

HOUSE BILL No. 5089

October 11, 2017, Introduced by Reps. Brinks, Sabo, Elder, Sneller, Schor, Gay-Dagnogo, Yanez, Durhal, Sowerby, Hoadley, Wittenberg, Hammoud, LaGrand, Lucido, Pagan, Zemke, Greimel, Hertel and Jones 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
6 member of a fully paid public fire authority employed and
7 compensated ~~upon~~ **ON** a full-time basis; a county sheriff and the
8 deputies of the county sheriff; a member of the state police; a
9 conservation officer; or an officer of the motor carrier
10 enforcement division of the department of state police, "personal

1 injury" includes respiratory and heart diseases, or illnesses
2 resulting ~~therefrom~~, **FROM RESPIRATORY AND HEART DISEASES**, that
3 develop or manifest themselves during a period while the member of
4 the department is in the active service of the department and that
5 result from the performance of duties for the department.

6 (2) A member of a fully paid fire department or public fire
7 authority who is in active service of the fire department or public
8 fire authority, has been employed 60 months or more in the active
9 service of the department or public fire authority at the time the
10 cancer manifests itself, and is exposed to the hazards incidental
11 to fire suppression, rescue, or emergency medical services in the
12 performance of his or her work-related duties with the department
13 or authority shall suspend a claim against his or her employer
14 under this act and may claim like benefits from the first responder
15 presumed coverage fund created under subsection (6) for any
16 respiratory tract, bladder, skin, brain, kidney, blood, thyroid,
17 testicular, prostate, **BREAST**, or lymphatic cancer. The cancers
18 described in this subsection are presumed to arise out of and in
19 the course of employment only with respect to a claim against the
20 fund and in the absence of non-work-related causation or specific
21 incidents that establish a cause independent of the employment.
22 Neither mere evidence that the condition was preexisting, nor an
23 abstract medical opinion that the employment was not the cause of
24 the disease or condition, is sufficient to overcome the presumption
25 for purposes of a claim against the first responder presumed
26 coverage fund. The presumption under this subsection may be
27 rebutted by scientific evidence that the member of the fully paid

1 fire department or public fire authority was a substantial and
2 consistent user of cigarettes or other tobacco products within the
3 10 years immediately preceding the date of injury, and that this
4 use was a significant factor in the cause, aggravation, or
5 progression of the cancer. The suspension of the member's claim
6 against his or her employer under this subsection is in effect only
7 during the period the member receives like benefits from the first
8 responder presumed coverage fund. If a redemption agreement between
9 the first responder presumed coverage fund and the claimant is
10 approved, the suspension of a claim against an employer under this
11 subsection continues indefinitely. A claimant may not receive
12 benefits covering the same time period from both the first
13 responder presumed coverage fund and the employer. The presumption
14 created in this subsection applies only to a claim for like
15 benefits against the first responder presumed coverage fund.

16 (3) Respiratory and heart diseases or illnesses resulting
17 ~~therefrom~~ **FROM RESPIRATORY AND HEART DISEASES** as described in
18 subsection (1) are presumed to arise out of and in the course of
19 employment in the absence of evidence to the contrary.

20 (4) As a condition precedent to filing an application for
21 benefits, a claimant described in subsection (1) or a claimant
22 under subsection (2) shall first apply for and do all things
23 necessary to qualify for any pension benefits to which he or she,
24 or his or her decedent, may be entitled or shall demonstrate that
25 he or she, or his or her decedent, is ineligible for any pension
26 benefits. If a final determination is made that pension benefits
27 ~~shall~~ **MUST** not be awarded or that the claimant or his or her

1 decedent is ineligible for any pension benefits, ~~then~~ the
2 ~~presumption~~-**DESIGNATION** of "personal injury" as provided in
3 subsection (1) or the presumption under subsection (2) applies. The
4 employer or employee may request 2 copies of the determination
5 denying pension benefits, 1 copy of which ~~shall~~-**MUST** be filed with
6 the workers' compensation agency ~~upon~~-**ON** request.

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

12 (6) The first responder presumed coverage fund is created as a
13 separate fund in the state treasury. The state treasurer may
14 receive money or other assets from any source for deposit into the
15 fund. The state treasurer shall direct the investment of the fund.
16 The state treasurer shall credit to the fund interest and earnings
17 from fund investments. The director ~~shall be~~-**IS** the administrator
18 of the fund for auditing purposes. The director shall expend money
19 from the fund only for the purpose of paying claims authorized
20 under subsection (2) and costs of administration. The department of
21 treasury shall cause to be paid from the first responder presumed
22 coverage fund those amounts and at those times as are prescribed by
23 the director to pay claims under subsection (2) ~~pursuant to~~-**UNDER**
24 this subsection and subsection (7). Money in the fund at the close
25 of the fiscal year ~~shall~~-**MUST** remain in the fund and ~~shall~~-**MUST** not
26 lapse to the general fund. If there is insufficient money in the
27 fund to pay claims authorized under subsection (2), claims that are

1 approved but not paid ~~shall~~**MUST** be paid if fund revenues become
2 available, and those claims ~~shall~~**MUST** be paid before subsequently
3 approved claims. The director shall develop and implement a process
4 to notify the legislature that money in the first responder
5 presumed coverage fund may be insufficient to cover future claims
6 when the director reasonably believes that within 60 days the money
7 in the fund will be insufficient to pay claims. The process ~~shall~~,
8 **MUST**, at a minimum, do all of the following:

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

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

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

16 (7) The director shall develop the application, approval, and
17 compliance process necessary to operate and manage the **FIRST**
18 **RESPONDER PRESUMED COVERAGE** fund. The director shall develop and
19 implement the use of an application form to be used by a claimant
20 for benefits payable by the fund under subsection (2). When a claim
21 under subsection (2) is received, the director shall notify the
22 employer against whom a claim is suspended or the carrier. The
23 employer or carrier may access all information the agency receives
24 respecting the claim and may request that the agency obtain
25 specific additional information. The fund standards, guidelines,
26 templates, and any other forms used by the director to implement
27 the first responder presumed coverage fund ~~shall~~**MUST** be posted and

1 maintained on the department's website. The director shall review
2 and consider claims in the order in which they are received and
3 shall approve or deny a claim within 30 days after receipt of the
4 claim.

5 (8) The director shall submit an annual report to the state
6 budget director and the senate and house of representatives
7 standing committees on appropriations not later than April 1 of
8 each year that includes, but is not limited to, all of the
9 following:

10 (a) The total number of claims received under the first
11 responder presumed coverage fund in the immediately preceding
12 calendar year.

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

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

18 ~~— (9) The department shall not implement the first responder~~
19 ~~presumed coverage fund until the legislature has appropriated money~~
20 ~~to the fund.~~

21 (9) ~~(10)~~ By March 31 of each year, the worker's compensation
22 agency shall report to the chairs of the appropriations committees
23 of the senate and the house of representatives the estimated amount
24 of both of the following:

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

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

4 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
5 same rights under this act as an employer or carrier.

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