~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 10, 2021

**S. 94**

Introduced by Senators Malloy and Adams

S. Printed 3/10/21--S. [SEC 3/11/21 1:17 PM]

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 94) to amend Section 42‑1‑160 of the 1976 Code, relating to injury and personal injury in workers’ compensation, to provide that a limitation on stress, mental injuries, 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. 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 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.

(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) ‘significanttraumatic 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.”

SECTION 2. This act takes effect on July 1, 2021, 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.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill exempts first responders from having to establish by a preponderance of the evidence that stress, mental injury, or mental illness arising out of or in the course of employment stems from conditions that are extraordinary or unusual relative to the normal conditions of employment for purposes of collecting workers’ compensation. 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 bill would allow a first responder to qualify for injury-related workers’ compensation if the stress, mental injury, or mental illness arise from normal working conditions. 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 may 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 agencies that employee first responders may see in an increase in insurance premiums due to this increase of coverage. The State Accident Fund offers workers compensation insurance for state agencies. The potential expenditure impact of this bill is undetermined, contingent upon additional response from the State Accident Fund.

**Local Expenditure**

This bill may 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 employee first responders may see in an increase in insurance premiums due to this increase of coverage. The South Carolina Association of Counties provides locals with workers compensation insurance coverage through the South Carolina Counties Workers Compensation Trust (SCCWCT). Additionally, the Municipal Association of South Carolina offers locals workers compensation coverage. The local expenditure impact of this bill is pending contingent upon additional response from SCAC and MASC.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 42‑1‑160 OF THE 1976 CODE, RELATING TO INJURY AND PERSONAL INJURY IN WORKERS’ COMPENSATION, TO PROVIDE THAT A LIMITATION ON STRESS, MENTAL INJURIES, AND MENTAL ILLNESS FOR WORKERS’ COMPENSATION DOES NOT APPLY TO A FIRST RESPONDER DIAGNOSED WITH POST-TRAUMATIC STRESS DISORDER, AND TO DEFINE NECESSARY TERMS.

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 impairment causing the stress, mental injury, or mental illness is medically diagnosed as post-traumatic stress disorder arising 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.

(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, or 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 state or local government is also considered a first responder of the state or local government for the purposes of this section.”

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

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