~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 20, 2022

**H. 3939**

Introduced by Reps. Pope, Hyde, McCravy, McGarry, Bryant, Wheeler, Wooten, Hixon, B. Newton, Blackwell and Weeks

S. Printed 4/20/22--S.

Read the first time April 29, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3939) to amend Section 42‑1‑160, Code of Laws of South Carolina, 1976, relating to the definitions of “injury” and “personal injury” in workers’, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting therein the following:

/ SECTION 1. Chapter 9, Title 42 of the 1976 Code is amended by adding:

“Section 42-9-45. (A) As used in this section:

(1) ‘First responder’ means a law enforcement officer or firefighter employed by state or local government. A volunteer law enforcement officer or firefighter engaged by state or local government is also considered a first responder of the state or local government for the purposes of this section.

(2) ‘Significant traumatic experience or situation’ means one of the following events:

(a) witnessing a deceased minor or the death of a minor;

(b) witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

(c) participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(d) manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(e) seeing for oneself a decedent whose death involved grievous bodily harm;

(f) witnessing a death, including suicide, that involved grievous bodily harm;

(g) witnessing a homicide, regardless of whether the homicide was criminal or excusable, including murder; mass killing, which means the killing of three or more individuals in a single incident; voluntary manslaughter; involuntary manslaughter; and self‑defense;

(h) witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm;

(i) participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm;

(j) manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm; or

(k) using deadly force or being subjected to deadly force in the course of the first responder’s employment.

(3) ‘Witnessing’ means to see, hear, or smell for oneself.

(4) ‘Grievous bodily harm’ means serious bodily injury including fractured or dislocated bones, deep cuts, torn members of the body, serious damages to internal organs, and other severe bodily injuries.

(B) A first responder who sustains a stress or mental injury unaccompanied by a physical injury arising out of and in the course of his employment shall be concluded to have sustained injury by accident if:

(1) the employee is employed as a first responder and if the impairment causing the stress, mental injury, or mental illness is medically diagnosed as post-traumatic stress disorder, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, arising from the first responder’s involvement in a significanttraumatic experience or situation in the course and scope of his employment, without regard to whether the experience or situation was extraordinary or unusual in comparison to the normal working conditions of a first responder’s employment;

(2) the first responder is participating in and receiving clinical care through the South Carolina Law Enforcement Assistance Program (SCLEAP), the South Carolina First Responders Assistance and Support Team (SC FAST), or their successor programs. An injured worker who is receiving medical benefits under this section must exhaust the clinical care provided through SCLEAP, SC FAST, or their successor programs before he is entitled to medical care under Section 42-15-60; and

(3) there is an incapacity to work as determined by the treating physician.

(C) When the incapacity for work resulting from an injury under this section is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds of his average weekly wages, but not less than seventy-five dollars a week so long as this amount does not exceed his average weekly wages; if this amount does exceed his average weekly wages, the injured employee may not be paid, each week, less than his average weekly wages. The injured employee may not be paid more each week than the average weekly wage in this State for the preceding fiscal year. In no case may the period covered by the compensation exceed five hundred weeks except as provided in Section 42-9-10(C). An injured employee is not entitled to indemnity under Section 42-9-10 or Section 42-9-30, unless the incapacity for work resulting from an injury under this section is total incapacity to work.

(D) Stress or mental injuries arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer-employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(E) Stress, mental injuries, and mental illness alleged to have been aggravated by a work‑related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer or carrier;

(2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee's physician as causally related or connected to the injury or accident.”

SECTION 2. This act takes effect on January 1, 2023, and is applicable to injuries that occur on or after the effective date. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**A** **BILL**

TO AMEND SECTION 42‑1‑160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITIONS OF “INJURY” AND “PERSONAL INJURY” IN WORKERS’ COMPENSATION, SO AS TO EXEMPT INJURIES SUSTAINED BY LAW ENFORCEMENT IN THE LINE OF DUTY FROM CERTAIN LIMITATIONS ON CLAIMS FOR INJURY CAUSED BY STRESS, MENTAL INJURY, OR MENTAL ILLNESS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 42‑1‑160 of the 1976 Code is amended to read:

“Section 42‑1‑160. (A) ‘Injury’ and ‘personal injury’ mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In construing this section, an accident arising out of and in the course of employment includes employment of an employee of a municipality outside the corporate limits of the municipality when the employment was ordered by a duly authorized employee of the municipality.

(B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) that the employee’s employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

(C) The provisions of subsection (B)(1) do not apply, however, if an employee is employed as a first responder and if the stress, mental injury, or mental illness is medically diagnosed as an anxiety disorder, conduct disorder, depression, obsessive‑compulsive disorder, sleep‑wake disorder, or post‑traumatic stress disorder as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and arises from the first responder’s involvement in a significant traumatic experience or situation in the course and scope of his employment, without regard to whether the experience or situation was extraordinary or unusual in comparison to the normal working conditions of a first responder’s employment.

(D) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

~~(D)~~(E) Stress, mental injuries, and mental illness alleged to have been aggravated by a work‑related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician’s opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee’s physician as causally related or connected to the injury or accident.

~~(E)~~(F) In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, ‘medically complex cases’ means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x‑rays, or other similar diagnostic techniques.

~~(F)~~(G) The word ‘accident’ as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42‑1‑172 or an occupational disease pursuant to the provisions of Chapter 11 of this title.

~~(G)~~(H) As used in this section, ‘medical evidence’ means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

(I) As used in this section:

(1) ‘First responder’ means a law enforcement officer or firefighter employed by state or local government. A volunteer law enforcement officer or firefighter engaged by state or local government is also considered a first responder of the state or local government for the purposes of this section.

(2) ‘Significant traumatic experience or situation’ means one of the following events:

(a) witnessing a deceased minor or the death of a minor;

(b) witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

(c) participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(d) manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(e) seeing for oneself a decedent whose death involved grievous bodily harm;

(f) witnessing a death, including suicide, that involved grievous bodily harm;

(g) witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder; mass killing, which means the killing of three or more individuals in a single incident; voluntary manslaughter; involuntary manslaughter; and self‑defense;

(h) witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm;

(i) participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm;

(j) manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured with grievous bodily harm; or

(k) using deadly force or being subjected to deadly force in the course of the first responder’s employment.

(3) ‘Witnessing’ means to see, hear, or smell for oneself.

(4) ‘Grievous bodily harm’ means serious bodily injury including fractured or dislocated bones, deep cuts, torn members of the body, serious damages to internal organs, and other severe bodily injuries.

(J) A law enforcement officer who received benefits pursuant to subsection (B) and is later convicted of an unlawful killing while on duty must return the benefits to his employer or insurance carrier.”

SECTION 2. This act takes effect on July 1, 2021, and is applicable to injuries that occur on or after the effective date.

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