

SENATE BILL No. 838

November 12, 2003, Introduced by Senators GARCIA, BASHAM, PRUSI, BRATER,
 BARCIA, GOSCHKA, EMERSON, CROPSEY, SCOTT, HAMMERSTROM, THOMAS
 and JELINEK and referred to the Committee on Commerce and Labor.

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:

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1 Sec. 405. (1) In the case of a member of a ~~full~~ **fully**
 2 paid fire department of an airport ~~run~~ **operated** by a county,
 3 ~~road commission in counties of 1,000,000 population or more~~
 4 **public airport authority**, or ~~by a~~ state university or college;
 5 ~~, or~~ **a member** of a ~~full~~ **fully** paid fire or police department
 6 of a city, township, or incorporated village employed and
 7 compensated upon a full-time basis; ~~, a~~ county sheriff and the
 8 deputies of the county sheriff; ~~, members~~ **a member** of the state
 9 police; ~~, a~~ conservation ~~officers, and~~ **officer; or an officer**
 10 **of the** motor carrier ~~inspectors of the Michigan public service~~

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

8 (2) For a member of a fully paid fire department who is
9 employed 24 months or more, "personal injury" includes all
10 respiratory tract, bladder, skin, brain, kidney, blood, and
11 lymphatic cancers.

12 (3) ~~(2) Such respiratory~~ Respiratory and heart diseases
13 ~~or~~ and illnesses resulting therefrom under subsection (1), and
14 respiratory tract, bladder, skin, brain, kidney, blood, and
15 lymphatic cancers under subsection (2), are ~~deemed~~ considered
16 to arise out of and in the course of employment in the absence of
17 affirmative evidence ~~to the contrary~~ of non-work-related
18 causation or specific incidents that establish a cause
19 independent of the employment and not merely evidence of a
20 preexisting condition or an abstract medical opinion that
21 employment was not the cause of the disease or condition.
22 Respiratory tract, bladder, skin, brain, kidney, blood, and
23 lymphatic cancers of a member of a fully paid fire department are
24 not considered to arise out of and in the course of employment if
25 evidence is shown that the member of the fully paid fire
26 department was a consistent smoker of cigarettes or other tobacco
27 products within the 5 years immediately preceding the date of

1 filing a claim under this act.

2 (4) ~~(3)~~ As a condition precedent to filing an application
3 for benefits, the claimant, if he or she is ~~one of those~~
4 ~~enumerated~~ **a person described** in subsection (1) or (2), shall
5 first make application for ~~—~~ and do all things necessary to
6 qualify for any pension benefits to which he or she, or his or
7 her decedent, may be entitled ~~to~~ **or shall demonstrate that he**
8 **or she, or his or her decedent, is ineligible for any pension**
9 **benefits.** If a final determination is made that pension benefits
10 shall not be awarded **or that the claimant or his or her decedent**
11 **is ineligible for any pension benefits,** then the presumption of
12 "personal injury" as provided in this section shall apply. The
13 employer or employee may request 2 copies of the determination
14 denying pension benefits, 1 copy of which may be filed with the
15 bureau.

16 (5) If an employee described in subsection (1) or (2) is
17 eligible for any pension benefits, that eligibility shall not
18 prohibit the employee or dependents of that employee from
19 receiving benefits under section 315 for the medical expenses or
20 portion of medical expenses that are not provided for by the
21 pension program. The presumption in subsection (3) shall apply
22 to the medical benefits provided under section 315.