

HOUSE BILL NO. 5758

April 30, 2020, Introduced by Rep. Pohutsky and referred to the Committee on Commerce and Tourism.

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



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

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



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

18 (3) Respiratory and heart diseases or illnesses resulting
 19 therefrom as described in subsection (1) **and personal injuries**
 20 **described in subsection (11)** are presumed to arise out of and in
 21 the course of employment in the absence of evidence to the
 22 contrary.

23 (4) As a condition precedent to filing an application for
 24 benefits, a claimant described in subsection (1) **or (11)** or a
 25 claimant under subsection (2) ~~shall~~**must** first apply for and do all
 26 things necessary to qualify for any pension benefits to which he or
 27 she, or his or her decedent, may be entitled or ~~shall~~**must**
 28 demonstrate that he or she, or his or her decedent, is ineligible
 29 for any pension benefits. If a final determination is made that



1 pension benefits ~~shall~~**will** not be awarded or that the claimant or
 2 his or her decedent is ineligible for any pension benefits, then
 3 the ~~presumption~~**designation** of "personal injury" as provided in
 4 subsection (1) **or (11)** or the presumption under subsection (2)
 5 applies. The employer or employee may request 2 copies of the
 6 determination denying pension benefits, 1 copy of which ~~shall~~**must**
 7 be filed with the workers' compensation agency upon request.

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

14 (6) The first responder presumed coverage fund is created as a
 15 separate fund in the state treasury. The state treasurer may
 16 receive money or other assets from any source for deposit into the
 17 fund. The state treasurer shall direct the investment of the fund.
 18 The state treasurer shall credit to the fund interest and earnings
 19 from fund investments. The director shall be the administrator of
 20 the fund for auditing purposes. The director shall expend money
 21 from the fund only for the purpose of paying claims authorized
 22 under subsection (2) and costs of administration. The department of
 23 treasury shall cause to be paid from the first responder presumed
 24 coverage fund those amounts and at those times as are prescribed by
 25 the director to pay claims under subsection (2) pursuant to this
 26 subsection and subsection (7). Money in the fund at the close of
 27 the fiscal year ~~shall~~**must** remain in the fund and ~~shall~~**does** not
 28 lapse to the general fund. If there is insufficient money in the
 29 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
 28 maintained on the department's website. The director shall review
 29 and consider claims in the order in which they are received and



1 shall approve or deny a claim within 30 days after receipt of the
2 claim.

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

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

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

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

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

19 (9) ~~(10)~~ By March 31 of each year, the worker's compensation
20 agency shall report to the chairs of the appropriations committees
21 of the senate and the house of representatives the estimated amount
22 of both of the following:

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

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

29 (10) ~~(11)~~ The first responder presumed coverage fund has the



1 same rights under this act as an employer or carrier.

2 (11) For an essential worker, "personal injury" includes an
3 injury or illness resulting from the essential worker's exposure to
4 an infectious disease during an emergency declared by the governor.
5 As used in this subsection, "essential employee" means an
6 individual who is required to work during a state declared
7 emergency because he or she is considered necessary to sustain or
8 protect life or to conduct minimum operations during a time that
9 the state has ordered the closure of all businesses that are
10 considered nonessential.

11 (12) Subsection (11) applies to personal injuries that occur
12 on or after the effective date of Executive Order No. 2020-4.

