

SUBSTITUTE FOR  
SENATE BILL NO. 211

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 1980 PA 457.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 405. **(1)** In the case of a member of a ~~full~~**FULLY** paid  
2 fire department of an airport ~~run~~**OPERATED** by a county, ~~read~~  
3 ~~commission in counties of 1,000,000 population or more~~**PUBLIC**  
4 **AIRPORT AUTHORITY**, or ~~by a~~ state university or college; ~~—or—~~**A**  
5 **MEMBER** of a ~~full~~**FULLY** paid fire or police department of a city,  
6 township, or incorporated village employed and compensated upon a  
7 full-time basis; ~~—~~**A MEMBER OF A FULLY PAID PUBLIC FIRE AUTHORITY**  
8 **EMPLOYED AND COMPENSATED UPON A FULL-TIME BASIS**; a county sheriff  
9 and the deputies of the county sheriff; ~~—members—~~**A MEMBER** of the

1 state police; ~~—A conservation officers, and OFFICER; OR AN OFFICER~~  
 2 ~~OF THE~~ motor carrier ~~inspectors of the Michigan public service~~  
 3 ~~commission~~ **ENFORCEMENT DIVISION OF THE DEPARTMENT OF STATE POLICE,**  
 4 "personal injury" ~~shall be construed to include~~ **INCLUDES**  
 5 respiratory and heart diseases, or illnesses resulting therefrom,  
 6 ~~which~~ **THAT** develop or manifest themselves during a period while the  
 7 member of the department is in the active service of the department  
 8 and **THAT** result from the performance of duties for the department.

9 (2) **FOR A MEMBER OF A FULLY PAID FIRE DEPARTMENT OR PUBLIC**  
 10 **FIRE AUTHORITY WHO IS EMPLOYED 60 MONTHS OR MORE, "PERSONAL INJURY"**  
 11 **INCLUDES ALL RESPIRATORY TRACT, BLADDER, SKIN, BRAIN, KIDNEY,**  
 12 **BLOOD, THYROID, TESTICULAR, PROSTATE, AND LYMPHATIC CANCERS. THIS**  
 13 **SUBSECTION APPLIES ONLY TO A MEMBER OF A FULLY PAID FIRE DEPARTMENT**  
 14 **OR PUBLIC FIRE AUTHORITY WHO IS IN THE ACTIVE SERVICE OF THE**  
 15 **DEPARTMENT OR AUTHORITY, WHO HAS BEEN IN ACTIVE SERVICE FOR 60**  
 16 **MONTHS OR MORE AT THE TIME THE CANCER MANIFESTS ITSELF, AND WHO IS**  
 17 **EXPOSED TO THE HAZARDS INCIDENTAL TO FIRE SUPPRESSION, RESCUE, OR**  
 18 **EMERGENCY MEDICAL SERVICES IN THE PERFORMANCE OF HIS OR HER WORK-**  
 19 **RELATED DUTIES FOR THE DEPARTMENT OR AUTHORITY. BENEFITS UNDER THIS**  
 20 **SUBSECTION ARE SUBJECT TO SUBSECTIONS (6) TO (9).**

21 (3) ~~(2) Such respiratory~~ **RESPIRATORY** and heart diseases ~~or~~ **AND**  
 22 illnesses resulting therefrom **UNDER SUBSECTION (1), AND IN A FISCAL**  
 23 **YEAR FOR WHICH THE LEGISLATURE APPROPRIATES MONEY FOR THE**  
 24 **REIMBURSEMENT OF ADDITIONAL COSTS OF BENEFITS RESULTING FROM THE**  
 25 **PRESUMPTION AS TO THESE CANCERS, RESPIRATORY TRACT, BLADDER, SKIN,**  
 26 **BRAIN, KIDNEY, BLOOD, THYROID, TESTICULAR, PROSTATE, AND LYMPHATIC**  
 27 **CANCERS UNDER SUBSECTION (2), are deemed** ~~PRESUMED~~ to arise out of

and in the course of employment in the absence of **AFFIRMATIVE** evidence ~~to the contrary~~ **OF NON-WORK-RELATED CAUSATION OR SPECIFIC INCIDENTS THAT ESTABLISH A CAUSE INDEPENDENT OF THE EMPLOYMENT. NEITHER MERE EVIDENCE THAT THE CONDITION WAS PREEXISTING, NOR AN ABSTRACT MEDICAL OPINION THAT THE EMPLOYMENT WAS NOT THE CAUSE OF THE DISEASE OR CONDITION, IS SUFFICIENT TO OVERCOME THE PRESUMPTION. IN A FISCAL YEAR FOR WHICH THE PRESUMPTION IS OPERATIVE, RESPIRATORY TRACT, BLADDER, SKIN, BRAIN, KIDNEY, BLOOD, THYROID, TESTICULAR, PROSTATE, AND LYMPHATIC CANCERS OF A MEMBER OF A FULLY PAID FIRE DEPARTMENT OR PUBLIC FIRE AUTHORITY MAY BE SHOWN NOT TO ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT IF SCIENTIFIC EVIDENCE IS INTRODUCED THAT THE MEMBER OF THE FULLY PAID FIRE DEPARTMENT OR PUBLIC FIRE AUTHORITY WAS A SUBSTANTIAL AND CONSISTENT USER OF CIGARETTES OR OTHER TOBACCO PRODUCTS WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF INJURY, AND THAT THIS USE WAS A SIGNIFICANT FACTOR IN THE CAUSE, AGGRAVATION, OR PROGRESSION OF THE CANCER. BENEFITS UNDER THIS SUBSECTION ARE SUBJECT TO SUBSECTIONS (6) TO (9).**

(4) ~~(3)~~ As a condition precedent to filing an application for benefits, ~~the~~ **A claimant** ~~, if he or she is one of those enumerated DESCRIBED in subsection (1) , OR (2) shall first make application APPLY for , and do all things necessary to qualify for any pension benefits TO which he or she, or his or her decedent, may be entitled to OR SHALL DEMONSTRATE THAT HE OR SHE, OR HIS OR HER DECEDENT, IS INELIGIBLE FOR ANY PENSION BENEFITS. If a final determination is made that pension benefits shall not be awarded OR THAT THE CLAIMANT OR HIS OR HER DECEDENT IS INELIGIBLE FOR ANY~~

1 PENSION BENEFITS, then the presumption of "personal injury" as  
2 provided in this section ~~shall apply.~~ **APPLIES.** The employer or  
3 employee may request 2 copies of the determination denying pension  
4 benefits, 1 copy of which may be filed with the ~~bureau~~ **WORKERS'**  
5 **COMPENSATION AGENCY.**

6 (5) IF AN EMPLOYEE DESCRIBED IN SUBSECTION (1) OR (2) IS  
7 ELIGIBLE FOR ANY PENSION BENEFITS, THAT ELIGIBILITY DOES NOT  
8 PROHIBIT THE EMPLOYEE OR DEPENDENTS OF THAT EMPLOYEE FROM RECEIVING  
9 BENEFITS UNDER SECTION 315 FOR THE MEDICAL EXPENSES OR PORTION OF  
10 MEDICAL EXPENSES THAT ARE NOT PROVIDED FOR BY THE PENSION PROGRAM.  
11 THE PRESUMPTION IN SUBSECTION (3) APPLIES TO THE MEDICAL BENEFITS  
12 PROVIDED UNDER SECTION 315.

13 (6) NOT LATER THAN 120 DAYS AFTER THE EFFECTIVE DATE OF THE  
14 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL  
15 CREATE AND OPERATE A FIRST RESPONDER PERSONAL COVERAGE  
16 REIMBURSEMENT PROGRAM TO REIMBURSE CARRIERS FOR CERTAIN COSTS OF  
17 WORKER'S COMPENSATION BENEFITS PAID FOR COVERAGE UNDER SUBSECTION  
18 (2) OR (3), TO OFFSET THE ADDITIONAL COSTS OF BENEFITS PAID AS A  
19 RESULT OF THE PRESUMPTION AS TO CERTAIN TYPES OF CANCERS  
20 ESTABLISHED IN THOSE SUBSECTIONS. THE DEPARTMENT SHALL DEVELOP THE  
21 APPLICATION, APPROVAL, AND COMPLIANCE PROCESS NECESSARY TO OPERATE  
22 AND MANAGE THE PROGRAM. THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT  
23 THE USE OF AN APPLICATION FORM TO BE USED BY A CARRIER OR THIRD  
24 PARTY ADMINISTRATOR WHO SEEKS REIMBURSEMENT FOR BENEFITS PAYABLE AS  
25 A RESULT OF THE PRESUMPTION AS TO CERTAIN TYPES OF CANCERS UNDER  
26 SUBSECTION (2) OR (3). THE PROGRAM STANDARDS, GUIDELINES,  
27 TEMPLATES, AND ANY OTHER FORMS USED BY THE DEPARTMENT TO IMPLEMENT

1 THIS PROGRAM SHALL BE PUBLISHED AND AVAILABLE ON THE DEPARTMENT'S  
2 WEBSITE. SUBJECT TO SUBSECTIONS (7) TO (9), THE PROGRAM SHALL, AS  
3 APPROVED BY THE DEPARTMENT, REIMBURSE CARRIERS AND THIRD PARTY  
4 ADMINISTRATORS IN AN AMOUNT EQUAL TO THE AMOUNT OF PAID CLAIMS THAT  
5 ARE PAID 180 DAYS OR MORE AFTER THE EFFECTIVE DATE OF THIS ACT BY  
6 THE CARRIER OR THIRD PARTY ADMINISTRATOR. A CARRIER OR THIRD PARTY  
7 ADMINISTRATOR SHALL APPLY, ON THE FORM PRESCRIBED BY THE  
8 DEPARTMENT, FOR APPROVAL OF FUNDING ASSOCIATED WITH PAID CLAIMS. AS  
9 PART OF THE APPLICATION, THE APPLICANT SHALL INCLUDE THE  
10 DOCUMENTATION VERIFYING THOSE PAID CLAIMS FOR WHICH THEY ARE  
11 SEEKING REIMBURSEMENT UNDER THIS PROGRAM. IN DETERMINING WHETHER TO  
12 APPROVE AN APPLICATION FOR THE REIMBURSEMENT OF PAID CLAIMS UNDER  
13 THIS SECTION, THE DEPARTMENT MAY CONSULT WITH THE WORKERS'  
14 COMPENSATION AGENCY TO CONFIRM THAT THE BENEFITS PAID WERE REQUIRED  
15 TO BE PAID UNDER THIS ACT. THE DEPARTMENT SHALL REVIEW AND CONSIDER  
16 APPLICATIONS IN THE ORDER IN WHICH THEY ARE RECEIVED AND SHALL  
17 APPROVE OR DENY AN APPLICATION WITHIN 30 DAYS AFTER RECEIPT OF THE  
18 APPLICATION. TO THE EXTENT THAT THERE IS A CAP ON THE AMOUNT OF  
19 COVERAGE MANDATED UNDER THIS ACT, THE DEPARTMENT SHALL NOT APPROVE  
20 MORE THAN THE MANDATED AMOUNT TO ANY CARRIER OR THIRD PARTY  
21 ADMINISTRATOR THAT SEEKS THE REIMBURSEMENT. IF A THIRD PARTY  
22 ADMINISTRATOR RECEIVES ANY FUNDING UNDER THIS PROGRAM, THE THIRD  
23 PARTY ADMINISTRATOR SHALL APPLY THAT FUNDING TO THE BENEFIT OF THE  
24 CARRIER COVERING THE CLAIM UPON WHICH THE FUNDING WAS RECEIVED. IF  
25 THE DEPARTMENT DETERMINES AT THE END OF THE FISCAL YEAR THAT A  
26 CARRIER WAS NOT FULLY REIMBURSED FOR PAID CLAIMS PAID DUE TO A  
27 SHORTFALL IN THE REIMBURSEMENT FUND FOR THE FISCAL YEAR, THE

1 CARRIER MAY INCREASE ITS RATES IN THE FOLLOWING YEAR TO COVER THE  
2 TOTAL AMOUNT OF THOSE UNREIMBURSED PAID CLAIMS IF THE COMMISSIONER  
3 DETERMINES THAT THE RATE INCREASE IS A REASONABLE RECOUPMENT OF THE  
4 AMOUNT OF THOSE UNREIMBURSED PAID CLAIMS.

5 (7) THE FIRST RESPONDERS PRESUMED COVERAGE REIMBURSEMENT FUND  
6 IS CREATED WITHIN THE STATE TREASURY. THE STATE TREASURER MAY  
7 RECEIVE MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE  
8 FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND.  
9 THE STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS  
10 FROM FUND INVESTMENTS. THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF  
11 THE FUND FOR AUDITING PURPOSES. THE DEPARTMENT SHALL EXPEND MONEY  
12 FROM THE FUND, UPON APPROPRIATION, ONLY FOR THE PURPOSE OF  
13 CREATING, OPERATING, AND FUNDING THE FIRST RESPONDER PRESUMED  
14 COVERAGE REIMBURSEMENT PROGRAM. MONEY IN THE FUND AT THE CLOSE OF  
15 THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE  
16 GENERAL FUND. THE DEPARTMENT SHALL REIMBURSE CARRIERS AND THIRD  
17 PARTY ADMINISTRATORS FROM THE FUND IN THE ORDER IN WHICH THE  
18 APPLICATIONS ARE APPROVED UNDER THE FIRST RESPONDER PRESUMED  
19 COVERAGE REIMBURSEMENT PROGRAM. IF THERE IS INSUFFICIENT MONEY IN  
20 THE FUND TO REIMBURSE A CARRIER OR THIRD PARTY ADMINISTRATOR FOR  
21 PAID CLAIMS APPROVED UNDER SUBSECTION (6), THEN REIMBURSEMENT SHALL  
22 NOT BE MADE. HOWEVER, APPLICATIONS THAT ARE APPROVED BUT NOT  
23 REIMBURSED MAY BE PAID IF FUND REVENUES BECOME AVAILABLE, AND THOSE  
24 APPLICATIONS SHALL BE PAID BEFORE SUBSEQUENTLY APPROVED  
25 APPLICATIONS. THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A PROCESS  
26 TO NOTIFY CARRIERS, THIRD PARTY ADMINISTRATORS, AND THE LEGISLATURE  
27 THAT FUNDS IN THIS PROGRAM MAY BE INSUFFICIENT TO COVER FUTURE

1 CLAIMS WHEN THE DEPARTMENT REASONABLY BELIEVES THAT WITHIN 60 DAYS  
2 THE MONEY IN THE FUND WILL BE INSUFFICIENT TO PAY CLAIMS. THE  
3 PROCESS SHALL, AT A MINIMUM, DO ALL OF THE FOLLOWING:

4 (A) IDENTIFY A SPECIFIC DATE BY WHICH CARRIERS AND THIRD PARTY  
5 ADMINISTRATORS WILL NO LONGER RECEIVE REIMBURSEMENT FOR CLAIMS  
6 SUBMITTED TO THE PROGRAM.

7 (B) OUTLINE A CLEAR PROCESS INDICATING THE ORDER IN WHICH  
8 CLAIMS PENDING WITH THE PROGRAM WILL BE PAID.

9 (C) OUTLINE A CLEAR PROCESS INDICATING THE ORDER IN WHICH  
10 CLAIMS THAT WERE PENDING WITH THE PROGRAM WHEN FUNDS BECAME  
11 INSUFFICIENT WILL BE PAID IF FUNDS SUBSEQUENTLY BECOME AVAILABLE.

12 (8) THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE STATE  
13 BUDGET DIRECTOR AND THE SENATE AND HOUSE OF REPRESENTATIVES  
14 STANDING COMMITTEES ON APPROPRIATIONS NOT LATER THAN APRIL 1 OF  
15 EACH YEAR THAT INCLUDES, BUT IS NOT LIMITED TO, ALL OF THE  
16 FOLLOWING:

17 (A) THE TOTAL NUMBER OF APPLICATIONS RECEIVED UNDER THE FIRST  
18 RESPONDER PRESUMED COVERAGE REIMBURSEMENT PROGRAM IN THE  
19 IMMEDIATELY PRECEDING CALENDAR YEAR.

20 (B) THE NUMBER OF APPLICATIONS APPROVED AND THE TOTAL AMOUNT  
21 OF FUNDING AWARDED UNDER THIS PROGRAM IN THE IMMEDIATELY PRECEDING  
22 CALENDAR YEAR.

23 (C) THE AMOUNT OF ADMINISTRATIVE COSTS USED TO ADMINISTER THE  
24 PROGRAM IN THE IMMEDIATELY PRECEDING CALENDAR YEAR.

25 (9) THE DEPARTMENT SHALL NOT IMPLEMENT THE FIRST RESPONDER  
26 PRESUMED COVERAGE REIMBURSEMENT PROGRAM UNTIL THE LEGISLATURE HAS  
27 APPROPRIATED SUFFICIENT FUNDS TO COVER THE PROGRAM. NOT MORE THAN

1 1% OF THE ANNUAL APPROPRIATION MADE TO THE FIRST RESPONDERS  
2 PRESUMED COVERAGE REIMBURSEMENT FUND MAY BE USED FOR ADMINISTRATIVE  
3 PURPOSES.

4 (10) BY JANUARY 31 OF EACH YEAR, THE WORKER'S COMPENSATION  
5 AGENCY SHALL REPORT TO THE CHAIRS OF THE APPROPRIATIONS COMMITTEES  
6 OF THE SENATE AND THE HOUSE OF REPRESENTATIVES THE ESTIMATED AMOUNT  
7 OF BOTH OF THE FOLLOWING:

8 (A) THE ADDITIONAL COST OF BENEFITS THAT WILL BE PAYABLE IN  
9 THE NEXT FISCAL YEAR IF THE PRESUMPTION THAT THE PERSONAL INJURIES  
10 DESCRIBED IN SUBSECTION (2) ARISE IN THE COURSE OF EMPLOYMENT IS IN  
11 EFFECT.

12 (B) THE AMOUNT OF ANY ANTICIPATED SHORTFALL IN THE FIRST  
13 RESPONDER PRESUMED COVERAGE REIMBURSEMENT PROGRAM FUNDS NECESSARY  
14 FOR IT TO MAKE THE REIMBURSEMENTS UNDER SUBSECTION (6) FOR THE  
15 CURRENT FISCAL YEAR.