

HOUSE BILL No. 5001

July 26, 1989, Introduced by Reps. Watkins, Profit, Kosteva,
Perry Bullard, Hunter and Leland and referred to the Committee on Labor.

A bill to amend sections 161 and 405 of Act No. 317 of the
Public Acts of 1969, entitled as amended
"Worker's disability compensation act of 1969,"
section 161 as amended by Act No. 103 of the Public Acts of 1985
and section 405 as amended by Act No. 457 of the Public Acts of
1980, being sections 418.161 and 418.405 of the Michigan Compiled
Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 161 and 405 of Act No. 317 of the
2 Public Acts of 1969, section 161 as amended by Act No. 103 of the
3 Public Acts of 1985 and section 405 as amended by Act No. 457 of
4 the Public Acts of 1980, being sections 418.161 and 418.405 of
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 161. (1) As used in this act, "employee" means:

1 (a) A person in the service of the state, a county, city,
2 township, village, or school district, under any appointment, or
3 contract of hire, express or implied, oral or written. A person
4 employed by a contractor who has contracted with a county, city,
5 township, village, school district, or the state, through its
6 representatives, shall not be considered an employee of the
7 state, county, city, township, village, or school district which
8 made the contract, when the contractor is subject to this act.
9 Nationals of foreign countries employed pursuant to section
10 102(a)(1) of the mutual educational and cultural exchange act of
11 1961, 22 U.S.C. 2452, shall not be considered employees under
12 this act. Police officers, fire fighters, or employees of the
13 police or fire departments, or their dependents, in municipali-
14 ties or villages of this state providing like benefits, may waive
15 the provisions of this act and accept like benefits that are pro-
16 vided by the municipality or village but shall not be entitled to
17 like benefits from both the municipality or village and this act;
18 however, this waiver shall not prohibit such employees or their
19 dependents from being reimbursed under section 315 for the medi-
20 cal expenses or portion of medical expenses that are not other-
21 wise provided for by the municipality or village. AS USED IN
22 THIS SUBDIVISION, "LIKE BENEFITS" MEANS DUTY DISABILITY PENSION
23 BENEFITS THAT ARE EQUAL TO OR GREATER THAN BENEFITS PROVIDED
24 UNDER THIS ACT AND THAT ARE NOT SUBJECT TO OFFSET OR COORDINATION
25 WITH BENEFITS PAID UNDER THIS ACT. This act shall not be con-
26 strued as limiting, changing, or repealing any of the provisions
27 of a charter of a municipality or village of this state relating

1 to benefits, compensation, pensions, or retirement independent of
2 this act, provided for employees. Members of a volunteer fire
3 department of a city, village, or township shall be considered to
4 be employees of the city, village, or township, and entitled to
5 all the benefits of this act when personally injured in the per-
6 formance of duties as members of the volunteer fire department.
7 Members of a volunteer fire department of a city, village, or
8 township shall be considered to be receiving the state average
9 weekly wage at the time of injury, as last determined under sec-
10 tion 355, from the village, city, or township for the purpose of
11 calculating the weekly rate of compensation provided under this
12 act. The benefits of this act shall be available to a safety
13 patrol officer who is engaged in traffic regulation and manage-
14 ment for and by authority of a county, city, village, or town-
15 ship, whether the officer is paid or unpaid, in the same manner
16 as benefits are available to volunteer fire fighters, upon the
17 adoption by the legislative body of the county, city, village, or
18 township of a resolution to that effect. A safety patrol officer
19 or safety patrol force when used in this act shall be considered
20 to include all persons who volunteer and are registered with a
21 school and assigned to patrol a public thoroughfare used by stu-
22 dents of a school. A volunteer civil defense worker who is a
23 member of the civil defense forces as provided by law and is reg-
24 istered on the permanent roster of the civil defense organization
25 of the state or a political subdivision of the state shall be
26 considered to be an employee of the state or the political
27 subdivision on whose permanent roster the employee is enrolled

1 when engaged in the performance of duty and shall be considered
2 to be receiving the state average weekly wage at the time of
3 injury, as last determined under section 355, from the state or
4 political subdivision for purposes of calculating the weekly rate
5 of compensation provided under this act. A volunteer ambulance
6 driver or attendant shall be considered to be an employee of the
7 county, city, village, or township and entitled to the benefits
8 of this act when personally injured in the performance of duties
9 as a volunteer ambulance driver or attendant and shall be consid-
10 ered to be receiving the state average weekly wage at the time of
11 injury, as last determined under section 355, from the county,
12 city, village, or township for purposes of calculating the weekly
13 rate of compensation provided under this act. A political subdi-
14 vision of this state shall not be required to provide compensa-
15 tion insurance for a peace officer of the political subdivision
16 with respect to the protection and compensation provided by Act
17 No. 329 of the Public Acts of 1937, as amended, being sections
18 419.101 to 419.104 of the Michigan Compiled Laws.

19 (b) Every person in the service of another, under any con-
20 tract of hire, express or implied, including aliens; a person
21 regularly employed on a full-time basis by his or her spouse
22 having specified hours of employment at a specified rate of pay;
23 working members of partnerships receiving wages from the partner-
24 ship irrespective of profits; a person insured for whom and to
25 the extent premiums are paid based on wages, earnings, or prof-
26 its; and minors, who shall be considered the same as and have the
27 same power to contract as adult employees. Any minor under 18

1 years of age whose employment at the time of injury shall be
2 shown to be illegal, in the absence of fraudulent use of permits
3 or certificates of age in which case only single compensation
4 shall be paid, shall receive compensation double that provided in
5 this act.

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

21 (d) Every person performing service in the course of the
22 trade, business, profession, or occupation of an employer at the
23 time of the injury, provided the person in relation to this serv-
24 ice does not maintain a separate business, does not hold himself
25 or herself out to and render service to the public, and is not an
26 employer subject to this act.

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

7 (3) 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 (4) If the persons to be excluded from coverage under this
21 act pursuant to subsection (2) or (3) comprise all of the employ-
22 ees of the employer, those persons may elect to be excluded from
23 being considered employees under this act by submitting written
24 notice of that election to the director upon a form prescribed by
25 the director. The exclusion shall remain in effect until revoked
26 by giving written notice to the director.

1 Sec. 405. (1) In the case of a member of a ~~full~~ FULLY
2 paid fire department of an airport run by a county road
3 commission ~~in counties of 1,000,000 population or more~~ OR OTHER
4 PUBLIC AUTHORITY, or by a state university or college; ~~or~~ of
5 a ~~full~~ FULLY paid fire or police department of a city, town-
6 ship, or incorporated village employed and compensated upon a
7 full-time basis; ~~a~~ a county sheriff and the deputies of the
8 county sheriff; ~~members of the state police;~~ ~~conservation~~
9 officers; ~~and OFFICERS OF THE motor carrier inspectors of~~
10 ~~the Michigan public service commission~~ ENFORCEMENT DIVISION OF
11 THE DEPARTMENT OF STATE POLICE, "personal injury" shall be con-
12 strued to include respiratory and heart diseases or illnesses
13 resulting therefrom which develop or manifest themselves during a
14 period while the member of the department is in the active serv-
15 ice of the department and result from the performance of duties
16 for the department.

17 (2) Such respiratory and heart diseases or illnesses result-
18 ing therefrom are deemed to arise out of and in the course of
19 employment in the absence of evidence to the contrary.

20 (3) As a condition precedent to filing an application for
21 benefits, the claimant, if he or she is one of those enumerated
22 in subsection (1), shall first make application for, and do all
23 things necessary to qualify for any DUTY DISABILITY pension bene-
24 fits which he or she, or his or her decedent, may be entitled
25 to. If a final determination is made that DUTY DISABILITY pen-
26 sion benefits shall not be awarded, then the presumption of
27 "personal injury" as provided in this section shall apply. The

1 employer or employee may request 2 copies of the determination
2 denying pension benefits, 1 copy of which may be filed with the
3 bureau.