

HOUSE BILL No. 5687

December 10, 2009, Introduced by Reps. Sheltroun, Terry Brown, Neumann and Mayes and referred to the Committee on 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:

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; ~~or~~**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; ~~or~~**A conservation officers, and OFFICER; OR AN OFFICER**

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

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

20 (3) ~~(2) Such respiratory~~ RESPIRATORY and heart diseases ~~or~~ AND
 21 illnesses resulting therefrom UNDER SUBSECTION (1), AND RESPIRATORY
 22 TRACT, BLADDER, SKIN, BRAIN, KIDNEY, BLOOD, AND LYMPHATIC CANCERS
 23 UNDER SUBSECTION (2), are ~~deemed~~ PRESUMED to arise out of and in
 24 the course of employment in the absence of AFFIRMATIVE evidence ~~to~~
 25 ~~the contrary~~ OF NON-WORK-RELATED CAUSATION OR SPECIFIC INCIDENTS
 26 THAT ESTABLISH A CAUSE INDEPENDENT OF THE EMPLOYMENT. NEITHER MERE
 27 EVIDENCE THAT THE CONDITION WAS PREEXISTING, NOR AN ABSTRACT

1 MEDICAL OPINION THAT THE EMPLOYMENT WAS NOT THE CAUSE OF THE
2 DISEASE OR CONDITION, IS SUFFICIENT TO OVERCOME THE PRESUMPTION.
3 RESPIRATORY TRACT, BLADDER, SKIN, BRAIN, KIDNEY, BLOOD, AND
4 LYMPHATIC CANCERS OF A MEMBER OF A FIRE DEPARTMENT OR PUBLIC FIRE
5 AUTHORITY MAY BE SHOWN NOT TO ARISE OUT OF AND IN THE COURSE OF
6 EMPLOYMENT IF SCIENTIFIC EVIDENCE IS INTRODUCED THAT THE MEMBER WAS
7 A SUBSTANTIAL AND CONSISTENT USER OF CIGARETTES OR OTHER TOBACCO
8 PRODUCTS WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF
9 INJURY, AND THAT THIS USE WAS A SIGNIFICANT FACTOR IN THE CAUSE,
10 AGGRAVATION, OR PROGRESSION OF THE CANCER.

11 (4) ~~(3)~~—As a condition precedent to filing an application for
12 benefits, the claimant, if he or she is ~~one of those enumerated~~ **A**
13 **PERSON DESCRIBED** in subsection (1) **OR (2)**, shall first make
14 application for ~~—~~and do all things necessary to qualify for any
15 pension benefits **TO** which he or she, or his or her decedent, may be
16 entitled ~~to~~ **OR SHALL DEMONSTRATE THAT HE OR SHE, OR HIS OR HER**
17 **DECEDENT, IS INELIGIBLE FOR ANY PENSION BENEFITS.** If a final
18 determination is made that pension benefits shall not be awarded **OR**
19 **THAT THE CLAIMANT OR HIS OR HER DECEDENT IS INELIGIBLE FOR ANY**
20 **PENSION BENEFITS,** then the presumption of "personal injury" as
21 provided in this section shall apply. The employer or employee may
22 request 2 copies of the determination denying pension benefits, 1
23 copy of which may be filed with the ~~bureau~~ **WORKERS' COMPENSATION**
24 **AGENCY.**

25 (5) **IF AN EMPLOYEE DESCRIBED IN SUBSECTION (1) OR (2) IS**
26 **ELIGIBLE FOR ANY PENSION BENEFITS, THAT ELIGIBILITY SHALL NOT**
27 **PROHIBIT THE EMPLOYEE OR DEPENDENTS OF THAT EMPLOYEE FROM RECEIVING**

1 BENEFITS UNDER SECTION 315 FOR THE MEDICAL EXPENSES OR PORTION OF
2 MEDICAL EXPENSES THAT ARE NOT PROVIDED FOR BY THE PENSION PROGRAM.
3 THE PRESUMPTION IN SUBSECTION (3) SHALL APPLY TO THE MEDICAL
4 BENEFITS PROVIDED UNDER SECTION 315.