



# House of Representatives

General Assembly

**File No. 310**

February Session, 2014

Substitute House Bill No. 5533

*House of Representatives, April 2, 2014*

The Committee on Public Safety and Security reported through REP. DARGAN of the 115th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR PUBLIC EMPLOYEES WITH POST-TRAUMATIC STRESS DISORDER.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (16) of section 31-275 of the 2014 supplement  
2 to the general statutes is repealed and the following is substituted in  
3 lieu thereof (*Effective October 1, 2014*):

4 (16) (A) "Personal injury" or "injury" includes, in addition to  
5 accidental injury that may be definitely located as to the time when  
6 and the place where the accident occurred, an injury to an employee  
7 that is causally connected with the employee's employment and is the  
8 direct result of repetitive trauma or repetitive acts incident to such  
9 employment, and occupational disease.

10 (B) "Personal injury" or "injury" shall not be construed to include:

11 (i) An injury to an employee that results from the employee's

12 voluntary participation in any activity the major purpose of which is  
13 social or recreational, including, but not limited to, athletic events,  
14 parties and picnics, whether or not the employer pays some or all of  
15 the cost of such activity;

16 (ii) A mental or emotional impairment, unless such impairment (I)  
17 arises from a physical injury or occupational disease, (II) in the case of  
18 a police officer, arises from such police officer's use of deadly force or  
19 subjection to deadly force in the line of duty, regardless of whether  
20 such police officer is physically injured, provided such police officer is  
21 the subject of an attempt by another person to cause such police officer  
22 serious physical injury or death through the use of deadly force, and  
23 such police officer reasonably believes such police officer to be the  
24 subject of such an attempt, [or] (III) in the case of a firefighter, is  
25 diagnosed as post-traumatic stress disorder by a licensed and board  
26 certified mental health professional, determined by such professional  
27 to be originating from the firefighter witnessing the death of another  
28 firefighter while engaged in the line of duty and not subject to any  
29 other exclusion in this section, or (IV) in the case of a state or municipal  
30 employee, is diagnosed as post-traumatic stress disorder by a qualified  
31 psychiatrist or psychologist and determined by such psychiatrist or  
32 psychologist to be originating from the state or municipal employee  
33 visually witnessing a traumatic event in person or visually witnessing  
34 the immediate aftermath of a traumatic event in person, provided the  
35 visual witnessing of a traumatic event or the visual witnessing of the  
36 immediate aftermath of a traumatic event was causally connected with  
37 the state or municipal employee's employment. As used in this clause,  
38 "police officer" means a member of the Division of State Police within  
39 the Department of Emergency Services and Public Protection, an  
40 organized local police department or a municipal constabulary,  
41 "firefighter" means a uniformed member of a municipal paid or  
42 volunteer fire department, [and] "in the line of duty" means any action  
43 that a police officer or firefighter is obligated or authorized by law,  
44 rule, regulation or written condition of employment service to  
45 perform, or for which the police officer or firefighter is compensated  
46 by the public entity such officer serves, "qualified psychiatrist or

47 psychologist" means a psychiatrist licensed pursuant to chapter 370  
48 and certified by a recognized American medical specialty board in  
49 psychiatry or a psychologist licensed pursuant to chapter 383 and  
50 certified by a recognized American medical specialty board in  
51 psychology, "traumatic event" means an event occurring on or after  
52 December 14, 2012, that is extraordinary due to the number or severity  
53 of casualties, that involves the death or serious bodily injury of one or  
54 more human beings caused by an intentional act of another human  
55 being, not by some natural cause or motor vehicle collision, and that  
56 does not happen in the usual course of the employee's employment  
57 and "immediate aftermath" means the scene at which a traumatic event  
58 occurred for a period of time not to exceed six hours after such scene is  
59 secured by law enforcement officers;

60 (iii) A mental or emotional impairment that results from a personnel  
61 action, including, but not limited to, a transfer, promotion, demotion  
62 or termination; or

63 (iv) Notwithstanding the provisions of subparagraph (B)(i) of this  
64 subdivision, "personal injury" or "injury" includes injuries to  
65 employees of local or regional boards of education resulting from  
66 participation in a school-sponsored activity but does not include any  
67 injury incurred while going to or from such activity. As used in this  
68 clause, "school-sponsored activity" means any activity sponsored,  
69 recognized or authorized by a board of education and includes  
70 activities conducted on or off school property and "participation"  
71 means acting as a chaperone, advisor, supervisor or instructor at the  
72 request of an administrator with supervisory authority over the  
73 employee.

74 Sec. 2. Section 31-294h of the general statutes is repealed and the  
75 following is substituted in lieu thereof (*Effective October 1, 2014*):

76 Notwithstanding any provision of this chapter, workers'  
77 compensation benefits for any (1) police officer, as defined in  
78 subparagraph (B)(ii) of subdivision (16) of section 31-275, as amended  
79 by this act, who suffers a mental or emotional impairment arising from

80 such police officer's use of deadly force or subjection to deadly force in  
 81 the line of duty, [or] (2) firefighter, as defined in subparagraph (B)(ii)  
 82 of subdivision (16) of section 31-275, as amended by this act, who  
 83 suffers a mental or emotional impairment diagnosed as post-traumatic  
 84 stress disorder originating from the firefighter witnessing the death of  
 85 another firefighter while engaged in the line of duty, or (3) state or  
 86 municipal employee who suffers a mental or emotional impairment  
 87 diagnosed as post-traumatic stress disorder originating from the state  
 88 or municipal employee visually witnessing a traumatic event in person  
 89 or visually witnessing the immediate aftermath of such traumatic  
 90 event in person pursuant to subparagraph (B)(ii) of subdivision (16) of  
 91 section 31-275, as amended by this act, shall be limited to treatment by  
 92 a psychologist or a psychiatrist who is on the approved list of  
 93 practicing physicians established by the chairman of the Workers'  
 94 Compensation Commission pursuant to section 31-280.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	31-275(16)
Sec. 2	October 1, 2014	31-294h

**Statement of Legislative Commissioners:**

In section 2, subdivision (3), "suffers a mental or emotional impairment" was inserted for accuracy and internal consistency.

**PS**            *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Various State Agencies	GF, TF - Cost	Indeterminate	Indeterminate

**Municipal Impact:**

Municipalities	Effect	FY 15 \$	FY 16 \$
All Municipalities	STATE MANDATE - Cost	Indeterminate	Indeterminate

**Explanation**

The bill will result in a cost to the state's workers' compensation program<sup>1</sup> and municipalities for employees with a compensable mental-mental injury (a mental injury without an accompanying physical injury) under the bill's expanded definition of personal injury for events which occurred on or after December 14, 2012. The cost depends on two factors: 1) number of claims filed (frequency) and 2) the severity of the claim, which are both unknown and highly variable. The average cost per case of a mental-mental injury resulting in absence from work can range from \$20,000 to \$150,000.<sup>2</sup> The bill's language limits the benefit to treatment by a licensed psychologist or psychiatrist. If this language is intended to restrict benefits to the medical category only, the incurred cost will be substantially less when compared to providing both medical and indemnity benefits. In

<sup>1</sup> The State's workers' compensation program is self-insured and therefore is responsible for the total cost of claims incurred as opposed to a fully insured policy where the state would pay a set annual premium.

<sup>2</sup> Source: NCCI (National Council on Compensation Insurance). These figures are based on data reported from fully insured entities.

addition, the bill requires a diagnosis of Post Traumatic Stress Disorder (PTSD). These limiting factors may mitigate the potential cost to the state plan and to municipalities. It is important to note while the bill appears to limit benefits to medical only and requires a diagnosis of PTSD, the definition of an “extraordinary” event is open to interpretation and may not limit the types of events for which an individual may file a claim.

Lastly, pursuant to current law a claim must be filed within one year from the date of accident or three years from the manifestation of a symptom of the occupational disease (CGS 31-294c). The cost to the state and municipalities will be greater if the provisions of the bill are interpreted to provide benefits retroactively for employees who did not file a claim within the time period specified in current law. There were approximately 50 claims to the state associated with December 12, 2012. It is uncertain at this time how many claims were filed in municipalities for the same date.

### *Frequency*

The number of potential claims is indeterminate. The State’s workers’ compensation program currently covers approximately 74,711 employees.<sup>3</sup> It is unclear if the bill will be interpreted to provide benefits retroactively to employees who did not file a claim within the time period specified under current law; this interpretation will impact the number of eligible claims filed. While the bill provides coverage to all state employees, the frequency with which an employee may be subject to the conditions in the bill, either as a singular event or repetitive exposure to events, is likely going to be the highest in the state’s first responders (e.g. state troopers). By way of reference the NP-1 bargaining unit, which is predominately state troopers, has

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<sup>3</sup> In general, any individual who receives a paycheck from the state is eligible to file a workers’ compensation claim and therefore, for the purposes of this bill are considered employees. This figure reflects the total number of individuals who were eligible to receive a paycheck as of March 1, 2014, excluding student workers. (Source: CoreCT)

approximately 1,065 members.<sup>4</sup> In addition, the Department of Corrections has approximately 3,545 correctional officers.<sup>5</sup> While these are not first responders the nature of their work may expose them to these conditions more frequently. While intentional acts of violence within the workplace are less frequent than incidents first responders may experience, the number of potential claims filed for a single incident is likely going to be higher, as any employee who witnesses the event or immediate aftermath would be eligible. For reference, Connecticut had 11 workplace homicides in 2012.<sup>5</sup> From 1992 to 2010 there were 13,827 workplace homicides nationwide; 140 were government workers killed by a coworker.<sup>6</sup>

### *Severity*

The severity of the claim is related to the cost associated with providing necessary medical treatment and indemnity benefits. The bill does not appear to provide wage replacement for mental-mental workers' compensation claims and therefore limits the cost of mental-mental claims to medical expenses. Unlike physical impairments, the treatment duration for PTSD is highly variable. The ultimate cost of medical benefits depends on the duration and scope of treatment.

It is important to note that once an injury is identified as a work related injury and covered under the workers' compensation program any subsequent injury or impairment which can be causally linked to the initial injury is also covered by workers' compensation, resulting in a wide range of potential per claim costs.

Long term PTSD, has been linked to other physical health issues including but not limited to cardiovascular disease.<sup>7</sup> In the event an individual receiving workers' compensation coverage for PTSD, develops a physical ailment whose etiology is linked to their emotional

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<sup>4</sup> Figure as of February 1, 2014.

<sup>5</sup> Sources: Census of Fatal Occupational Injuries; 2012 Census. Bureau of Labor Statistics, US Department of Labor. (Assessed March 13, 2014).

<sup>6</sup> Source: Ibid

<sup>7</sup> Coughlin, S. *Post-Traumatic Stress Disorder and Cardiovascular Disease*, The Open Cardiovascular Medicine Journal, 2011, 5, 164-170.

distress, the state will be liable for the cost of treating the employee's related physical condition. The fiscal impact will depend on the condition and course of treatment.

### **Municipal Impact**

The bill will result in a cost to municipalities as it makes all municipal employees eligible for workers' compensation coverage for mental-mental injuries within the parameters of the bill.

It is not known how many mental-mental claims are filed in a given year by municipal police officers or firefighters. Similar to the state, the cost will depend on 1) number of claims filed and 2) the severity of the claims.

There are approximately 133,986 local government employees in Connecticut.<sup>8</sup>

The bill is likely to result in increased premium costs for fully-insured municipalities when the costs are realized in future workers' compensation rates. Costs for self-insured municipalities will be realized when an eligible claim is filed. There are 32 self-insured municipalities and 137 fully insured municipalities for workers' compensation.<sup>9</sup>

In addition, it is unclear what the fiscal impact will be to fully insured municipalities' premiums or workers' compensation insurance coverage if the provisions of the bill are interpreted to provide retroactive workers' compensation coverage for PTSD which was not included in premiums paid.

### **The Out Years**

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<sup>8</sup> It is unclear what percentage of these employees are eligible for workers' compensation benefits. Source: State Department of Labor, Office of Research, as of December 2013.

<sup>9</sup> Source: State of Connecticut, Workers' Compensation Commission (as of March 2014).

The annualized ongoing fiscal impact identified above would continue into the future subject to various factors, including, medical inflation, incidence, and in the case of fully insured workers' compensation programs, future premiums.

**OLR Bill Analysis****sHB 5533*****AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR PUBLIC EMPLOYEES WITH POST-TRAUMATIC STRESS DISORDER.*****SUMMARY:**

This bill extends eligibility for limited workers' compensation benefits to state and municipal employees diagnosed, by a state-licensed psychiatrist or psychologist, with post traumatic stress disorder (PTSD) stemming from seeing, in person, a traumatic event or its "immediate aftermath" (the scene of a traumatic event for up to six hours after it is secured by law enforcement officers). For an employee to qualify for the benefits, the employment must have caused him or her to see an event that:

1. was extraordinary because of the number or severity of casualties,
2. involved the death or serious bodily injury of one or more people,
3. was caused by an intentional human act and not by natural cause or motor vehicle collision,
4. does not happen in the usual course of the employee's employment, and
5. occurred on or after December 14, 2012 (the date of the Sandy Hook elementary school massacre).

Under existing law, which the bill does not change, workers' compensation claims must be filed within (1) one year from the date of the accident or (2) three years from the manifestation of a symptom of

the occupational disease giving rise to the claim (CGS § 31-294c). Thus, to qualify for compensation under the one-year filing provision, a Sandy Hook claimant would have had to file by December 14, 2013. In addition, a retroactive application for workers' compensation benefits could perhaps be vulnerable to a legal challenge under the contract clause of the U.S. Constitution (see COMMENT).

EFFECTIVE DATE: October 1, 2014

### **WORKERS' COMPENSATION BENEFITS AND PTSD DIAGNOSIS**

With limited exceptions, mental and emotional impairments do not qualify for workers' compensation coverage under current law, unless they stem from a work-related physical injury (see BACKGROUND). One exception is a firefighter diagnosed with PTSD stemming from seeing the death of another firefighter in the line of duty.

The bill expands the definition of "personal injuries" under the workers' compensation law, allowing state or municipal employees diagnosed with PTSD related to a traumatic event (as described above) to qualify for workers' compensation benefits. The employee must be diagnosed by a qualified psychologist or psychiatrist who determines that the PTSD originated from seeing the traumatic event or its aftermath in person. A "qualified" psychiatrist or psychologist is one licensed by the state and certified by a recognized American medical specialty board in psychiatry or a psychology.

Under the bill, the workers' compensation benefits available to an eligible employee are limited to treatment by a psychologist or psychiatrist on the approved list of practicing physicians established by the Workers' Compensation Commission. The bill does not provide wage replacement benefits.

### **BACKGROUND**

#### ***Workers' Compensation***

The workers' compensation system serves as a substitute for the court system and provides employees with an "exclusive remedy" for work-related injuries. Under existing law, mental or emotional

impairment qualifies for workers' compensation only if the impairment:

1. arises from a physical or occupational disease;
2. in the case of a police officer, is caused by using, or being subjected to, deadly force in the line of duty; or
3. in the case of a firefighter, is diagnosed as PTSD stemming from witnessing the death of another firefighter in the line of duty.

### ***PTSD***

PTSD is an anxiety disorder that some people develop after seeing or experiencing an event that caused or threatened to cause serious harm or death. Symptoms include flashbacks or bad dreams, emotional numbness, intense guilt or worry, and angry outbursts. Traumatic events that may trigger PTSD include military combat, natural disasters, and violent crime. According to the National Institute of Mental Health, PTSD symptoms last at least one month.

### ***Related Bill***

sSB 56, reported favorably by the Labor Committee, expands the definition of "personal injuries" under the workers' compensation law, thereby allowing an employee to qualify for benefits if:

1. during the course of his or her duties, the employee sees (a) a person's death or maiming or (b) its immediate aftermath;
2. the death or maiming was intentionally caused by another person; and
3. a licensed psychiatrist or psychologist diagnoses the employee with a mental or emotional impairment and determines that it originated from the employee seeing the crime or crime scene.

The bill also extends workers' compensation wage replacement benefits to (1) police officers who suffer a mental or emotional impairment caused by using, or being subjected to, deadly force in the

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line of duty and (2) firefighters diagnosed with PTSD caused by witnessing the death of another firefighter in the line of duty.

## COMMENT

### ***Possible Contract Clause Violation***

In general, many employers provide workers' compensation benefits through insurance policies purchased from third-party insurance providers. Before issuing these policies, the insurer determines the potential risks for which the policy may become payable and charges the employer a premium based on those risks. Because the bill applies retroactively to December 14, 2012, it could require a workers' compensation insurance policy to pay benefits for which it never charged or collected appropriate premiums. To the extent that such a policy might be considered a contract, the bill could be vulnerable to a legal challenge under the constitution's contracts clause, which bars states from passing any laws that impair contractual obligations. But, the U.S. Supreme Court has also ruled that a challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U. S. 400, 411-412 (1983)).

## COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Substitute

Yea 18 Nay 5 (03/18/2014)