

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4171

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 405 (MCL 418.405), as amended by 2014 PA 515.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 405. (1) ~~In the case of~~ **For** a member of a fully paid fire
2 department of an airport operated by a county, public airport
3 authority, or state university or college; a member of a fully paid
4 fire or police department of a city, township, or incorporated
5 village employed and compensated ~~upon~~ **on** a full-time basis; a
6 member of a fully paid public fire authority employed and
7 compensated ~~upon~~ **on** a full-time basis; a county sheriff and the
8 deputies of the county sheriff; a member of the state police; a
9 conservation officer; or an officer of the motor carrier

1 enforcement division of the department of state police, "personal
2 injury" includes respiratory and heart diseases, or illnesses
3 resulting therefrom, that develop or manifest themselves during a
4 period while the member of the department is in the active service
5 of the department and that result from the performance of duties
6 for the department.

7 (2) A member of a fully paid fire department or public fire
8 authority who is in active service of the fire department or public
9 fire authority, ~~has been employed~~ 60 months or more in ~~the~~ active
10 service of the department or public fire authority at the time the
11 cancer manifests itself, and is exposed to the hazards incidental
12 to fire suppression, rescue, or emergency medical services in the
13 performance of his or her work-related duties with the department
14 or authority shall suspend a claim **he or she may have** against his
15 or her employer under this act and may claim like benefits from the
16 first responder presumed coverage fund created under subsection (6)
17 for any respiratory tract, bladder, skin, brain, kidney, blood,
18 thyroid, testicular, prostate, or lymphatic cancer. **Beginning**
19 **January 1, 2022, a forest fire officer or fire/crash rescue officer**
20 **who is in active service, has 60 months or more in active service**
21 **at the time the cancer manifests itself, and is exposed to the**
22 **hazards incidental to fire suppression, rescue, or emergency**
23 **medical services in the performance of his or her work-related**
24 **duties shall suspend a claim he or she may have against his or her**
25 **employer under this act and may claim like benefits from the first**
26 **responder presumed coverage fund created under subsection (6) for**
27 **any respiratory tract, bladder, skin, brain, kidney, blood,**
28 **thyroid, testicular, prostate, or lymphatic cancer.** The cancers
29 described in this subsection are presumed to arise out of and in

1 the course of employment only with respect to a claim against the
2 fund and in the absence of non-work-related causation or specific
3 incidents that establish a cause independent of the employment.
4 Neither mere evidence that the condition was preexisting, nor an
5 abstract medical opinion that the employment was not the cause of
6 the disease or condition, is sufficient to overcome the presumption
7 for purposes of a claim against the first responder presumed
8 coverage fund. The presumption under this subsection may be
9 rebutted by scientific evidence that the member of the ~~fully paid~~
10 fire department or public fire authority was a substantial and
11 consistent user of cigarettes or other tobacco products within the
12 10 years immediately preceding the date of injury, and that this
13 use was a significant factor in the cause, aggravation, or
14 progression of the cancer. The suspension of the member's claim
15 against his or her employer under this subsection is in effect only
16 during the period the member receives like benefits from the first
17 responder presumed coverage fund. If a redemption agreement between
18 the first responder presumed coverage fund and the claimant is
19 approved, the suspension of a claim against an employer under this
20 subsection continues indefinitely. A claimant may not receive
21 benefits covering the same time period from both the first
22 responder presumed coverage fund and the employer. The presumption
23 created in this subsection applies only to a claim for like
24 benefits against the first responder presumed coverage fund.

25 (3) Respiratory and heart diseases or illnesses resulting
26 therefrom as described in subsection (1) are presumed to arise out
27 of and in the course of employment in the absence of evidence to
28 the contrary.

29 (4) As a condition precedent to filing an application for

1 benefits, a claimant described in subsection (1) or a claimant
2 under subsection (2) ~~shall~~**must** first apply for and do all things
3 necessary to qualify for any pension benefits to which he or she,
4 or his or her decedent, may be entitled or ~~shall~~**must** demonstrate
5 that he or she, or his or her decedent, is ineligible for any
6 pension benefits. If a final determination is made that pension
7 benefits ~~shall~~**will** not be awarded or that the claimant or his or
8 her decedent is ineligible for any pension benefits, then the
9 ~~presumption~~**designation** of "personal injury" as provided in
10 subsection (1) or the presumption under subsection (2) applies. The
11 employer or employee may request 2 copies of the determination
12 denying pension benefits, 1 copy of which ~~shall~~**must** be filed with
13 the workers' compensation agency upon request.

14 (5) If an employee described in subsection (1) or (2) is
15 eligible for any pension benefits, that eligibility does not
16 prohibit the employee or dependents of that employee from receiving
17 benefits under section 315 for the medical expenses or portion of
18 medical expenses that are not provided for by the pension program.

19 (6) The first responder presumed coverage fund is created as a
20 separate fund in the state treasury. The state treasurer may
21 receive money or other assets from any source for deposit into the
22 fund. The state treasurer shall direct the investment of the fund.
23 The state treasurer shall credit to the fund interest and earnings
24 from fund investments. The director ~~shall be~~**is** the administrator
25 of the fund for auditing purposes. The director shall expend money
26 from the fund only for the purpose of paying claims authorized
27 under subsection (2) and costs of administration. The department of
28 treasury shall cause to be paid from the first responder presumed
29 coverage fund those amounts and at those times as are prescribed by

1 the director to pay claims under subsection (2) pursuant to this
 2 subsection and subsection (7). Money in the fund at the close of
 3 the fiscal year ~~shall remain~~**remains** in the fund and ~~shall does~~ not
 4 lapse to the general fund. If there is insufficient money in the
 5 fund to pay claims authorized under subsection (2), claims that are
 6 approved but not paid ~~shall must~~ be paid if fund revenues become
 7 available, and those claims ~~shall must~~ be paid before subsequently
 8 approved claims. The director shall develop and implement a process
 9 to notify the legislature that money in the first responder
 10 presumed coverage fund may be insufficient to cover future claims
 11 when the director reasonably believes that within 60 days the money
 12 in the fund will be insufficient to pay claims. The process ~~shall,~~
 13 **must**, at a minimum, do all of the following:

14 (a) Identify a specific date by which the money in the fund
 15 will become insufficient to pay claims.

16 (b) Outline a clear process indicating the order in which
 17 claims pending with the fund will be paid.

18 (c) Outline a clear process indicating the order in which
 19 claims that were pending with the fund when money became
 20 insufficient will be paid, if money subsequently becomes available.

21 (7) The director shall develop the application, approval, and
 22 compliance process necessary to operate and manage the **first**
 23 **responder presumed coverage** fund. The director shall develop and
 24 implement the use of an application form to be used by a claimant
 25 for benefits payable by the fund under subsection (2). When a claim
 26 under subsection (2) is received, the director shall notify the
 27 employer against whom a claim is suspended or the carrier. The
 28 employer or carrier may access all information the agency receives
 29 respecting the claim and may request that the agency obtain

1 specific additional information. The fund standards, guidelines,
 2 templates, and any other forms used by the director to implement
 3 the first responder presumed coverage fund ~~shall~~**must** be posted and
 4 maintained on the department's website. The director shall review
 5 and consider claims in the order in which they are received and
 6 shall approve or deny a claim within 30 days after receipt of the
 7 claim.

8 (8) The director shall submit an annual report to the state
 9 budget director and the senate and house of representatives
 10 standing committees on appropriations not later than April 1 of
 11 each year that includes, but is not limited to, all of the
 12 following:

13 (a) The total number of claims received under the first
 14 responder presumed coverage fund in the immediately preceding
 15 calendar year.

16 (b) The number of claims approved and the total dollar amount
 17 of claims paid by the first responder presumed coverage fund in the
 18 immediately preceding calendar year.

19 (c) The costs of administering the first responder presumed
 20 coverage fund in the immediately preceding calendar year.

21 ~~(9) The department shall not implement the first responder~~
 22 ~~presumed coverage fund until the legislature has appropriated money~~
 23 ~~to the fund.~~

24 (9) ~~(10)~~By March 31 of each year, the worker's compensation
 25 agency shall report to the chairs of the appropriations committees
 26 of the senate and the house of representatives the estimated amount
 27 of both of the following:

28 (a) The anticipated cost of benefits in the next fiscal year
 29 for claims authorized under subsection (2) and payable by the first

1 responder presumed coverage fund.

2 (b) The amount of any anticipated shortfall in the first
3 responder presumed coverage fund that would prevent payment of
4 claims under subsection (6) for the current fiscal year.

5 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
6 same rights under this act as an employer or carrier.