

# HOUSE BILL REPORT

## SSB 6214

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### As Reported by House Committee On: Labor & Workplace Standards

**Title:** An act relating to industrial insurance coverage for posttraumatic stress disorders affecting law enforcement officers and firefighters.

**Brief Description:** Allowing industrial insurance coverage for posttraumatic stress disorders affecting law enforcement officers and firefighters.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, Hobbs, Keiser, Van De Wege, Palumbo, Hasegawa, Rolfes, Ranker, Mullet, Saldaña, Kuderer and Wellman).

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 2/15/18, 2/20/18 [DP].

#### **Brief Summary of Substitute Bill**

- Creates an exemption from the exclusion of claims based on mental conditions or disabilities caused by stress for posttraumatic stress disorders of certain firefighters and law enforcement officers.
- Creates a rebuttable presumption that posttraumatic stress disorder is an occupational disease for these firefighters and law enforcement officers.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Ranking Minority Member; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 1 member: Representative Manweller.

**Staff:** Joan Elgee (786-7106).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Under the state's industrial insurance laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. An "occupational disease" is one that arises naturally and proximately out of employment.

The law directs the Department of Labor and Industries (Department) to adopt a rule that claims based on mental conditions or mental disabilities caused by stress are excluded from occupational disease. The Department's rule provides examples of excluded conditions, including conditions or disabilities resulting from:

- relationships with supervisors, coworkers, or the public;
- work load pressures;
- fear of exposure to hazards; or
- objective or subjective stresses of employment.

In contrast, the rule provides that stress resulting from exposure to a single traumatic event, such as actual or threatened death, assault, or life-threatening injury, may constitute an industrial injury. The exposure may be from directly experiencing the event, witnessing it, or having extreme exposure to aversive details of the traumatic event. In addition, treatment may be authorized for mental health conditions caused or aggravated by an accepted condition.

The Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) provides payment of death, disability, and retirement benefits to law enforcement officers and firefighters. "Law enforcement officer" includes full-time commissioned county sheriffs, deputy sheriffs, and city police. "Firefighter" includes full-time city and county firefighters, city and county firefighter supervisory personnel, certain other firefighters, and specified full-time emergency medical technicians (EMTs) who provide emergency medical services.

For full-time city and county firefighters and city and county firefighter supervisory personnel who are members of the LEOFF and certain private sector firefighters, there are presumptions that certain medical conditions are occupational diseases. These conditions are: (1) respiratory disease; (2) heart problems; (3) specified cancers; and (4) infectious diseases. For cancers, the firefighter must have served at least 10 years before the cancer develops or manifests itself and received a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer.

The presumptions of occupational disease (presumption) may be rebutted by a preponderance of evidence, including: (1) use of tobacco products; (2) physical fitness and weight; (3) lifestyle; (4) hereditary factors; and (5) exposure from other employment or non-employment activities. In addition, the presumption does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use.

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### **Summary of Bill:**

An exemption is created to the requirement that the Department adopt rules excluding claims based on mental conditions or disabilities from occupational disease for posttraumatic stress disorders (PTSD). The exception applies to:

- those firefighters, both public and private, covered by the occupational disease presumptions;
- EMTs who are members of the LEOFF; and
- full-time commissioned county sheriffs, deputy sheriffs, and city police who are members of the LEOFF.

As a condition of the exemption, individuals hired after the effective date of the bill must submit to a psychological examination as a condition of employment, unless the employer does not provide an examination. A psychiatrist or psychologist licensed in the state must administer the examination and must rule out the presence of PTSD from pre-employment exposures. Posttraumatic stress disorder is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

An occupational disease presumption is established for PTSD for the same individuals covered by the exception to claims based on stress. The presumption applies only if the PTSD develops or manifests itself after the individual has served at least 10 years.

Posttraumatic stress disorder is a disorder that meets the diagnostic criteria for posttraumatic stress specified by the American Psychiatric Association in the Diagnostic and Statistics Manual of Mental Disorders, Fifth Edition, or in a later edition as adopted by the Department in rule.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available. New fiscal note requested on February 20, 2018.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) First responders are different from other people in that they are repeatedly exposed to trauma. The trauma they see cannot be unseen. Military members are exposed for 18 to 20 months while first responders may have 30-year careers. The stress limitation was enacted in 1988 and now there is a better understanding of psychological exposures. The *Diagnostic and Statistical Manual of Mental Disorders* recognizes that first responders are getting PTSD. Many first responders go to work with PTSD. Nationally, more police officers die by suicide than in gunfire and traffic accidents combined. Doing nothing will increase the use of sick leave and self-medication. There is a high likelihood of getting back to work if PTSD is treated. Proponents have been working with others. The bill is narrowly crafted to avoid abuse.

(Opposed) The work of first responders is valued. However, counties struggle to provide basic service levels and have very limited options to bring in revenue. Thirteen counties do not have 24/7 law enforcement coverage. There are multiple proposals before the Legislature that increase costs to counties. A worker can recover from a psychological issue stemming from an injury. The bill opens the gates to all mental health claims, which could bankrupt the system.

(Other) The coverage is supported but not the presumption. Posttraumatic stress disorder claims should be reviewed in the same way as other conditions. To enact a presumption there should be unequivocal medical evidence. Some studies show that PTSD is not occupational. The Legislature should not be dealing with scientific proof. It is desirable that people affected by PTSD reach out and get care, but the bill does not help them with this need. There is a stigma. If the psychological harm is part of an injury, a worker can recover.

**Persons Testifying:** (In support) Michael White, Washington State Council of Firefighters; and Bud Sizemore, Washington Council of Police and Sheriffs.

(Opposed) Bob Battles, Association of Washington Business; and Paul Jewell, Washington State Association of Counties.

(Other) Logan Bahr, Association of Washington Cities; and Christine Brewer, Washington Self Insured Association.

**Persons Signed In To Testify But Not Testifying:** None.