

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
10 state police; ~~A conservation officers, and~~**OFFICER; OR AN OFFICER**

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

9 (2) A MEMBER OF A FULLY PAID FIRE DEPARTMENT OR PUBLIC FIRE
10 AUTHORITY WHO IS IN ACTIVE SERVICE OF THE FIRE DEPARTMENT OR PUBLIC
11 FIRE AUTHORITY, HAS BEEN EMPLOYED 60 MONTHS OR MORE IN THE ACTIVE
12 SERVICE OF THE DEPARTMENT OR PUBLIC FIRE AUTHORITY AT THE TIME THE
13 CANCER MANIFESTS ITSELF, AND IS EXPOSED TO THE HAZARDS INCIDENTAL
14 TO FIRE SUPPRESSION, RESCUE, OR EMERGENCY MEDICAL SERVICES IN THE
15 PERFORMANCE OF HIS OR HER WORK-RELATED DUTIES WITH THE DEPARTMENT
16 OR AUTHORITY SHALL SUSPEND A CLAIM AGAINST HIS OR HER EMPLOYER
17 UNDER THIS ACT AND MAY CLAIM LIKE BENEFITS FROM THE FIRST RESPONDER
18 PRESUMED COVERAGE FUND CREATED UNDER SUBSECTION (6) FOR ANY
19 RESPIRATORY TRACT, BLADDER, SKIN, BRAIN, KIDNEY, BLOOD, THYROID,
20 TESTICULAR, PROSTATE, OR LYMPHATIC CANCER. THE CANCERS DESCRIBED IN
21 THIS SUBSECTION ARE PRESUMED TO ARISE OUT OF AND IN THE COURSE OF
22 EMPLOYMENT ONLY WITH RESPECT TO A CLAIM AGAINST THE FUND AND IN THE
23 ABSENCE OF NON-WORK-RELATED CAUSATION OR SPECIFIC INCIDENTS THAT
24 ESTABLISH A CAUSE INDEPENDENT OF THE EMPLOYMENT. NEITHER MERE
25 EVIDENCE THAT THE CONDITION WAS PREEXISTING, NOR AN ABSTRACT
26 MEDICAL OPINION THAT THE EMPLOYMENT WAS NOT THE CAUSE OF THE
27 DISEASE OR CONDITION, IS SUFFICIENT TO OVERCOME THE PRESUMPTION FOR

PURPOSES OF A CLAIM AGAINST THE FIRST RESPONDER PRESUMED COVERAGE FUND. THE PRESUMPTION UNDER THIS SUBSECTION MAY BE REBUTTED BY SCIENTIFIC EVIDENCE 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. THE SUSPENSION OF THE MEMBER'S CLAIM AGAINST HIS OR HER EMPLOYER UNDER THIS SUBSECTION IS IN EFFECT ONLY DURING THE PERIOD THE MEMBER RECEIVES LIKE BENEFITS FROM THE FIRST RESPONDER PRESUMED COVERAGE FUND. IF A REDEMPTION AGREEMENT BETWEEN THE FIRST RESPONDER PRESUMED COVERAGE FUND AND THE CLAIMANT IS APPROVED, THE SUSPENSION OF A CLAIM AGAINST AN EMPLOYER UNDER THIS SUBSECTION CONTINUES INDEFINITELY. A CLAIMANT MAY NOT RECEIVE BENEFITS COVERING THE SAME TIME PERIOD FROM BOTH THE FIRST RESPONDER PRESUMED COVERAGE FUND AND THE EMPLOYER. THE PRESUMPTION CREATED IN THIS SUBSECTION APPLIES ONLY TO A CLAIM FOR LIKE BENEFITS AGAINST THE FIRST RESPONDER PRESUMED COVERAGE FUND.

(3) ~~(2) Such respiratory~~ RESPIRATORY and heart diseases or illnesses resulting therefrom AS DESCRIBED IN SUBSECTION (1) are ~~deemed~~ PRESUMED to arise out of and in the course of employment in the absence of evidence to the contrary.

(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 A CLAIMANT UNDER SUBSECTION (2)~~ shall first ~~make application~~ APPLY for ~~and~~ and do all things necessary to qualify for any pension benefits TO which he or she,

1 or his or her decedent, may be entitled to ~~to~~ OR SHALL DEMONSTRATE
 2 THAT HE OR SHE, OR HIS OR HER DECEDENT, IS INELIGIBLE FOR ANY
 3 PENSION BENEFITS. If a final determination is made that pension
 4 benefits shall not be awarded OR THAT THE CLAIMANT OR HIS OR HER
 5 DECEDENT IS INELIGIBLE FOR ANY PENSION BENEFITS, then the
 6 presumption of "personal injury" as provided in ~~this section shall~~
 7 ~~apply.~~ SUBSECTION (1) OR THE PRESUMPTION UNDER SUBSECTION (2)
 8 APPLIES. The employer or employee may request 2 copies of the
 9 determination denying pension benefits, 1 copy of which ~~may~~ SHALL
 10 be filed with the ~~bureau.~~ WORKERS' COMPENSATION AGENCY UPON REQUEST.

11 (5) IF AN EMPLOYEE DESCRIBED IN SUBSECTION (1) OR (2) IS
 12 ELIGIBLE FOR ANY PENSION BENEFITS, THAT ELIGIBILITY DOES NOT
 13 PROHIBIT THE EMPLOYEE OR DEPENDENTS OF THAT EMPLOYEE FROM RECEIVING
 14 BENEFITS UNDER SECTION 315 FOR THE MEDICAL EXPENSES OR PORTION OF
 15 MEDICAL EXPENSES THAT ARE NOT PROVIDED FOR BY THE PENSION PROGRAM.

16 (6) THE FIRST RESPONDER PRESUMED COVERAGE FUND IS CREATED AS A
 17 SEPARATE FUND IN THE STATE TREASURY. THE STATE TREASURER MAY
 18 RECEIVE MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE
 19 FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND.
 20 THE STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS
 21 FROM FUND INVESTMENTS. THE DIRECTOR SHALL BE THE ADMINISTRATOR OF
 22 THE FUND FOR AUDITING PURPOSES. THE DIRECTOR SHALL EXPEND MONEY
 23 FROM THE FUND ONLY FOR THE PURPOSE OF PAYING CLAIMS AUTHORIZED
 24 UNDER SUBSECTION (2) AND COSTS OF ADMINISTRATION. THE DEPARTMENT OF
 25 TREASURY SHALL CAUSE TO BE PAID FROM THE FIRST RESPONDER PRESUMED
 26 COVERAGE FUND THOSE AMOUNTS AND AT THOSE TIMES AS ARE PRESCRIBED BY
 27 THE DIRECTOR TO PAY CLAIMS UNDER SUBSECTION (2) PURSUANT TO THIS

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1 SUBSECTION AND SUBSECTION (7). MONEY IN THE FUND AT THE CLOSE OF
2 THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE
3 GENERAL FUND. IF THERE IS INSUFFICIENT MONEY IN THE FUND TO PAY
4 CLAIMS AUTHORIZED UNDER SUBSECTION (2), CLAIMS THAT ARE APPROVED
5 BUT NOT PAID SHALL BE PAID IF FUND REVENUES BECOME AVAILABLE, AND
6 THOSE CLAIMS SHALL BE PAID BEFORE SUBSEQUENTLY APPROVED CLAIMS. THE
7 DIRECTOR SHALL DEVELOP AND IMPLEMENT A PROCESS TO NOTIFY THE
8 LEGISLATURE THAT MONEY IN THE FIRST RESPONDER PRESUMED COVERAGE
9 FUND MAY BE INSUFFICIENT TO COVER FUTURE CLAIMS WHEN THE DIRECTOR
10 REASONABLY BELIEVES THAT WITHIN 60 DAYS THE MONEY IN THE FUND WILL
11 BE INSUFFICIENT TO PAY CLAIMS. THE PROCESS SHALL, AT A MINIMUM, DO
12 ALL OF THE FOLLOWING:

13 (A) IDENTIFY A SPECIFIC DATE BY WHICH THE MONEY IN THE FUND
14 WILL BECOME INSUFFICIENT TO PAY CLAIMS.

15 (B) OUTLINE A CLEAR PROCESS INDICATING THE ORDER IN WHICH
16 CLAIMS PENDING WITH THE FUND WILL BE PAID.

17 (C) OUTLINE A CLEAR PROCESS INDICATING THE ORDER IN WHICH
18 CLAIMS THAT WERE PENDING WITH THE FUND WHEN MONEY BECAME
19 INSUFFICIENT WILL BE PAID, IF MONEY SUBSEQUENTLY BECOMES AVAILABLE.

20 (7) THE DIRECTOR SHALL DEVELOP THE APPLICATION, APPROVAL, AND
21 COMPLIANCE PROCESS NECESSARY TO OPERATE AND MANAGE THE FUND. THE
22 DIRECTOR SHALL DEVELOP AND IMPLEMENT THE USE OF AN APPLICATION FORM
23 TO BE USED BY A CLAIMANT FOR BENEFITS PAYABLE BY THE FUND UNDER
24 SUBSECTION (2). WHEN A CLAIM UNDER SUBSECTION (2) IS RECEIVED, THE
25 DIRECTOR SHALL NOTIFY THE EMPLOYER AGAINST WHOM A CLAIM IS
26 SUSPENDED OR THE CARRIER. <<THE EMPLOYER OR CARRIER MAY ACCESS ALL
27 INFORMATION THE AGENCY RECEIVES RESPECTING THE CLAIM AND

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>> MAY REQUEST

1
2 THAT THE AGENCY OBTAIN SPECIFIC ADDITIONAL INFORMATION. THE FUND
3 STANDARDS, GUIDELINES, TEMPLATES, AND ANY OTHER FORMS USED BY THE
4 DIRECTOR TO IMPLEMENT THE FIRST RESPONDER PRESUMED COVERAGE FUND
5 SHALL BE POSTED AND MAINTAINED ON THE DEPARTMENT'S WEBSITE. THE
6 DIRECTOR SHALL REVIEW AND CONSIDER CLAIMS IN THE ORDER IN WHICH
7 THEY ARE RECEIVED AND SHALL APPROVE OR DENY A CLAIM WITHIN 30 DAYS
8 AFTER RECEIPT OF THE CLAIM.

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

14 (A) THE TOTAL NUMBER OF CLAIMS RECEIVED UNDER THE FIRST
15 RESPONDER PRESUMED COVERAGE FUND IN THE IMMEDIATELY PRECEDING
16 CALENDAR YEAR.

17 (B) THE NUMBER OF CLAIMS APPROVED AND THE TOTAL DOLLAR AMOUNT
18 OF CLAIMS PAID BY THE FIRST RESPONDER PRESUMED COVERAGE FUND IN THE
19 IMMEDIATELY PRECEDING CALENDAR YEAR.

20 (C) THE COSTS OF ADMINISTERING THE FIRST RESPONDER PRESUMED
21 COVERAGE FUND IN THE IMMEDIATELY PRECEDING CALENDAR YEAR.

22 (9) THE DEPARTMENT SHALL NOT IMPLEMENT THE FIRST RESPONDER
23 PRESUMED COVERAGE FUND UNTIL THE LEGISLATURE HAS APPROPRIATED MONEY
24 TO THE FUND.

25 (10) BY MARCH 31 OF EACH YEAR, THE WORKER'S COMPENSATION
26 AGENCY SHALL REPORT TO THE CHAIRS OF THE APPROPRIATIONS COMMITTEES
27 OF THE SENATE AND THE HOUSE OF REPRESENTATIVES THE ESTIMATED AMOUNT

1 OF BOTH OF THE FOLLOWING:

2 (A) THE ANTICIPATED COST OF BENEFITS IN THE NEXT FISCAL YEAR
3 FOR CLAIMS AUTHORIZED UNDER SUBSECTION (2) AND PAYABLE BY THE FIRST
4 RESPONDER PRESUMED COVERAGE FUND.

5 (B) THE AMOUNT OF ANY ANTICIPATED SHORTFALL IN THE FIRST
6 RESPONDER PRESUMED COVERAGE FUND THAT WOULD PREVENT PAYMENT OF
7 CLAIMS UNDER SUBSECTION (6) FOR THE CURRENT FISCAL YEAR.

8 (11) THE FIRST RESPONDER PRESUMED COVERAGE FUND HAS THE SAME
9 RIGHTS UNDER THIS ACT AS AN EMPLOYER OR CARRIER.