

HOUSE BILL NO. 4063

January 17, 2019, Introduced by Reps. Yaroach, Shannon, Sabo, Ellison, Marino, Sowerby, Brixie, Hertel, Stone, Cherry, Hood, Berman, Howell, Cynthia Johnson, LaGrand, Kuppa, Elder, Vaupel, Brann and Allor 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**

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

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

1 incidents that establish a cause independent of the employment.
2 Neither mere evidence that the condition was preexisting, nor an
3 abstract medical opinion that the employment was not the cause of
4 the disease or condition, is sufficient to overcome the presumption
5 for purposes of a claim against the first responder presumed
6 coverage fund. The presumption under this subsection may be
7 rebutted by scientific evidence that the member of the ~~fully paid~~
8 fire 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 claim
13 against his or her employer under this subsection is in effect only
14 during the period the member receives like benefits from the first
15 responder presumed coverage fund. If a redemption agreement between
16 the first responder presumed coverage fund and the claimant is
17 approved, the suspension of a claim against an employer under this
18 subsection continues indefinitely. A claimant may not receive
19 benefits covering the same time period from both the first
20 responder presumed coverage fund and the employer. The presumption
21 created in this subsection applies only to a claim for like
22 benefits against the first responder presumed coverage fund. **For**
23 **purposes of a claim against the presumed coverage fund, a fire**
24 **department or public fire authority is considered the employer of a**
25 **volunteer member.**

26 (3) Respiratory and heart diseases or illnesses resulting
27 therefrom as described in subsection (1) are presumed to arise out
28 of and in the course of employment in the absence of evidence to
29 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~~**must** 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~~**will** not be awarded or that the claimant or his or her decedent is ineligible for any pension benefits, then the ~~presumption~~**designation** 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

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

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

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

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

22 (7) The director shall develop the application, approval, and
23 compliance process necessary to operate and manage the **first**
24 **responder presumed coverage** fund. The director shall develop and
25 implement the use of an application form to be used by a claimant
26 for benefits payable by the fund under subsection (2). When a claim
27 under subsection (2) is received, the director shall notify the
28 employer against whom a claim is suspended or the carrier. The
29 employer or carrier may access all information the agency receives

1 respecting the claim and may request that the agency obtain
2 specific additional information. The fund standards, guidelines,
3 templates, and any other forms used by the director to implement
4 the first responder presumed coverage fund ~~shall~~**must** be posted and
5 maintained on the department's website. The director shall review
6 and consider claims in the order in which they are received and
7 shall approve or deny a claim within 30 days after receipt of the
8 claim.

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

14 (a) The total number of claims received under the first
15 responder presumed coverage fund in the immediately preceding
16 calendar year.

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

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

22 ~~(9) The department shall not implement the first responder~~
23 ~~presumed coverage fund until the legislature has appropriated money~~
24 ~~to the fund.~~

25 (9) ~~(10)~~ By March 31 of each year, the worker's compensation
26 agency shall report to the chairs of the appropriations committees
27 of the senate and the house of representatives the estimated amount
28 of both of the following:

29 (a) The anticipated cost of benefits in the next fiscal year

1 for claims authorized under subsection (2) and payable by the first
2 responder presumed coverage fund.

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

6 **(10)** ~~(11)~~—The first responder presumed coverage fund has the
7 same rights under this act as an employer or carrier.

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