

HOUSE BILL No. 5296

November 30, 2017, Introduced by Reps. Yaroch, Lucido, Hertel, Sabo, Cochran, Yanez, Green, Sowerby, Chang and Brann 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 FULL-TIME, PART-TIME, PAID**
2 **ON-CALL, OR VOLUNTEER** member of a ~~fully paid~~ fire department of an
3 airport operated by a county, public airport authority, or state
4 university or college; a **FULL-TIME, PART-TIME, PAID ON-CALL, OR**
5 **VOLUNTEER** member of a ~~fully paid~~ fire or police department of a
6 city, township, or ~~incorporated village; employed and compensated~~
7 ~~upon a full-time basis;~~ a **FULL-TIME, PART-TIME, PAID ON-CALL, OR**
8 **VOLUNTEER** member of a ~~fully paid~~ public fire authority; ~~employed~~

1 ~~and compensated upon 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 **FULL-TIME, PART-TIME, PAID ON-CALL, OR VOLUNTEER** member
11 of a ~~fully paid~~ fire department or public fire authority who is in
12 active service of the fire department or public fire authority, has
13 ~~been employed 60 months or more in the active service of~~ **IN** the
14 department or public fire authority at the time the cancer
15 manifests itself, and is exposed to the hazards incidental to fire
16 suppression, rescue, or emergency medical services in the
17 performance of his or her work-related duties with the department
18 or authority shall suspend a claim **HE OR SHE MAY HAVE** against his
19 or her employer under this act and may claim like benefits from the
20 first responder presumed coverage fund created under subsection (6)
21 for any respiratory tract, bladder, skin, brain, kidney, blood,
22 thyroid, testicular, prostate, or lymphatic cancer. The cancers
23 described in this subsection are presumed to arise out of and in
24 the course of employment only with respect to a claim against the
25 fund and in the absence of non-work-related causation or specific
26 incidents that establish a cause independent of the employment.
27 Neither mere evidence that the condition was preexisting, nor an

1 abstract medical opinion that the employment was not the cause of
2 the disease or condition, is sufficient to overcome the presumption
3 for purposes of a claim against the first responder presumed
4 coverage fund. The presumption under this subsection may be
5 rebutted by scientific evidence that the member of the ~~fully-paid~~
6 fire department or public fire authority was a substantial and
7 consistent user of cigarettes or other tobacco products within the
8 10 years immediately preceding the date of injury, and that this
9 use was a significant factor in the cause, aggravation, or
10 progression of the cancer. The suspension of the member's claim
11 against his or her employer under this subsection is in effect only
12 during the period the member receives like benefits from the first
13 responder presumed coverage fund. If a redemption agreement between
14 the first responder presumed coverage fund and the claimant is
15 approved, the suspension of a claim against an employer under this
16 subsection continues indefinitely. A claimant may not receive
17 benefits covering the same time period from both the first
18 responder presumed coverage fund and the employer. The presumption
19 created in this subsection applies only to a claim for like
20 benefits against the first responder presumed coverage fund. **FOR**
21 **PURPOSES OF A CLAIM AGAINST THE PRESUMED COVERAGE FUND, A FIRE**
22 **DEPARTMENT OR PUBLIC FIRE AUTHORITY IS CONSIDERED THE EMPLOYER OF A**
23 **VOLUNTEER MEMBER.**

24 (3) Respiratory and heart diseases or illnesses resulting
25 therefrom as described in subsection (1) are presumed to arise out
26 of and in the course of employment in the absence of evidence to
27 the contrary.

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

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

20 (6) The first responder presumed coverage fund is created as a
21 separate fund in the state treasury. The state treasurer may
22 receive money or other assets from any source for deposit into the
23 fund. The state treasurer shall direct the investment of the fund.
24 The state treasurer shall credit to the fund interest and earnings
25 from fund investments. The director shall be the administrator of
26 the fund for auditing purposes. The director shall expend money
27 from the fund only for the purpose of paying claims authorized

1 under subsection (2) and costs of administration. The department of
2 treasury shall cause to be paid from the first responder presumed
3 coverage fund those amounts and at those times as are prescribed by
4 the director to pay claims under subsection (2) pursuant to this
5 subsection and subsection (7). Money in the fund at the close of
6 the fiscal year ~~shall~~**MUST** remain in the fund and ~~shall~~**DOES** not
7 lapse to the general fund. If there is insufficient money in the
8 fund to pay claims authorized under subsection (2), claims that are
9 approved but not paid ~~shall~~**MUST** be paid if fund revenues become
10 available, and those claims ~~shall~~**MUST** be paid before subsequently
11 approved claims. The director shall develop and implement a process
12 to notify the legislature that money in the first responder
13 presumed coverage fund may be insufficient to cover future claims
14 when the director reasonably believes that within 60 days the money
15 in the fund will be insufficient to pay claims. The process shall,
16 at a minimum, do all of the following:

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

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

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

24 (7) The director shall develop the application, approval, and
25 compliance process necessary to operate and manage the **FIRST**
26 **RESPONDER PRESUMED COVERAGE** fund. The director shall develop and
27 implement the use of an application form to be used by a claimant

1 for benefits payable by the fund under subsection (2). When a claim
2 under subsection (2) is received, the director shall notify the
3 employer against whom a claim is suspended or the carrier. The
4 employer or carrier may access all information the agency receives
5 respecting the claim and may request that the agency obtain
6 specific additional information. The fund standards, guidelines,
7 templates, and any other forms used by the director to implement
8 the first responder presumed coverage fund ~~shall~~ **MUST** be posted and
9 maintained on the department's website. The director shall review
10 and consider claims in the order in which they are received and
11 shall approve or deny a claim within 30 days after receipt of the
12 claim.

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

18 (a) The total number of claims received under the first
19 responder presumed coverage fund in the immediately preceding
20 calendar year.

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

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

26 ~~—— (9) The department shall not implement the first responder~~
27 ~~presumed coverage fund until the legislature has appropriated money~~

1 ~~to the fund.~~

2 **(9)** ~~(10)~~—By March 31 of each year, the worker's compensation
3 agency shall report to the chairs of the appropriations committees
4 of the senate and the house of representatives the estimated amount
5 of both of the following:

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

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

12 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
13 same rights under this act as an employer or carrier.

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