~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 29, 2015

**S. 429**

Introduced by Senators Thurmond, Rankin, Malloy, McElveen, Shealy, Davis, Hembree, Johnson, Coleman, Setzler, Kimpson, Sheheen, Cromer, Campsen and Allen

S. Printed 4/29/15--S.

Read the first time February 5, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 429) 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, etc., respectfully

**REPORT:**

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

Amend the committee amendment, as and if amended, page 2, by striking lines 10-16 and inserting:

/ “(C) The provisions of subsection (B)(1) do not apply, however, if the employee is employed as a first responder and the impairment causing the stress, mental injury, or mental illness is medically diagnosed as Post Traumatic Stress Disorder that arises from the first responder’s direct involvement in a significanttraumatic experience or situation, 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.” /

Amend the bill further, as and if amended, page 3, by striking line 23 and inserting:

/ SECTION 2. This act takes effect the fiscal year following the approval of the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

CHAUNCEY K. GREGORY ROSS TURNER

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The State Accident Fund indicates this bill would have an expenditure impact on the general fund, but an estimate could not be determined as the costs will depend upon the number of workers’ compensation claims filed in a given year. This bill is not expected to impact federal funds or other funds.

This bill would have a local expenditure impact on municipal and county governments of $1,950,000 to $5,475,000 in FY 2015-16 based on estimates from the Municipal Association and counties on increased premium costs and incurred claims expenses.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends Section 42-1-160 by modifying the requirements of first responders seeking workers’ compensation for personal injury caused by stress, mental injury, or mental illness.

**State Accident Fund**. The State Accident Fund reports this bill could increase claim costs and awards for state agencies and local governments. Although the agency reports that the increased costs could have a significant impact on the general fund, an estimate on the increase could not be determined as the additional costs will depend upon the number of workers’ compensation claims filed in a given year.

**Workers’ Compensation Commission**. The Workers’ Compensation Commission reports this bill will have no expenditure impact on the general fund, federal funds, or other funds.

**Local Expenditure**

The Revenue and Fiscal Affairs Office contacted the Municipal Association of South Carolina, the South Carolina Association of Counties, and thirteen county governments regarding the expenditure impact of this bill. We received responses from the Municipal Association, the South Carolina Association of Counties, and six county governments.

The Municipal Association reports the expenditure impact of this bill would be an estimated five percent to twenty percent in the cost of premiums for first responders. Based on data provided by the Municipal Association and prorating for a municipal impact statewide, we estimate an increase in municipal premiums for first responders of $950,000 at a five percent increase to $3,775,000 at a twenty percent increase in FY 2015-16.

The South Carolina Association of Counties did not release data on incurred claims costs or premiums on the counties affiliated with their insurance pool due to the proprietary nature of the data.

Our office received responses from Barnwell, Charleston, Chester, Florence, Lancaster and York Counties on the expenditure impact of this bill.

**Barnwell County**.Barnwell County reports this bill could increase incurred claims expenses by fifteen to twenty percent, which equates to additional expenses of $7,193 and $9,590, respectively.

**Charleston County**. Charleston County reports this bill could have a significant expenditure impact but could not place a dollar amount on the impact.

**Chester County**. Chester County reports this bill could increase incurred claims expenses by fifteen to twenty percent, which equates to additional expenses of $3,020 and $4,025, respectively.

**Florence County**. Florence County reports this bill could increase incurred claims expenses by fifteen to twenty percent, which equates to additional expenses of $25,000 and $35,000, respectively.

**Lancaster County**. Lancaster County reports this bill could increase incurred claims expenses by fifteen to twenty percent, which equates to additional expenses of $36,520 and $48,693, respectively.

**York County**. York County estimates this bill would have an expenditure impact of $40,000.

Based on information received from the responding counties and prorating for a county impact statewide, we estimate an increase in incurred claims expenses for first responders of $1,000,000 at a fifteen percent increase to $1,700,000 for a twenty percent increase in FY 2015-16.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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 PROVIDE A DEFINITION OF “FIRST RESPONDER” AND TO MODIFY THE REQUIREMENTS OF SUCH AN EMPLOYEE SEEKING WORKERS’ COMPENSATION FOR PERSONAL INJURY CAUSED BY STRESS, MENTAL INJURY, OR MENTAL ILLNESS, AND TO ADD MENTAL ILLNESS TO RELATED CONDITIONS THAT MAY BE COMPENSABLE IF RESULTING FROM A SIGNIFICANT TRAUMATIC EXPERIENCE.

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

SECTION 1. Section 42‑1‑160 of the 1976 Code, as last amended by Act 111 of 2007, is further 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 the employee is employed as a first responder and the impairment causing the stress, mental injury, or mental illness arises from the first responder’s direct involvement in, or subjection to, a significanttraumatic experience or situation, 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.

(~~C~~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, ‘first responder’ means a law enforcement officer, firefighter, emergency medical technician or paramedic employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or local government is also considered a first respondent of the state or local government for purposes of this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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