

Act No. 515  
Public Acts of 2014  
Approved by the Governor  
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January 14, 2015  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

Introduced by Senators Rocca, Hood, Jones, Nofs, Hopgood, Anderson and Bieda

# **ENROLLED SENATE BILL No. 211**

AN ACT to amend 1969 PA 317, entitled “An act to revise and consolidate the laws relating to worker’s disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker’s compensation system; to improve the qualifications of the persons having adjudicative functions within the worker’s compensation system; to prescribe certain powers and duties; to create the board of worker’s compensation magistrates and the worker’s compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts,” by amending section 405 (MCL 418.405), as amended by 1980 PA 457.

*The People of the State of Michigan enact:*

Sec. 405. (1) In the case of a member of a fully paid fire department of an airport operated by a county, public airport authority, or state university or college; a member of a fully paid fire or police department of a city, township, or incorporated village employed and compensated upon a full-time basis; a member of a fully paid public fire authority employed and compensated upon a full-time basis; a county sheriff and the deputies of the county sheriff; a member of the state police; a conservation officer; or an officer of the motor carrier enforcement division of the department of state police, “personal injury” includes respiratory and heart diseases, or illnesses resulting therefrom, that develop or manifest themselves during a period while the member of the department is in the active service of the department and that result from the performance of duties for the department.

(2) A member of a fully paid fire department or public fire authority who is in active service of the fire department or public fire authority, has been employed 60 months or more in the active service of the department or public fire authority at the time the cancer manifests itself, and is exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties with the department or authority shall suspend a claim against his or her employer under this act and may claim like benefits from the first responder presumed coverage fund created under subsection (6) for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic cancer. The cancers described in this subsection are presumed to arise out of and in the course of employment only with respect to a claim against the fund and in the absence of non-work-related causation or specific incidents that establish a cause independent of the employment. Neither mere evidence that the condition was preexisting, nor an abstract medical opinion that the employment was not the cause of the 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) Respiratory and heart diseases or illnesses resulting therefrom as described in subsection (1) are presumed to arise out of and in the course of employment in the absence of evidence to the contrary.

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

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

(6) The first responder presumed coverage fund is created as a separate fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The director shall be the administrator of the fund for auditing purposes. The director shall expend money from the fund only for the purpose of paying claims authorized under subsection (2) and costs of administration. The department of treasury shall cause to be paid from the first responder presumed coverage fund those amounts and at those times as are prescribed by the director to pay claims under subsection (2) pursuant to this subsection and subsection (7). Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. If there is insufficient money in the fund to pay claims authorized under subsection (2), claims that are approved but not paid shall be paid if fund revenues become available, and those claims shall be paid before subsequently approved claims. The director shall develop and implement a process to notify the legislature that money in the first responder presumed coverage fund may be insufficient to cover future claims when the director reasonably believes that within 60 days the money in the fund will be insufficient to pay claims. The process shall, at a minimum, do all of the following:

- (a) Identify a specific date by which the money in the fund will become insufficient to pay claims.
- (b) Outline a clear process indicating the order in which claims pending with the fund will be paid.
- (c) Outline a clear process indicating the order in which claims that were pending with the fund when money became insufficient will be paid, if money subsequently becomes available.

(7) The director shall develop the application, approval, and compliance process necessary to operate and manage the fund. The director shall develop and implement the use of an application form to be used by a claimant for benefits payable by the fund under subsection (2). When a claim under subsection (2) is received, the director shall notify the employer against whom a claim is suspended or the carrier. The employer or carrier may access all information the agency receives respecting the claim and may request that the agency obtain specific additional information. The fund standards, guidelines, templates, and any other forms used by the director to implement the first responder presumed coverage fund shall be posted and maintained on the department's website. The director shall review and consider claims in the order in which they are received and shall approve or deny a claim within 30 days after receipt of the claim.

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

- (a) The total number of claims received under the first responder presumed coverage fund in the immediately preceding calendar year.
- (b) The number of claims approved and the total dollar amount of claims paid by the first responder presumed coverage fund in the immediately preceding calendar year.
- (c) The costs of administering the first responder presumed coverage fund in the immediately preceding calendar year.
- (9) The department shall not implement the first responder presumed coverage fund until the legislature has appropriated money to the fund.

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

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

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor