

P.H. 2/17/15

**Support for SB 902 AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR POLICE OFFICERS AND FIREFIGHTERS WITH POST-TRAUMATIC STRESS DISORDER.
Background/White Paper**

Connecticut does not currently recognize mental health injury, including post-traumatic stress disorder ("PTSD"), as a compensable injury under its workers compensation laws. In the 1993 workers comp reforms, coverage for mental injuries were eliminated.

The only **exception** to this is for medical benefits for police officers and firefighters who, while in the line of duty, are: (1) in the case of a police officer, subjected to deadly force or witnesses the death of another police officer, or (2) in the case of a firefighter, witnesses the death of a fellow firefighter. These two exceptions were passed recognizing that there are **FIT FOR DUTY** requirements for police officers (and firefighters).

A police officer or firefighter suffering from PTSD raises serious **public safety concerns**. Police officers regularly encounter extremely stressful and dangerous situations in the course of their work. Officers who are suffering from PTSD can present a danger to themselves or to others or may be rendered ineffective in performing their essential work functions. For this reason, the coverage under **CGA Section 31-275 must be amended to cover work related PTSD arising out of witnessing the death of ANY person, not just another first responder.** (See SB 902, attachment A)

After Sandy Hook, many of the officers who responded to the school and investigated the aftermath of that devastating tragedy, suffered from intense PTSD. Had they suffered a physical injury, they would be covered under workers compensation, but since their injuries were mental in nature, there is no coverage. Their claims under workers comp were rejected by the insurance company (CIRMA) and the Town. **They were forced to go back to work or lose their paychecks, or worse, their jobs. Many did not get the mental health care that they needed. No time off of work. No opportunity for light duty. No protection against retaliation (or firing) by the employer/Town of Newtown.**

Other States:

In at least 32 other states, including all of the New England states and New York, mental-mental coverage is included in their workers compensation coverage as any other injury. (See **attachment B. Table 9**)

Data analysis says that this coverage will not add significant costs to the state or its municipalities. Below we look at other states through the NCCI analysis, as well as the actual cost of Sandy Hook Fund claims. We also look at CIRMA's annual financial report. Finally we look at the costs of doing nothing.

Costs in Other States:

In those states that have broad mental-mental coverage, (not limited to homicide or PTSD or first responders) the actual payouts for such claims amount to **less than a half a percent (.05 %)** of the overall costs of workers compensation claims. That number was determined by the National Council on Compensation Insurance (NCCI) when they analyzed a similar proposal, SB 823, two years ago. NCCI analyzed 5 years of "loss cost" data in 15 states where mental-mental is covered. (The states analyzed were Alaska, Arizona, Colorado, Indiana, ME, MI, Nevada, NH, NM, OR, RI, SC, Tennessee, Utah and VT) They found that in those states, the dollars paid out on mental-mental claims was only less than .5 percent as compared to the total dollars paid on all workers comp claims mental and physical combined. While it was addressing a different and

broader bill, the analysis of the states with mental-mental coverage is important to show that the change sought here for first responders will not result in a significant increase, in fact would be significantly less than a half a percent of the total workers compensation costs. (See Attachment C)

What are the workers compensation costs in Connecticut today and would this impact municipalities?

There is a total of \$737 million in workers comp premium in CT (per NCCI). That's all businesses. CIRMA is the insurer that covers the vast majority of CT Municipalities. The numbers that are most important can be found on their website in their annual report for (2012-2013): (See Attachment D)

- CIRMA collected \$ 79.9 million in premium (a little more than 10 percent of total premiums collected statewide (.10841)
- CIRMA's paid losses was \$ 57,112,50.
- CIRMA also paid \$14 million for reinsurance, which protects them and the municipalities they insure from catastrophic losses.
- CIRMA saw \$5.9 million in investment income.

So for 2012-2013, CIRMA had profits of over \$7 million.

They allocated \$3 million back to their members equity, and still recognized \$4,213,301 in "excess of revenue over expenses". *Had CIRMA accepted the claims from Sandy Hook, they could have absorbed those costs with no increase in premiums.*

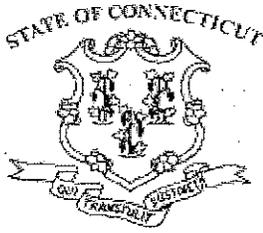
Even using NCCI's analysis which is high since it looked at all stress claims, not just PTSD, if we take their number, 5 percent of paid losses, and look at CIRMA: .5 percent of CIRMA's paid losses of \$57 million would equal \$285,562.

This cost estimate is consistent with the claims under the Sandy Hook Worker Assistance Fund.

(FN: Because there was no workers compensation coverage for workers at Sandy Hook, the Legislature in 2012 created the Sandy Hook worker assistance fund to provide medical benefits and wage replacement to the impacted workers. Through accepting monetary donations from private individuals and businesses, the fund was able to provide necessary benefits to workers suffering from PTSD. Those funds will continue to be available until August 31, 2016.)

There were 19 police officers and firefighters who made claims for medical benefits and lost wages from the fund. The total payouts to those 19 thus far have been \$142,655 in wage replacement and \$15,599 in medical bills for a grand total of \$158,255. (See attachment E) This would have been an insignificant cost to CIMRA had they accepted the claims and well within the NCCI cost estimate.

The cost of doing nothing could be more. With no workers compensation coverage for work related PTSD and the protections that are offered under the workers compensation act, officers will be unwilling to admit that they have PTSD for fear of losing their gun and badge. This can have serious consequences and potentially significant civil liability for the municipality. The other alternative is that the officer admits that he/she has PTSD; gun and badge taken away; and claims a disability pension. Neither of these costly alternatives should be acceptable. Rather, the officer, or firefighter with PTSD should be covered under workers compensation to receive the immediate medical assistance they need and get back to work. A WIN- WIN for the employer as well as the officer/firefighter and his/her family.



"A"

General Assembly
January Session, 2015

Raised Bill No. 902

LCO No. 3483



Referred to Committee on PUBLIC SAFETY AND SECURITY

Introduced by:

(PS)

AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR POLICE OFFICERS AND FIREFIGHTERS WITH POST-TRAUMATIC STRESS DISORDER.

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

Section 1. Subdivision (16) of section 31-275 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2016, and applicable to the visual witnessing of a death, or the immediate aftermath of a death, occurring on or after said date*):

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

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

(i) An injury to an employee that results from the employee's voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether or not the employer pays some or all of the cost of such activity;

(ii) A mental or emotional impairment, unless such impairment (I) arises from a physical injury or occupational disease, (II) in the case of a police officer, arises from such police officer's use of deadly force or subjection to deadly force in the line of duty, regardless of whether such police officer is physically injured, provided such police officer is the subject of an attempt by another person to cause such police officer serious physical injury or death through the use of deadly force, and such police officer reasonably believes such police officer to be the subject of such an attempt, [or] (III) in the case of a firefighter, is diagnosed as post-traumatic stress disorder by a licensed and board certified mental health professional,

determined by such professional to be originating from the firefighter witnessing the death of another firefighter while engaged in the line of duty and not subject to any other exclusion in this section, or (IV) in the case of a police officer or firefighter, is diagnosed as post-traumatic stress disorder by a licensed and board certified mental health professional, determined by such professional to be originating from the police officer or firefighter visually witnessing the death of a human being, or the immediate aftermath of such death, provided the visual witnessing of such death or the aftermath of such death occurred while the police officer or firefighter was engaged in the line of duty. As used in this clause, "police officer" means a member of the Division of State Police within the Department of Emergency Services and Public Protection, an organized local police department or a municipal constabulary, "firefighter" means a uniformed member of a municipal paid or volunteer fire department, [and] "in the line of duty" means any action that a police officer or firefighter is obligated or authorized by law, rule, regulation or written condition of employment service to perform, or for which the police officer or firefighter is compensated by the public entity such officer serves, and "immediate aftermath" means the scene at which such death occurred for a period of time not to exceed six hours after such scene is secured by law enforcement officers;

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

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

Sec. 2. Section 31-294h of the general statutes is repealed. (Effective from passage)

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2016, and applicable to the visual witnessing of a death, or the immediate aftermath of a death, occurring on or after said date	31-275(16)
Sec. 2	from passage	Repealer section

Statement of Purpose:

To provide workers' compensation coverage to police officers and firefighters suffering from post-traumatic stress disorder as a direct result of witnessing the death of a human being or



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WORKERS' COMPENSATION LAWS

AS OF JANUARY 2012

Ramona P. Tanabe

Originally created by the U.S. Department of Labor, this version is produced through a joint effort by the International Association of Industrial Accident Boards and Commissions (IAIABC) and the Workers Compensation Research Institute (WCRI)

WC-12-18

March 2012

WORKERS COMPENSATION RESEARCH INSTITUTE
CAMBRIDGE, MASSACHUSETTS

TABLE 9. COVERAGE OF MENTAL STRESS, CUMULATIVE TRAUMA, HEARING LOSS, AND DISFIGUREMENT AS OF JANUARY 2012

Jurisdiction	Coverage Of Mental Stress Claims When No Physical Injury	Coverage Of Cumulative Trauma	Coverage Of Occupational Hearing Loss	Coverage Of Disfigurement
Alabama	No	Yes	Yes	Yes
Alaska	Yes (1)	Yes	Yes	No
Arizona	Yes	Yes	Yes	Yes
Arkansas	No (2)	Limited to rapid repetitive motion back or neck and hearing loss injuries	Yes	Yes (3)
California	Yes	Yes	Yes	Yes
Colorado	Yes (4)	Yes	Yes	Yes
Connecticut	No	Yes	Yes	Yes
Delaware	Yes	Yes	Yes	Yes
District of Columbia (5)	No	Yes	If the employment is the major contributing cause	No
Florida	No	Yes	Yes	No
Georgia	No	Yes	Yes	No
Hawaii	Yes	Yes (6)	Yes	Yes
Idaho	No	Yes	Yes	Yes (7)
Illinois	Yes	Yes	Yes	Yes
Indiana	No	Yes	Yes	No
Iowa	Yes	Yes	Yes	Yes
Kansas	No	Yes	Yes	Yes
Kentucky	No	Yes	Yes	Yes
Louisiana	Yes	Only when considered an occupational disease	Yes	Yes
Maine	Yes	Yes	Yes	No
Maryland	Yes (8)	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes
Michigan	Yes	Yes	No	No
Minnesota	No	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes (9)
Montana	No	Yes	Yes	Yes
Nebraska	Yes (10)	Yes	Yes	No
Nevada	Yes	Yes	Yes	No

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Jurisdiction	Coverage Of Mental Stress Claims When No Physical Injury	Coverage Of Cumulative Trauma	Coverage Of Occupational Hearing Loss	Coverage Of Disfigurement
New Hampshire	Yes (11)	Yes	Yes	Yes
New Jersey	Yes	Yes	Yes	No
New Mexico	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes (12)	Yes
North Carolina	Yes	Yes	Yes	Yes
North Dakota	No	Yes	Yes	Yes
Ohio	No	Yes	Yes	Yes
Oklahoma	No (13)	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes (14)
Pennsylvania	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Yes
South Dakota	No	Yes	Yes	Yes
Tennessee	Yes	Yes (15)	Yes (15)	Yes
Texas	No	Yes	Yes	No
US Federal Programs - FECA	Yes	Yes	Yes	Yes
US Federal Programs - Longshore	Yes	Yes	Yes	Yes
Utah	Yes (16)	Yes	Yes	Yes
Vermont	Yes	Yes	Yes	Yes
Virginia	Yes	Yes (17)	Possibly (18)	Yes
Washington	Yes	Yes	Yes	No
West Virginia	No	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	Yes
Wyoming	No	Yes	Yes	Yes
Canadian Jurisdictions Participating				
British Columbia	Yes (19)	Yes	Yes	Yes
New Brunswick	Yes (20)	Yes (21)	Yes	No (22)
Nova Scotia	Yes (23)	Yes	Yes	Yes
Ontario	Yes	Yes	Yes	Yes
Prince Edward Island	Yes, when stress is an acute reaction to a traumatic event	Yes (24)	Yes	Yes
Saskatchewan	Yes	Yes	Yes	Yes

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Jurisdiction	Coverage Of Mental Stress Claims: When No Physical Injury	Coverage Of Cumulative Trauma	Coverage Of Occupational Hearing Loss	Coverage Of Disfigurement
Notes:				
1	Alaska - Mental stress is covered if work stress was extraordinary and unusual compared to the experiences of others in a comparable work environment; work stress was the predominant cause of the mental injury; and the work stress was not the result of "a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer."			
2	Arkansas - There is an exception for victims of crimes of violence.			
3	Arkansas - Limited to facial or head.			
4	Colorado - A claim of mental impairment must be proven by evidence supported by the testimony of a licensed physician or psychologist. For purposes of this subsection (2), "mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer; and (2)(b)...the claimant shall be limited to twelve weeks of medical impairment benefits...This limitation shall not apply to any victim of a crime of violence...nor to the victim of a physical injury or occupational disease that causes neurological brain damage.			
5	District of Columbia - Users should be aware that no survey was completed for the current year and that answers are from the 2008 survey.			
6	Hawaii - Not in the statute, but these are handled just like any other claim.			
7	Idaho - If it affects return to work.			
8	Maryland - This is covered but under very limited circumstances.			
9	Missouri - Disfigurement coverage is restricted to injuries of the head, neck, hands and arms.			
10	Nebraska - Effective July 15, 2010, first responders may claim mental injury unaccompanied by physical injury if the mental injury was a result of extraordinary and unusual conditions as compared to the normal conditions of the employment. Mental injuries incidental to employee/employer relations are not compensable.			
11	New Hampshire - There must be a physical manifestation of stress. Disfigurement must be caused by burns.			
12	New York - Scheduled PPD benefits are reduced by temporary partial benefits paid only. Nonscheduled PPD benefits are not reduced by any temporary benefits paid.			
13	Oklahoma - The exception is rape arising out of and in the course of employment.			

TABLE 9. COVERAGE OF MENTAL STRESS, CUMULATIVE TRAUMA, HEARING LOSS, AND DISFIGUREMENT AS OF JANUARY 2012

Information on how broad the coverage is in each jurisdiction, which statutes cover mental stress, cumulative trauma, hearing loss, and disfigurement	Coverage Of Mental Stress Claims When No Physical Injury	Coverage Of Cumulative Trauma	Coverage Of Occupational Hearing Loss	Coverage Of Disfigurement
Jurisdiction				
14	Oregon - The law covers some disfigurement. There is no set dollar amount; however, compensation is payable only if disfigurement results in certain psychological adjustment problems.			
15	Tennessee - Hearing loss, carpal tunnel, and repetitive injury claims are compensable only if the condition primarily arises out of and in the scope of employment.			
16	Utah - Mental stress claims are allowed, without a physical injury, only when there is extraordinary mental stress from a sudden stimulus arising out of and in the course and scope of employment. Mental stress claims are not allowed if the basis for the claim is good faith employer personnel actions.			
17	Virginia - Only cumulative hearing loss and carpal tunnel are covered as "ordinary diseases of life" and subject to higher "clear and convincing" evidentiary standards as opposed to the "preponderance of the evidence" standard.			
18	Virginia - It is covered upon clear and convincing evidence as an "ordinary disease of life" under Va. Code Section 65.2-401.			
19	British Columbia - This is covered if it is the result of an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of the worker's employment and not caused by a decision of the worker's employer relating to the worker's employment.			
20	New Brunswick - Under limited circumstances the WC Act excludes mental stress as a compensable condition, except when the mental stress or disablement caused by mental stress is the result of an acute reaction to a traumatic event.			
21	New Brunswick - Yes, if proven to arise out of and in the course of employment.			
22	New Brunswick - Not specifically; however, if the disfigurement leads to increased impairment, then the higher impairment translates into a higher PPI award. Otherwise, there is no specific award.			
23	Nova Scotia - When stress is an acute reaction to a traumatic event.			
24	Prince Edward Island - If risk factors are present.			



ANALYSIS OF CONNECTICUT SUBSTITUTE SENATE BILL 823
As Introduced on March 18, 2013

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Connecticut Substitute Senate Bill 823 (SSB 823), if enacted in its current form, may result in an indeterminable increase in overall workers compensation (WC) system costs in Connecticut. The ultimate cost impact would be realized through future loss experience and reflected in subsequent NCCI loss cost filings.

Summary of SSB 823

Currently under Section 31-275 of the Connecticut Statutes, mental or emotional impairment without related physical injury is excluded from the definition of "personal injury" or "injury" unless:

- In the case of police officers, the impairment arose out of an officer's use of or subjection to deadly force in the line of duty; or
- In the case of firefighters, the impairment and subsequent post-traumatic stress disorder (PTSD) diagnosis originated from witnessing the death of a fellow firefighter in the line of duty

SSB 823 expands the definition of injury in the case of all public and private employees to include mental injuries diagnosed by a licensed and certified mental health professional as resulting from an "employee witnessing the death or maiming, or immediate aftermath of such death or maiming, of one or more human beings" provided that a causal connection exist between the witnessing of such a death or maiming and the employment.

Actuarial Analysis of SSB 823

If enacted, SSB 823 would broaden the definition of injury and occupational disease which may result in additional claims being deemed compensable. The proposed language is more restrictive than many states that offer WC benefits for mental-mental claims (a mental injury claim without an accompanying physical injury) as long as the mental injury was caused by an "extraordinary and unusual work-related" event. NCCI analyzed five years of loss data on mental injuries and mental illnesses for states¹ that allow some level of compensation for mental-mental injuries under various circumstances. For each of these states, mental injury losses account for less than 0.5% of total losses in the state.



According to a recent study published by NCCI on violence in the workplace², homicides, which are primarily a result of armed robberies, account for 11% of all workplace fatalities. Although fatalities only account for 1.6% of total WC system costs in Connecticut, the proposed language would seem to include exposure to all homicides, regardless if the resulting fatality was a workplace fatality, as a qualifying event for mental-mental injury benefits. Based on statistics collected by the U.S. Department of Justice³, the rate of

¹ States considered were Alaska, Arizona, Colorado, Indiana, Maine, Missouri, Nevada, New Hampshire, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, and Vermont.

² NCCI Holdings, Inc. Violence in the Workplace (2012), https://www.ncci.com/documents/Workplace_Research.pdf

³ FBI's Crime in the United States, 1960-2007, <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/StateCrime.cfm>



ANALYSIS OF CONNECTICUT SUBSTITUTE SENATE BILL 823
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murder and non-negligent manslaughter for Connecticut in 2010 is 3.6 per every 100,000 people, which is 25% below the national average. Based on the Connecticut population of 3,574,097 as reported in the U.S. Census for 2010⁴, this translates to approximately 129 events per year.

The types of events described in the proposed language occur relatively infrequently and cannot be predicted. However when these types of events take place, there is potential for multiple claim filings in reaction to a single event as any employee who witnesses such an event or its aftermath may be eligible for WC benefits under the proposed language. Depending on the setting and/or circumstances, this could lead to a large influx of mental-mental claims after the occurrence of such an event. It is uncertain how many of these claims would be deemed compensable as employees must be diagnosed by a health professional as having a mental impairment which resulted from the employee's exposure to the types of event described in the proposal in order to be eligible for benefits.

Notwithstanding the above, the term "maiming" is not defined in the proposed language and is therefore open to interpretation. Similarly, the timeframe surrounding the term "immediate aftermath" is not defined. It remains to be seen how these terms will be defined in practice. A broad interpretation of these terms could result in more claims being deemed compensable.

Under the proposal, there are no caps or restrictions on either the number of medical visits and treatments or on the duration of wage replacement benefits for such mental stress claims. As such, a mental injury claim deemed compensable under this bill could be compensated for an unspecified number of weeks.

NCCI expects that, if enacted, SSB 823 would result in an increase in WC system costs in Connecticut. The impact of such an increase is expected to be more pronounced in certain occupations such as first responders and emergency room personnel who are exposed to events involving "death or maiming" more frequently than the general population.

Due to the unpredictable nature of the types of events that would qualify an exposed worker for WC benefits and the subjectivity involved in a mental injury diagnosis, the extent of such an increase on overall system costs cannot be reasonably determined.

Other Considerations

- Preliminary research has been published that links exposure to traumatic stress as a cause of other serious physical health conditions⁵. It is unclear if workers

⁴ United States Census Bureau, 2010 Demographic Profile. http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml

⁵ Carsten Spitzer, MD, Sven Barnow, PhD, Henry Völzke, MD, Ulrich John, PhD, Harald J. Freyberger, MD and Hans Joergen Grabe, MD. Trauma, Posttraumatic Stress Disorder, and Physical Illness: Findings from the General Population. *Psychosomatic Medicine: Journal of Biobehavioral Medicine* November/December 2009. <http://www.psychosomaticmedicine.org/content/71/9/1012.full#ref-list-1>

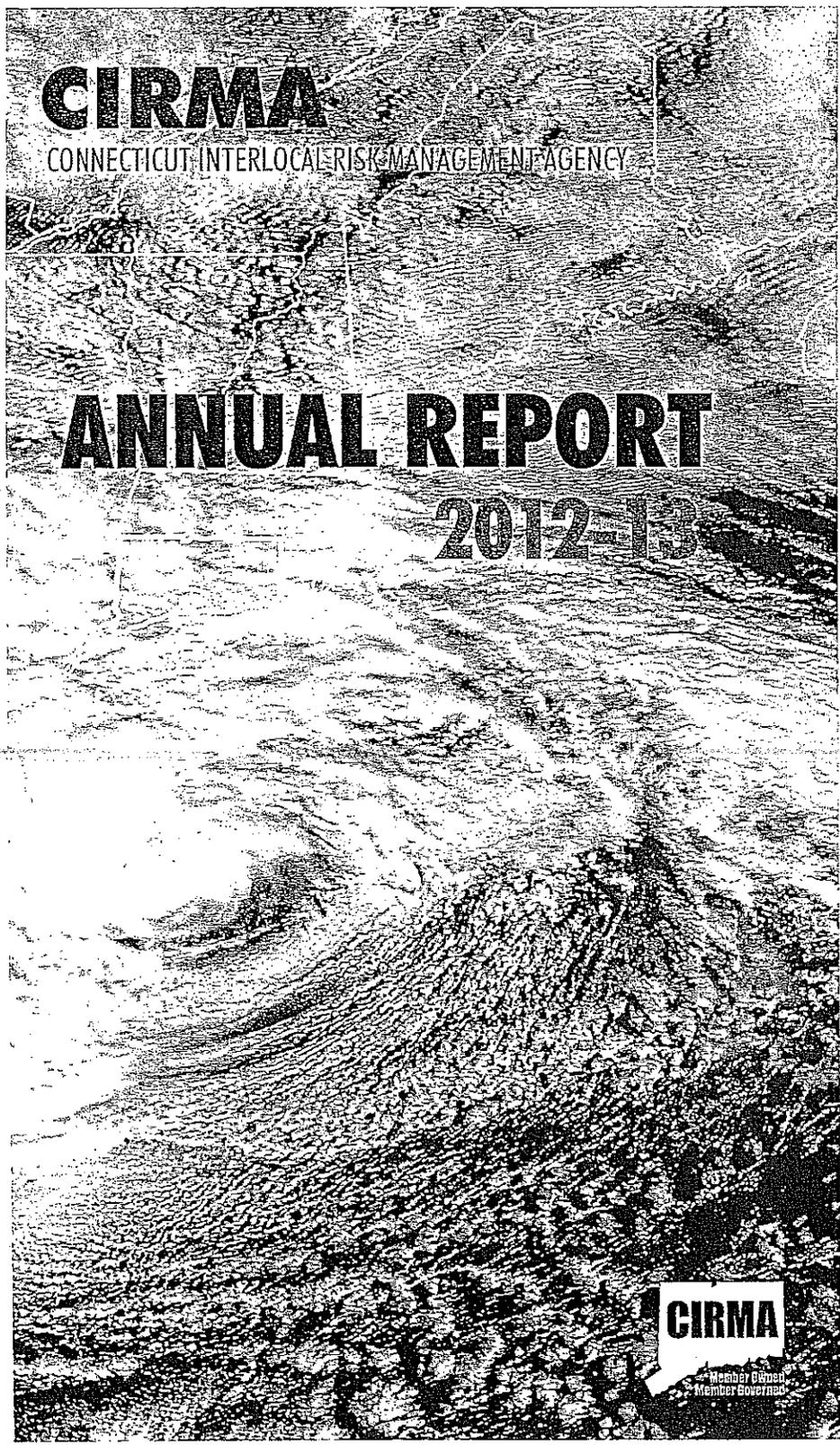


**ANALYSIS OF CONNECTICUT SUBSTITUTE SENATE BILL 823
As Introduced on March 18, 2013**

compensation coverage will compensate for these related injuries or conditions if the mental or emotional impairment is determined to have originated in the workplace.

- If enacted, SSB 823 could potentially result in increased litigation, both in the determination of whether the mental or emotional impairment resulted from the "employee witnessing the death or maiming, or immediate aftermath of such death or maiming, of one or more human beings" and also in determination of whether a causal connection exists between the witnessing of such a death or maiming and the employment. Any additional costs associated with increased litigation would contribute to the upward pressure on overall workers compensation system costs.

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CIRMA
CONNECTICUT INTERLOCAL RISK MANAGEMENT AGENCY

ANNUAL REPORT
2012-13

CIRMA
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