

HOUSE BILL NO. 4171

February 09, 2021, Introduced by Reps. Allor, O'Malley, Borton, Roth, Markkanen, Yaroeh, Wozniak, Brixie, Aiyash, Kuppa, Tisdell and Haadsma and referred to the Committee on Insurance.

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

1 member of a fully paid public fire authority employed and
2 compensated ~~upon~~ **on** a full-time basis; a county sheriff and the
3 deputies of the county sheriff; a member of the state police; a
4 conservation officer; or an officer of the motor carrier
5 enforcement division of the department of state police, "personal
6 injury" includes respiratory and heart diseases, or illnesses
7 resulting therefrom, that develop or manifest themselves during a
8 period while the member of the department is in the active service
9 of the department and that result from the performance of duties
10 for the department.

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

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

29 (3) Respiratory and heart diseases or illnesses resulting

1 therefrom as described in subsection (1) are presumed to arise out
2 of and in the course of employment in the absence of evidence to
3 the contrary.

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

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

23 (6) The first responder presumed coverage fund is created as a
24 separate fund in the state treasury. The state treasurer may
25 receive money or other assets from any source for deposit into the
26 fund. The state treasurer shall direct the investment of the fund.
27 The state treasurer shall credit to the fund interest and earnings
28 from fund investments. The director ~~shall be~~**is** the administrator
29 of the fund for auditing purposes. The director shall expend money

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

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

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

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

25 (7) The director shall develop the application, approval, and
26 compliance process necessary to operate and manage the **first**
27 **responder presumed coverage** fund. The director shall develop and
28 implement the use of an application form to be used by a claimant
29 for benefits payable by the fund under subsection (2). When a claim

1 under subsection (2) is received, the director shall notify the
2 employer against whom a claim is suspended or the carrier. The
3 employer or carrier may access all information the agency receives
4 respecting the claim and may request that the agency obtain
5 specific additional information. The fund standards, guidelines,
6 templates, and any other forms used by the director to implement
7 the first responder presumed coverage fund ~~shall~~**must** be posted and
8 maintained on the department's website. The director shall review
9 and consider claims in the order in which they are received and
10 shall approve or deny a claim within 30 days after receipt of the
11 claim.

12 (8) The director 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 claims received under the first
18 responder presumed coverage fund in the immediately preceding
19 calendar year.

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

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

25 ~~(9) The department shall not implement the first responder~~
26 ~~presumed coverage fund until the legislature has appropriated money~~
27 ~~to the fund.~~

28 **(9)** ~~(10)~~ By March 31 of each year, the worker's compensation
29 agency shall report to the chairs of the appropriations committees

1 of the senate and the house of representatives the estimated amount
2 of both of the following:

3 (a) The anticipated cost of benefits in the next fiscal year
4 for claims authorized under subsection (2) and payable by the first
5 responder presumed coverage fund.

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

9 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
10 same rights under this act as an employer or carrier.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.