

# HOUSE BILL No. 5927

September 22, 2016, Introduced by Reps. Brinks, Love, Wittenberg, Gay-Dagnogo, Durhal, Darany, Hovey-Wright, Cochran, Yanez, Greig, Moss, Liberati, Pagan, Rutledge, Chang, Price, Phelps, Chirkun, Smiley, Singh, Yonker and Faris 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 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 a full-time basis; a member  
6 of a fully paid public fire authority employed and compensated upon  
7 a full-time basis; a county sheriff and the deputies of the county  
8 sheriff; a member of the state police; a conservation officer; or  
9 an officer of the motor carrier enforcement division of the  
10 department of state police, "personal injury" includes respiratory

1 and heart diseases, or illnesses resulting therefrom, that develop  
2 or manifest themselves during a period while the member of the  
3 department is in the active service of the department and that  
4 result from the performance of duties for the department.

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

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

15 (3) Respiratory and heart diseases or illnesses resulting  
16 therefrom as described in subsection (1) are presumed to arise out  
17 of and in the course of employment in the absence of evidence to  
18 the contrary.

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

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

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

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

1 those claims shall be paid before subsequently approved claims. The  
2 director shall develop and implement a process to notify the  
3 legislature that money in the first responder presumed coverage  
4 fund may be insufficient to cover future claims when the director  
5 reasonably believes that within 60 days the money in the fund will  
6 be insufficient to pay claims. The process shall, at a minimum, do  
7 all of the following:

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

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

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

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

1 and consider claims in the order in which they are received and  
2 shall approve or deny a claim within 30 days after receipt of the  
3 claim.

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

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

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

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

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

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

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

27 (b) The amount of any anticipated shortfall in the first

1 responder presumed coverage fund that would prevent payment of  
2 claims under subsection (6) for the current fiscal year.

3       **(10)** ~~(11)~~—The first responder presumed coverage fund has the  
4 same rights under this act as an employer or carrier.

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