

HOUSE BILL NO. 4172

February 09, 2021, Introduced by Reps. Yaroch, Allor, O'Malley, Wozniak, Brixie, Aiyash, Hertel, Hood, Breen, Haadsma, Tisdell, Tate, Sabo, Borton and Markkanen 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 a full-time basis; a member

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

10 (2) A **full-time member, or, beginning January 1, 2022, a full-**
 11 **time, part-time, paid on-call, or volunteer** member, of a ~~fully paid~~
 12 fire department or public fire authority, **or, beginning January 1,**
 13 **2022, a retiree** who ~~is in active service of the~~ **was a full-time,**
 14 **part-time, paid on-call, or volunteer member of a** fire department
 15 or public fire authority, ~~who has been employed or had~~ 60 months or
 16 more ~~in the active service of~~ **in** the department or public fire
 17 authority at the time the cancer manifests itself, and **who is or**
 18 **was** exposed to the hazards incidental to fire suppression, rescue,
 19 or emergency medical services in the performance of his or her
 20 work-related duties with the department or authority shall suspend
 21 a claim **he or she may have** against his or her employer under this
 22 act and may claim like benefits from the **Christopher R. Slezak**
 23 first responder presumed coverage fund created under subsection (6)
 24 for any respiratory tract, bladder, skin, brain, kidney, blood,
 25 thyroid, testicular, prostate, ~~or~~ lymphatic, **ovarian, or breast**
 26 cancer. The cancers described in this subsection are presumed to
 27 arise out of and in the course of employment only with respect to a
 28 claim against the fund and in the absence of non-work-related
 29 causation or specific incidents that establish a cause independent

1 of the employment. Neither mere evidence that the condition was
2 preexisting, nor an abstract medical opinion that the employment
3 was not the cause of the disease or condition, is sufficient to
4 overcome the presumption for purposes of a claim against the
5 **Christopher R. Slezak** first responder presumed coverage fund. The
6 presumption under this subsection may be rebutted by scientific
7 evidence that the member **or retiree** of the ~~fully paid~~ fire
8 department or public fire authority was a substantial and
9 consistent user of cigarettes or other tobacco products within the
10 10 years immediately preceding the date of injury, and that this
11 use was a significant factor in the cause, aggravation, or
12 progression of the cancer. The suspension of the member's **or**
13 **retiree's** claim against his or her employer under this subsection
14 is in effect only during the period the member receives like
15 benefits from the **Christopher R. Slezak** first responder presumed
16 coverage fund. If a redemption agreement between the **Christopher R.**
17 **Slezak** first responder presumed coverage fund and the claimant is
18 approved, the suspension of a claim against an employer under this
19 subsection continues indefinitely. A claimant may not receive
20 benefits covering the same time period from both the **Christopher R.**
21 **Slezak** first responder presumed coverage fund and the employer. The
22 presumption created in this subsection applies only to a claim for
23 like benefits against the **Christopher R. Slezak** first responder
24 presumed coverage fund. **For purposes of a claim against the**
25 **Christopher R. Slezak first responder presumed coverage fund**
26 **created under subsection (6), a fire department or public fire**
27 **authority is considered the employer of a volunteer member. If a**
28 **member or retiree of a fire department or public fire authority is**
29 **eligible for the federal Medicare program established under title**

1 XVIII of the social security act, 42 USC 1395 to 1395111, that
 2 member or retiree may not receive medical benefit or medical
 3 expense payments from the Christopher R. Slezak first responder
 4 presumed coverage fund as provided for in this section.

5 (3) Respiratory and heart diseases or illnesses resulting
 6 therefrom as described in subsection (1) are presumed to arise out
 7 of and in the course of employment in the absence of evidence to
 8 the contrary.

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

23 (5) If an employee described in subsection (1) or (2) **or a**
 24 **retiree described in subsection (2)** is eligible for any pension
 25 benefits, that eligibility does not prohibit the employee or
 26 dependents of that employee from receiving benefits under section
 27 315 for the medical expenses or portion of medical expenses that
 28 are not provided for by the pension program.

29 (6) The **Christopher R. Slezak** first responder presumed

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

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

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

29 (c) Outline a clear process indicating the order in which

1 claims that were pending with the fund when money became
2 insufficient will be paid, if money subsequently becomes available.

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

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

24 (a) The total number of claims received under the **Christopher**
25 **R. Slezak** first responder presumed coverage fund in the immediately
26 preceding calendar year.

27 (b) The number of claims approved and the total dollar amount
28 of claims paid by the **Christopher R. Slezak** first responder
29 presumed coverage fund in the immediately preceding calendar year.

1 (c) The costs of administering the **Christopher R. Slezak** first
2 responder presumed coverage fund in the immediately preceding
3 calendar year.

4 ~~(9) The department shall not implement the first responder~~
5 ~~presumed coverage fund until the legislature has appropriated money~~
6 ~~to the fund.~~

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

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

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

17 **(10)** ~~(11)~~ The **Christopher R. Slezak** first responder presumed
18 coverage fund has the same rights under this act as an employer or
19 carrier.

20 Enacting section 1. This amendatory act takes effect 180 days
21 after the date it is enacted into law.