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Indicates New Matter

AMENDED

April 28, 2021

**H. 3939**

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

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Read the first time February 23, 2021.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This amended bill exempts first responders from having to establish by a preponderance of the evidence that the conditions leading to stress, mental injury, or mental illness stemmed from extraordinary or unusual relative to the normal conditions of employment for purposes of collecting workers’ compensation. The stress, mental injury, or mental illness must be medically diagnosed, as described in the most recent edition of Diagnostics and Statistical Manual of Mental Disorders published by the American Psychiatric Association, as one of the following:

 Anxiety disorder,

 Conduct disorder,

 Depression,

 Obsessive-compulsive disorder,

 Sleep-wake disorder, or

 Post-traumatic disorder

Currently, if a first responder’s stress, mental injury, or mental illness arise from normal working conditions, the first responder is not considered injured for purposes of collecting workers’ compensations. This amended bill will allow a first responder to qualify for injury-related workers’ compensation if the stress, mental injury, or mental illness arises from normal working conditions. This bill includes firefighters, volunteer firefighters, law enforcement officers, and volunteer law enforcement officers. This bill takes effect upon approval of the Governor.

**Workers’ Compensation Commission.** This bill does not materially alter the responsibilities of the agency. Therefore, this bill will have no expenditure impact on the Workers’ Compensation Commission.

**State Accident Fund.** This bill will result in an increase in the number of successful workers’ compensation claims triggering an increase in the cost of workers’ compensation insurance coverage. The amount of the increased cost will depend upon the number of newly successful workers’ compensation claims filed by first responders whose stress or mental illness stem from the normal conditions of their jobs.

SAF offers workers’ compensation insurance for state agencies. SAF anticipates this bill will result in an increase in the number of successful workers’ compensation claims filed. This will result in an increase in other funds expenditure for the SAF to cover these claims. The following is the number of first responders, as defined in the amended bill, covered through SAF:

 Firefighters: 1,396

 Volunteer Firefighters: 2,385

 Law Enforcement: 7,677

Any increase in other funds expenditures for SAF will be offset by an increase in workers’ compensation premiums. Those agencies that employ first responders will have an increase in insurance premiums due to this increase in coverage. As the increase in the compensable claims is unknown, the increase to premiums is undetermined. However, based on historical data SAF anticipates that this amended bill will result in only a two to three percent increase in premiums to most agencies with first responder employees, due to this bill. SAF stated that larger agencies would likely see a small increase in premiums, whereas smaller agencies and local governments would likely experience a larger impact as their smaller size makes it more difficult to absorb non-typical claim incidences. SAF noted that the cost associated with each claim depends on a number of factors, including the nature of the accident, medical history of the injured party, as well as the injured party’s salary and profession. Therefore, this bill will result in an increase in general fund, other funds, and/or federal funds expenditures for those agencies employing first responders to cover the increased cost of workers’ compensation insurance premiums beginning in FY 2021-22.

**State Revenue**

As discussed above, this bill will increase the number of compensable workers’ compensation claims, resulting in an increase in other funds expenditures for SAF to cover these new claims. However, RFA anticipates that any increase in expenditures will be offset by an increase in workers’ compensation insurance premiums. Therefore, this bill will result in an increase in other funds revenue for SAF beginning in FY 2021-22.

**Local Expenditure**

This amended bill will result in an increase in the cost of workers’ compensation insurance coverage, dependent upon the number of new workers’ compensation claims likely to be filed by first responders whose stress or mental illness stem from the normal conditions of their jobs. Those local entities that employ first responders may see an increase in insurance premiums due to this increase in coverage. The South Carolina Association of Counties (SCAC) provides locals with workers’ compensation insurance coverage through the South Carolina Counties Workers’ Compensation Trust (SCCWCT). SCAC estimates the number of first responders covered in the SCCWCT totals approximately 19,000, including EMS. Additionally, based on an initial review, SCAC anticipates this bill will result in a 15 to 20 percent increase to the Trust and a corresponding increase to premiums for locals that have first responders covered under their policies within SCCWCT. Current premiums vary dependent upon the number of persons covered and other factors.

Additionally, the Municipal Association of South Carolina (MASC) offers locals workers’ compensation coverage. MASC covers 130 of the 271 municipalities within the SC Municipal Insurance Trust (SCMIT). MASC estimates approximately 6,807 of the 18,000 covered lives within the SCMIT are first responders. SCMIT’s actuaries estimate that this bill will increase the cost to the Trust and a corresponding increase to premiums by 10 to 20 percent. The annual expense for the Trust varies annually, dependent upon the number of successful claims. SCMIT’s claims expense for 2019 and 2020 were $12,200,000 and $18,900,000, respectively. Using an average of $15,000,000, SCMIT estimated the potential expenditure increase may be between $1,500,000 and $3,000,000 annually, beginning in FY 2021-22. This increase will result in a corresponding total increase in premiums for the 130 municipalities to offset the expenditures to SCMIT. By dividing the estimated increase of $1,5000,000 to $3,000,000 by the 130 municipalities, the resulting average increase in premiums will be between $12,000 and $23,000 annually for each municipality. To estimate the potential impact of this bill, MASC’s analyst looked at similar bills from other states as a factor, among other resources. These states included: Florida, Idaho, Minnesota, and South Dakota. MASC emphasized that this potential impact is just an estimate. The actual impact will depend upon the number of newly compensable claims due to this bill, and the actual premium increase for each municipality will depend upon the number of lives covered and other relevant factors.

Further, some local governmental entities purchase workers’ compensation insurance from other sources, such as the private market. Revenue and Fiscal Affairs anticipates this bill will result in an increase in premiums for these local governing entities to cover the additional costs of compensable workers’ compensation cases. However, the actual expenditure impact will depend upon the number of newly compensable claims due to this bill, the number of lives covered in each policy, and other relevant factors.

**Introduced on April 16, 2021**

**State Expenditure**

This exempts law enforcement officers with an impairment causing stress, mental injury, or mental illness arising out of the course of employment without a physical injury from having to establish that the impairment occurred under extraordinary and unusual work conditions in order to be eligible for workers’ compensation. This exemption applies if the impairment arises from direct involvement in, or subjection to, the use of deadly force in the line of duty or the repeated exposure, or subjection to, trauma in the officer’s scope of work. Currently, law enforcement officers have to establish extraordinary and unusual work conditions in order to be eligible for workers’ compensation for stress, mental injury, or mental illness. This exemption will result in an increase in the number of compensable workers’ compensation cases relative to law enforcement officers with stress, mental injury, or mental illness.

**Workers Compensation Commission.** This bill does not materially alter the responsibilities of WCC. Therefore, this bill will have no expenditure impact on the agency.

**State Accident Fund.**  This bill will result in an increase in the number of compensable workers’ compensation claims. Additionally, this bill will result in an increase in the cost of workers’ compensation insurance coverage, dependent upon the number of newly successful workers’ compensation claims filed by law enforcement officers whose stress or mental illness stem from direct involvement in, or subjection to, the use of deadly force in the line of duty or the repeated exposure, or subjection to, trauma in the officer’s scope of work.

The State Accident Fund offers workers’ compensation insurance for state agencies. Based on similar bills, Revenue and Fiscal Affairs anticipates this section will result in an increase in the number of successful workers’ compensation claims filed. This will result in an increase in other funds expenditure for the State Accident Fund to cover these claims. The State Accident Fund covers 7,677 law enforcement officers through various other state agencies.

Any increase in other funds expenditures for the State Accident Fund will be offset by an increase in workers’ compensation premiums. Those agencies that employ law enforcement officers will have an increase in insurance premiums due to this increase in coverage. However, as the increase in the compensable claims is unknown, the increase to premiums is undetermined. Therefore, this bill will result in an increase in general fund, other funds, and/or federal funds expenditures for those agencies employing first responders to cover the increased cost of workers’ compensation insurance premiums beginning in FY 2021-22.

**State Revenue**

This bill will result in an increase in the number of compensable workers’ compensation cases relative to law enforcement officers with stress, mental injury, or mental illness. This will result in an increase in other funds expenditure for the State Accident Fund to cover these claims. Any increase in other funds expenditures for the State Accident Fund will be offset by an increase in workers’ compensation premiums. Those agencies that employ law enforcement officers will have an increase in insurance premiums due to this increase in coverage. However, as the increase in the compensable claims is unknown, the increase to premiums is undetermined. Therefore, this bill will result in an undetermined increase in other funds for the State Accident Fund due to the increase in workers’ compensation insurance premiums beginning in FY 2021-22.

**Local Expenditure**

This bill may result in an increase in the cost of workers’ compensation insurance coverage, depending upon the number of new workers’ compensation claims likely to be filed by law enforcement officers whose stress or mental illness stem from direct involvement in, or subjection to, the use of deadly force in the line of duty or the repeated exposure, or subjection to, trauma in the officer’s scope of work. Those local entities that employ law enforcement officers may see an increase in insurance premiums due to this increase in coverage. The South Carolina Association of Counties (SCAC) provides locals with workers’ compensation insurance coverage through the South Carolina Counties Workers’ Compensation Trust (SCCWCT). Additionally, the Municipal Association of South Carolina (MASC) offers locals workers’ compensation coverage through the South Carolina Municipal Insurance Trust (SCMIT). However, not all local governing entities purchase workers’ compensation insurance from these trusts; they may instead purchase coverage from the private market or other sources.

Based on responses from SCAC and MASC on similar bills, Revenue and Fiscal Affairs (RFA) anticipates this section will result in an increase of compensable workers’ compensation claims, which will increase the costs to the SCCWCT and SCMIT. However, as the amount of the compensation is unknown, the increased expenditure to the Trusts is undetermined. RFA expects that any increased expenditure to the Trusts or to other providers of workers’ compensation coverage will result in an increase in premiums to the local governing entities covered. Therefore, this bill will result in an undetermined increase in workers’ compensation premiums for local governing entities.

RFA also received a response from the Saluda County Sheriff’s Office, which reported that the implementation of the bill would result in no expenditure impact.

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 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.

Amend Title To Conform

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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