

HOUSE BILL No. 6188

June 12, 2018, Introduced by Reps. Allor, Yaroeh, Cochran and Sabo 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, that develop or manifest themselves during a
3 period while the member of the department is in the active service
4 of the department and that result from the performance of duties
5 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~~ **IN** the department or public fire authority at the time
10 the cancer manifests itself, and is exposed to the hazards
11 incidental to fire suppression, rescue, or emergency medical
12 services in the performance of his or her work-related duties with
13 the department or authority shall suspend a claim **HE OR SHE MAY**
14 **HAVE** against his or her employer under this act and may claim like
15 benefits from the first responder presumed coverage fund created
16 under subsection (6) for any respiratory tract, bladder, skin,
17 brain, kidney, blood, thyroid, testicular, prostate, or lymphatic
18 cancer. **A FOREST FIRE OFFICER OR FIRE/CRASH RESCUE OFFICER WHO IS**
19 **IN ACTIVE SERVICE, HAS 60 MONTHS OR MORE IN ACTIVE SERVICE AT THE**
20 **TIME THE CANCER MANIFESTS ITSELF, AND IS EXPOSED TO THE HAZARDS**
21 **INCIDENTAL TO FIRE SUPPRESSION, RESCUE, OR EMERGENCY MEDICAL**
22 **SERVICES IN THE PERFORMANCE OF HIS OR HER WORK-RELATED DUTIES SHALL**
23 **SUSPEND A CLAIM HE OR SHE MAY HAVE AGAINST HIS OR HER EMPLOYER**
24 **UNDER THIS ACT AND MAY CLAIM LIKE BENEFITS FROM THE FIRST RESPONDER**
25 **PRESUMED COVERAGE FUND CREATED UNDER SUBSECTION (6) FOR ANY**
26 **RESPIRATORY TRACT, BLADDER, SKIN, BRAIN, KIDNEY, BLOOD, THYROID,**
27 **TESTICULAR, PROSTATE, OR LYMPHATIC CANCER.** The cancers described in

1 this subsection are presumed to arise out of and in the course of
2 employment only with respect to a claim against the fund and in the
3 absence of non-work-related causation or specific incidents that
4 establish a cause independent of the employment. Neither mere
5 evidence that the condition was preexisting, nor an abstract
6 medical opinion that the employment was not the cause of the
7 disease or condition, is sufficient to overcome the presumption for
8 purposes of a claim against the first responder presumed coverage
9 fund. The presumption under this subsection may be rebutted by
10 scientific evidence that the member of the ~~fully paid~~ fire
11 department or public fire authority was a substantial and
12 consistent user of cigarettes or other tobacco products within the
13 10 years immediately preceding the date of injury, and that this
14 use was a significant factor in the cause, aggravation, or
15 progression of the cancer. The suspension of the member's claim
16 against his or her employer under this subsection is in effect only
17 during the period the member receives like benefits from the first
18 responder presumed coverage fund. If a redemption agreement between
19 the first responder presumed coverage fund and the claimant is
20 approved, the suspension of a claim against an employer under this
21 subsection continues indefinitely. A claimant may not receive
22 benefits covering the same time period from both the first
23 responder presumed coverage fund and the employer. The presumption
24 created in this subsection applies only to a claim for like
25 benefits against the first responder presumed coverage fund.

26 (3) Respiratory and heart diseases or illnesses resulting
27 therefrom as described in subsection (1) are presumed to arise out

1 of and in the course of employment in the absence of evidence to
2 the contrary.

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

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

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

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

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

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

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

26 (7) The director shall develop the application, approval, and
27 compliance process necessary to operate and manage the **FIRST**

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

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

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

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

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

1 ~~— (9) The department shall not implement the first responder~~
2 ~~presumed coverage fund until the legislature has appropriated money~~
3 ~~to the fund.~~

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

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

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

14 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
15 same rights under this act as an employer or carrier.

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