

# HOUSE BILL REPORT

## 2SSB 5454

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### As Reported by House Committee On:

Labor & Workplace Standards

Appropriations

**Title:** An act relating to industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

**Brief Description:** Concerning industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Cleveland, Robinson, King, Keiser, Van De Wege, Conway, Kuderer, Lias, Nguyen, Shewmake, Stanford and Valdez).

### Brief History:

#### Committee Activity:

Labor & Workplace Standards: 3/17/23, 3/24/23 [DPA];

Appropriations: 4/1/23, 4/4/23 [DPA(APP w/o LAWS)].

### Brief Summary of Second Substitute Bill

#### (As Amended By Committee)

- Creates a rebuttable presumption that post-traumatic stress disorder is an occupational disease under workers' compensation for direct care registered nurses.
- Provides that the presumption may be rebutted by a preponderance of the evidence.
- Limits application of the presumption to direct care nurses that have worked in Washington for 90 consecutive days prior to the occupational disease manifesting.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

**Staff:** Trudes Tango (786-7384).

**Background:**

Workers' Compensation Coverage for Mental Health Conditions.

Under the state's industrial insurance (workers' compensation) laws, administered by the Department of Labor and Industries (Department), 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 Department was required to adopt a rule establishing that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease. Examples in the rule of conditions caused by stress that do not fall within occupational disease include, among other things, those conditions and disabilities resulting from: (a) changes in employment duties; (b) conflicts with a supervisor or relationships with coworkers or the public; (c) work load pressures; (d) subjective perceptions of employment conditions or environment; and (e) fear of exposure to chemicals, radiation biohazards, or other perceived hazards.

Stress resulting from exposure to a single traumatic event, such as actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury, may be considered an industrial injury. The worker must have been exposed to the event either by: (1) directly experiencing the event; (2) witnessing, in person, the event as it occurred to others; or (3) extreme exposure to aversive details of the event. Repeated exposure to traumatic events, none of which are a single traumatic event, is not an industrial injury or an occupational disease. However, a single traumatic event that occurs within a series of exposures may be considered an industrial injury.

Presumption for Certain First Responders.

The Department's rule does not apply to occupational disease claims resulting from post-traumatic stress disorders (PTSD) of certain firefighters, law enforcement officers, and public safety telecommunicators who receive calls for assistance and dispatch emergency services (dispatchers). For those workers, there is a presumption that PTSD is an occupational disease if certain conditions are met. If the firefighter, law enforcement officer, or dispatcher was hired after a certain date, they must have submitted to a psychological examination that ruled out the presence of PTSD from preemployment exposures, if the employer provided such an examination. The firefighter, law enforcement

officer, or dispatcher must also have served for at least 10 years before the PTSD develops. The presumption may be rebutted by a preponderance of the evidence.

The presumption is extended following termination of service for a period of three calendar months for each year of service, but may not extend more than 60 months following the last date of employment.

The worker's PTSD is not considered an occupational disease if it is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

When a determination involving the presumption is appealed to the Board of Industrial Insurance Appeals (Board) or a court, and the final Board decision or court order allows the claim, the Board or the court must order the opposing party to pay reasonable costs and attorneys' fees to the claimant. When costs of the appeal must be paid by the Department in a state-fund case, the costs must be paid from the Accident Fund and charged to the costs of the claim.

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#### **Summary of Amended Bill:**

A rebuttable presumption that PTSD is an occupational disease is created for direct care registered nurses covered under the workers' compensation statutes who are employed on a fully compensated basis. A direct care registered nurse is an individual licensed in the state as a nurse providing direct care to patients.

The presumption may be rebutted by clear and convincing evidence. The presumption extends to the claimant for a period of three calendar months for each year the claimant was a direct care registered nurse employed on a fully compensated basis, but may not extend more than 60 months following the last date of employment.

The PTSD is not considered an occupational disease if it is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

When a determination involving the presumption is appealed to the Board or a court, and the final Board decision or court order allows the claim, the Board or the court must order the opposing party to pay reasonable costs and attorneys' fees to the claimant. When costs of the appeal must be paid by the Department in a state-fund case, the costs must be paid from the Accident Fund and charged to the costs of the claim.

#### **Amended Bill Compared to Second Substitute Bill:**

The striking amendment added the rebuttable presumption and provisions for costs on

appeal.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) Access to mental health care should be easy, and nurses should not have to fight their employer to receive treatment for trauma experienced on the job. Trauma in the workplace causes nurses to burn out and ultimately impacts patient safety. The presumption was removed from the bill in the Senate and it should be reinserted.

(Opposed) None.

**Persons Testifying:** Katharine Weiss, Washington State Nurses Association; and Lindsey Grad, Service Employees International Union 1199NW.

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

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**HOUSE COMMITTEE ON APPROPRIATIONS**

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Labor & Workplace Standards. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Sandlin, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** David Pringle (786-7310).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:**

The Appropriations Committee recommendation added a condition to only apply the

presumption of job-related occupational disease when the post-traumatic stress disorder (PTSD) develops after the direct care registered nurse has been employed on a fully compensated basis in Washington for at least 90 consecutive days.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) In recent years nurses have been asked to do a lot. Now the Legislature needs to step up and provide nurses with the mental health care that they need. Turnover in the nursing workforce is expensive. New nurses will see a bill like this and know that their health matters to policymakers. Trauma is part of nursing, but PTSD does not have to be. The societal cost of those suffering with nonmilitary PTSD is enormous. The afflicted nurses are at risk of becoming high-utilizing health care consumers themselves, if they continue to suffer from PTSD.

(Opposed) None.

(Other) The experience from the firefighters is that the cost of this is important. There were 250 claims from the firefighters costing \$108 million, and it is estimated that this bill could result in 450 claims based upon the projections in the fiscal note. The state contributes to this fund, and rates will increase by about 1 percent.

**Persons Testifying:** (In support) Melissa Johnson, Washington State Nurses Association; and Lindsey Grad, Service Employees International Union Healthcare 1199NW.

(Other) Bob Battles, Association of Washington Business.

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