

HOUSE BILL NO. 4934

September 10, 2019, Introduced by Reps. Allor, Yaroch, Sabo, Rabhi and Hertel 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



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

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



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



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

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

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

24 (6) The first responder presumed coverage fund is created as a
25 separate fund in the state treasury. The state treasurer may
26 receive money or other assets from any source for deposit into the
27 fund. The state treasurer shall direct the investment of the fund.
28 The state treasurer shall credit to the fund interest and earnings
29 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 **must**, 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**
 28 **responder presumed coverage** fund. The director shall develop and
 29 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~~
28 ~~to the fund.~~

29 (9) ~~(10)~~By March 31 of each year, the worker's compensation



1 agency shall report to the chairs of the appropriations committees
2 of the senate and the house of representatives the estimated amount
3 of both of the following:

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

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

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

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

