

Act No. 206
Public Acts of 1995
Approved by the Governor
November 29, 1995
Filed with the Secretary of State
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Reps. DeLange, Nye, Freeman, Sikkema and Munsell

Reps. Agee, Baade, Baird, Brackenridge, Bush, Byl, Clack, Curtis, Dalman, Dobb, Dolan, Gernaat, Gnodtke, Goschka, Green, Jersevic, Johnson, Kaza, Kukuk, Law, London, Lowe, McBryde, McManus, Middaugh, Middleton, Murphy, Olshove, Owen, Palamara, Parks, Perricone, Pitoniak, Porreca, Price, Profit, Rhead, Rocca, Scott, Vaughn, Voorhees, Weeks and Wetters named co-sponsors

ENROLLED HOUSE BILL No. 4848

AN ACT to amend sections 151, 161, and 647 of Act No. 317 of the Public Acts of 1969, entitled as amended "An act to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," section 151 as amended by Act No. 103 of the Public Acts of 1985 and section 161 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.151, 418.161, and 418.647 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 151, 161, and 647 of Act No. 317 of the Public Acts of 1969, section 151 as amended by Act No. 103 of the Public Acts of 1985 and section 161 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.151, 418.161, and 418.647 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 151. The following constitutes employers subject to this act:

(a) The state; each county, city, township, incorporated village, and school district; each incorporated public board or public commission in this state authorized by law to hold property and to sue or be sued generally; and any library in a county with a population less than 600,000 established under Act No. 138 of the Public Acts of 1917, being sections 397.301 to 397.305 of the Michigan Compiled Laws, if the library board by resolution expresses its intention to be considered as a separate employer from the county where it is located for purposes of this act.

(b) Every person, firm, limited liability company, limited liability partnership, and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, unless those employees excluded according to the provisions of section 161(5) comprise all of the employees of the person, firm, limited liability company, limited liability partnership, or corporation.

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

(a) A person in the service of the state, a county, city, township, village, or school district, under any appointment, or contract of hire, express or implied, oral or written. A person employed by a contractor who has contracted with a county, city, township, village, school district, or the state, through its representatives, shall not be considered an employee of the state, county, city, township, village, or school district which made the contract, when the contractor is subject to this act.

(b) Nationals of foreign countries employed pursuant to section 102(a)(1) of the mutual educational and cultural exchange act of 1961, 22 U.S.C. 2452, shall not be considered employees under this act.

(c) Police officers, fire fighters, or employees of the police or fire departments, or their dependents, in municipalities or villages of this state providing like benefits, may waive the provisions of this act and accept like benefits that are provided by the municipality or village but shall not be entitled to like benefits from both the municipality or village and this act; however, this waiver shall not prohibit such employees or their dependents from being reimbursed under section 315 for the medical expenses or portion of medical expenses that are not otherwise provided for by the municipality or village. This act shall not be construed as limiting, changing, or repealing any of the provisions of a charter of a municipality or village of this state relating to benefits, compensation, pensions, or retirement independent of this act, provided for employees.

(d) On-call members of a fire department of a county, city, village, or township shall be considered to be employees of the county, city, village, or township, and entitled to all the benefits of this act when personally injured in the performance of duties as on-call members of the fire department whether the on-call member of the fire department is paid or unpaid. On-call members of a fire department of a county, city, village, or township shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the county, village, city, or township for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(e) On-call members of a fire department that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships shall be entitled to all the benefits of this act when personally injured in the performance of their duties as on-call members of a fire department whether the on-call member of the fire department is paid or unpaid. On-call members of a fire department shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the fire department for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(f) The benefits of this act shall be available to a safety patrol officer who is engaged in traffic regulation and management for and by authority of a county, city, village, or township, whether the officer is paid or unpaid, in the same manner as benefits are available to on-call members of a fire department under subdivision (d), upon the adoption by the legislative body of the county, city, village, or township of a resolution to that effect. A safety patrol officer or safety patrol force when used in this act includes all persons who volunteer and are registered with a school and assigned to patrol a public thoroughfare used by students of a school.

(g) A volunteer civil defense worker who is a member of the civil defense forces as provided by law and is registered on the permanent roster of the civil defense organization of the state or a political subdivision of the state shall be considered to be an employee of the state or the political subdivision on whose permanent roster the employee is enrolled when engaged in the performance of duty and shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the state or political subdivision for purposes of calculating the weekly rate of compensation provided under this act.

(h) A volunteer licensed under section 20950 or 20952 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20950 and 333.20952 of the Michigan Compiled Laws, who is an on-call member of a life support agency as defined under section 20906 of Act No. 368 of the Public Acts of 1978, being section 333.20906 of the Michigan Compiled Laws, shall be considered to be an employee of the county, city, village, or township and entitled to the benefits of this act when personally injured in the performance of duties as an on-call member of a life support agency whether the on-call member of the life support agency is paid or unpaid. An on-call member of a life support agency shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the county, city, village, or township for purposes of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(i) A volunteer licensed under section 20950 or 20952 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20950 and 333.20952 of the Michigan Compiled Laws, who is an on-call member of a life support agency as defined under section 20906 of Act No. 368 of the Public Acts of 1978, being section 333.20906 of the Michigan Compiled Laws, that contracts with or receives reimbursement from 1 or more counties, cities, villages, or townships

shall be entitled to all the benefits of this act when personally injured in the performance of his or her duties as an on-call member of a life support agency whether the on-call member of the life support agency is paid or unpaid. An on-call member of a life support agency shall be considered to be receiving the state average weekly wage at the time of injury, as last determined under section 355, from the life support agency for the purpose of calculating the weekly rate of compensation provided under this act except that if the member's average weekly wage was greater than the state average weekly wage at the time of the injury, the member's weekly rate of compensation shall be determined based on the member's average weekly wage.

(j) A political subdivision of this state shall not be required to provide compensation insurance for a peace officer of the political subdivision with respect to the protection and compensation provided by Act No. 329 of the Public Acts of 1937, being sections 419.101 to 419.104 of the Michigan Compiled Laws.

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

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

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

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

(3) An employee who is subject to this act, including an employee covered pursuant to section 121, who is an employee of a limited liability company of not more than 10 members and who is also a manager and member, as defined in section 102 of the Michigan limited liability company act, Act No. 23 of the Public Acts of 1993, being section 450.4102 of the Michigan Compiled Laws, and who owns at least a 10% interest in that limited liability company, with the consent of the limited liability company as approved by a majority vote of the members, or if the limited liability company has more than 1 manager, all of the managers who are also members, except as otherwise provided in an operating agreement, may elect to be individually excluded from this act by giving a notice of the election in writing to the carrier with the consent of the limited liability company endorsed on the notice. The exclusion shall remain in effect until revoked by the employee by giving notice in writing to the carrier. While the exclusion is in effect, section 141 shall not apply to any action brought by the employee against the limited liability company.

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

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

Sec. 647. (1) If compensation is awarded under this act against any employer who at the time of the injury has not complied with section 611, the employer shall not be entitled as to any judgment entered upon the award, to any of the exemptions of property from seizure and sale on execution allowed by statute.

(2) If the employer is a corporation, the officers and directors of the corporation shall be individually and jointly and severally liable for any portion of the judgment returned unsatisfied after execution against the corporation. If the employer is a limited liability company, the managers who are also members shall be individually and jointly and

severally liable for any portion of the judgment returned unsatisfied after execution against the company. If the employer is a limited liability partnership, the partners shall be individually and jointly and severally liable for any portion of the judgment returned unsatisfied after execution against the partnership.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.