considered to be an employee of the team.
23 For the purpose of securing the payment of compensation under this
24 act, on activation, each member of the team shall be considered to
25 be covered by a policy obtained by the team unless the employer of
26 a member of the team agrees in writing to provide coverage for that
27 member under its policy. Members of an emergency rescue team shall

1 be considered to be receiving the state average weekly wage at the
2 time of injury, as last determined under section 355, from the team
3 for the purpose of calculating the weekly rate of compensation
4 provided under this act except that if the member's average weekly
5 wage was greater than the state average weekly wage at the time of
6 the injury, the member's weekly rate of compensation shall be
7 determined based on the member's average weekly wage. As used in
8 this subdivision, "activation" means a request by the emergency
9 management coordinator appointed pursuant to section 8 or 9 of the
10 emergency management act, 1976 PA 390, MCL 30.408 and 30.409, made
11 of and accepted by an emergency rescue team.

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

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

1 provided in this act.

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

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

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

10 (O) AN INDIVIDUAL REGISTERED WITH THE STATE OF MICHIGAN
11 VERIFICATION SYSTEM DESCRIBED IN 42 USC 247D-7B SHALL BE CONSIDERED
12 AN EMPLOYEE OF THE STATE OF MICHIGAN WHEN ENGAGED IN THE
13 PERFORMANCE OF DUTIES OR SERVICES AS A REGISTRANT, OR WHEN TRAINING
14 TO PROVIDE THOSE DUTIES OR SERVICES, EXCEPT IF ANOTHER EMPLOYER
15 PROVIDES COVERAGE FOR THAT INDIVIDUAL SPECIFICALLY FOR DUTIES AND
16 SERVICES ARISING FROM REGISTRATION WITH THIS STATE. THAT INDIVIDUAL
17 SHALL BE CONSIDERED TO BE RECEIVING THE STATE AVERAGE WEEKLY WAGE
18 AT THE TIME OF INJURY OR DEATH, AS LAST DETERMINED UNDER SECTION
19 355, FROM THE STATE OF MICHIGAN FOR PURPOSES OF CALCULATING THE
20 WEEKLY RATE OF COMPENSATION PROVIDED UNDER THIS ACT, EXCEPT THAT IF
21 THE INDIVIDUAL'S AVERAGE WEEKLY WAGE WAS GREATER THAN THE STATE
22 AVERAGE WEEKLY WAGE AT THE TIME OF INJURY OR DEATH THE INDIVIDUAL'S
23 WEEKLY RATE OF COMPENSATION SHALL BE DETERMINED BASED UPON THE
24 INDIVIDUAL'S WEEKLY AVERAGE WAGE. THE STATE OF MICHIGAN SHALL
25 EXERCISE ALL THE RIGHTS AND OBLIGATIONS OF AN EMPLOYER AND CARRIER
26 AS PROVIDED FOR UNDER THIS ACT.

27 (2) A policy or contract of worker's compensation insurance,

1 by endorsement, may exclude coverage as to any 1 or more named
2 partners or the spouse, child, or parent in the employer's family.
3 A person excluded pursuant to this subsection is not subject to
4 this act and shall not be considered an employee for the purposes
5 of section 115.

6 (3) An employee who is subject to this act, including an
7 employee covered pursuant to section 121, who is an employee of a
8 limited liability company of not more than 10 members and who is
9 also a manager and member, as defined in section 102 of the
10 Michigan limited liability company act, 1993 PA 23, MCL 450.4102,
11 and who owns at least a 10% interest in that limited liability
12 company, with the consent of the limited liability company as
13 approved by a majority vote of the members, or if the limited
14 liability company has more than 1 manager, all of the managers who
15 are also members, except as otherwise provided in an operating
16 agreement, may elect to be individually excluded from this act by
17 giving a notice of the election in writing to the carrier with the
18 consent of the limited liability company endorsed on the notice.
19 The exclusion remains in effect until revoked by the employee by
20 giving notice in writing to the carrier. While the exclusion is in
21 effect, section 141 does not apply to any action brought by the
22 employee against the limited liability company.

23 (4) An employee who is subject to this act, including an
24 employee covered pursuant to section 121, who is an employee of a
25 corporation that has not more than 10 stockholders and who is also
26 an officer and stockholder who owns at least 10% of the stock of
27 that corporation, with the consent of the corporation as approved

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

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

15 Sec. 372. (1) If an employee was engaged in more than 1
16 employment at the time of a personal injury or a personal injury
17 resulting in death, the employer in whose employment the injury or
18 injury resulting in death occurred is liable for all the injured
19 employee's medical, rehabilitation, and burial benefits. Weekly
20 benefits shall be apportioned as follows:

21 (a) If the employment which caused the personal injury or
22 death provided more than 80% of the injured employee's average
23 weekly wages at the time of the personal injury or death, the
24 insurer or self-insurer is liable for all of the weekly benefits.

25 (b) If the employment which caused the personal injury or
26 death provided 80% or less of the employee's average weekly wage at
27 the time of the personal injury or death, the insurer or self-

insurer is liable for that portion of the employee's weekly benefits as bears the same ratio to his or her total weekly benefits as the average weekly wage from the employment which caused the personal injury or death bears to his or her total weekly wages. The second injury fund is separately but dependently liable for the remainder of the weekly benefits. The insurer or self-insurer has the obligation to pay the employee or the employee's dependents at the full rate of compensation. The second injury fund shall reimburse the insurer or self-insurer quarterly for the second injury fund's portion of the benefits due the employee or the employee's dependents.

(2) For purposes of apportionment under this section, only wages ~~which~~ **THAT** were reported to the internal revenue service shall be considered, and the reports of wages to the internal revenue service are conclusive for the purpose of apportionment under this section.

(3) This section does not apply to ~~volunteer public employees~~ **INDIVIDUALS** entitled to benefits under section ~~161(1)(a)~~ **161(1)(D), (E), (F), (G), (H), (I), (J), AND (O).**

Sec. 625. Each insurer mentioned in section 611 issuing an insurance policy covering worker's compensation in this state shall file with the director, within 30 days after the effective date of the policy, a notice of the issuance of the policy and its effective date. A notice of issuance of insurance, a notice of termination of insurance, or a notice of employer name change may be submitted in writing or by using agency-approved electronic filing and transaction standards and may be submitted by the

1 insurer directly or by the compensation advisory organization of
2 Michigan on behalf of the insurer. Payment shall not be required by
3 the agency or any third party for the use of agency-approved
4 electronic record layout and transaction standards under this act.
5 Time requirements for notices under this act apply whether filed by
6 the insurer or the compensation advisory organization of Michigan.
7 If the policy covers persons who would otherwise be exempted from
8 this act by section 115, the notice shall contain a specific
9 statement to that effect. A notice is **NOT** required of any insurer
10 if the policy issued is a renewal of the preceding policy. The
11 insurer, if it refuses to accept any coverage under this act, shall
12 do so in writing.

13 Sec. 891. (1) To the extent that they are reenacted herein,
14 all the provisions of former ~~Act No. 44 of the Public Acts of 1965~~
15 ~~shall 1965 PA 44~~ apply only to personal injuries ~~the date of which~~
16 ~~occurs~~ **OCCURRING** on or after September 1, 1965, except as otherwise
17 provided in ~~such~~ **THAT** act and except for the amendment to part 2,
18 section 4 of that act, concerning selection of physicians as
19 provided in that act.

20 (2) In all cases where the date of injury is on or after
21 September 1, 1965, and the employee or his dependents would be
22 entitled to the new maximum weekly benefit rates, ~~such~~ **THE** employee
23 or his dependents shall receive, without application to the ~~bureau,~~
24 **WORKERS' COMPENSATION AGENCY**, an adjustment to the increased
25 maximum rate as it becomes effective September 1, 1966, or
26 September 1, 1967, for any compensable weeks subsequent to the
27 above dates.

House Bill No. 4552 (H-6) as amended February 23, 2012

1 (3) This act ~~shall~~**DOES** not affect or impair any right
2 accruing, accrued or acquired or any liability developing or
3 imposed prior to the time this act takes effect, and all such
4 rights and liabilities shall be governed by the provisions of ~~Act~~
5 ~~No. 10 of the Public Acts of the First Extra Session of 1912, as~~
6 ~~amended, being sections 411.1 to 417.61 of the Compiled Laws of~~
7 ~~1948.~~**FORMER 1912 (1ST EX SESS) PA 10.** The first adjustment to the
8 maximum rates of weekly compensation provided previously in
9 ~~subsection (f) of section 9~~**SECTION 9(F)** of part 2 of ~~Act No. 10 of~~
10 ~~the Public Acts of the First Extra Session of 1912, as amended,~~
11 **FORMER 1912 (1ST EX SESS) PA 10,** shall remain in effect to the
12 extent provided in such section and the amount of change in the
13 average weekly wage not incorporated in the first adjustment made
14 January 1, 1969 shall be carried forward as provided in such
15 section.

16 (4) NOTWITHSTANDING SECTIONS **[301(14)]** AND 401(10), THE
17 **AMENDMENTS TO THIS ACT MADE BY 2011 PA 266 APPLY TO PERSONAL**
18 **INJURIES AND WORK-RELATED DISEASES INCURRED ON OR AFTER DECEMBER**
19 **19, 2011.**