

SENATE THIRD READING
SB 623 (Laird)
As Amended March 20, 2023
Majority vote

SUMMARY

Expands an existing industrial injury rebuttable presumption for a diagnosis of a post-traumatic stress disorder (PTSD) to additional firefighters and public safety officers.

Major Provisions

- 1) Extends, until January 1, 2032, the PTSD presumption described above to firefighters employed by the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veterans Affairs.
- 2) Extends, until January 1, 2032, the PTSD presumption described above to additional peace officers, as specified, employed by the Department of Justice, the State Department of State Hospitals, the State Department of Developmental Services, and the Department of Corrections and Rehabilitation.
- 3) Extends, until January 1, 2032, the PTSD presumption to public safety dispatchers, public safety telecommunicators, and emergency response communication employees.
- 4) Defines "public safety dispatcher," "public safety telecommunicator," or "emergency response communication employee" as an individual employed by a public safety agency whose primary responsibility is to receive, process, transmit, or dispatch emergency and nonemergency calls for law enforcement, fire, emergency medical and other public safety services by telephone, radio, or other communication device, and includes an individual who supervises other individuals who perform these functions.
- 5) The provisions of this bill would only apply prospectively to individuals, as specified, to injuries occurring on, or after, January 1, 2024.
- 6) Extends the sunset, until January 1, 2032, for the existing presumption that a diagnosis of PTSD for specified peace officers and firefighters is an occupational injury.

COMMENTS

Presumptions have never been intended to create work related injuries when, in fact, the injuries in question are not work related. Rather, presumptions of compensability have been adopted, some many decades ago, to reflect unique circumstances where injuries or illnesses appear to logically be work related, but it is difficult for the safety officer to prove it is work related.

With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm's way.

Generally, in order to establish that a new presumption ought to be adopted, proponents must show that the injury is most likely to be related to the job, that it is hard to prove this fact, and that when claims are filed, they are denied for lack of proof that the injury is related to the job.

In September 2019, the Chair of the Assembly Insurance Committee requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) undertake a study related to the PTSD rebuttable presumption created by SB 542 (Stern, Chapter 390, Statutes of 2019). CHSWC commissioned RAND to undertake the study and the results of that study were presented to the CHSWC board at their October 5, 2021 meeting. However, many of the board members raised concerns about the study not being very robust and the study's authors noted that further research would be needed to better understand the effectiveness of the PTSD presumption.

The author of this bill has committed to requesting a new study from CHSWC to be completed at a point where the data from the presumption proposed in this bill would be more readily available, but before the provisions of this bill sunset on January 1, 2032.

According to the Author

California's peace officers, firefighters, and public safety dispatchers are exposed to extraordinarily stressful working conditions on a near-daily basis. They respond to structure fires, massive wildfires, gun violence, domestic violence incidents, terrorist acts, automobile accidents, airplane crashes, and earthquakes, just to name a few.

In 2019, California enacted a rebuttable presumption within the workers' compensation system to increase treatment of post-traumatic stress injuries (PTSI) in firefighters and law enforcement. Because PTSI is presumed to have occurred during the course of their duties under the workers' compensation system, this law has promoted timely care of PTSI for our public emergency responders.

Senate Bill 623 ensures California's public emergency responders can continue accessing critical health care by extending the existing PTSI presumption by seven years from 2025 to 2032. Without further action, this critical presumption will expire. SB 623 also expands the presumption to include 9-1-1 dispatchers and other state peace officers who experience these same traumatic events on a near-daily basis.

Arguments in Support

CPF, one of the sponsors of this bill, write in support stating that "It is imperative that the current presumption afforded to many firefighters and law enforcement personnel across the state be maintained and that the protections be extended to the additional members of public safety identified in this bill. This will help facilitate timely treatment for a firefighter, law enforcement officer or public safety dispatchers who is suffering with a PTSI and in doing so, enables a quick recovery and return to work."

Arguments in Opposition

In opposition to this bill, a coalition of employers and insurers including the American Property Casualty Insurance Association, the California Association of Joint Powers Authorities, and the California Coalition on Workers' Compensation state: "There is no objective basis to evaluate the operation of current law, the need for this expansion, or the impact of stripping away protections for taxpayer-funded public entities. It is clear that SB 623 would drive up costs for struggling

public entities that are trying to provide emergency services, but it's not at all clear that a presumption is needed for these workers to fairly access the workers' compensation system."

FISCAL COMMENTS

According to the Assembly Appropriation Committee:

- 1) Costs of an unknown amount to the Workers' Compensation Appeals Board (WCAB), as data suggests that a PTSD presumption has not led to less litigation (special fund). Although the Division of Workers' Compensation (DWC) has estimated absorbable costs for prior legislation establishing a presumption, DWC must reconsider such costs after reviewing data to quantify how much additional time and resources are needed for WCAB adjudication of such matters.
- 2) Costs of an unknown amount, but potentially in the millions of dollars, across impacted departments for additional workers' compensation claims and staff workload to process the increase (General Fund (GF)). The magnitude of costs depends on the number of affected employees and frequency of claims that become compensable as a result of the presumption's expansion and extension.

The Department of Finance's (DOF's) analysis notes that an increase of 10 approved claims per year, assuming costs of approximately \$50,000 per claim, would result in GF costs of at least \$500,000, paid out over the course of several years. DOF also estimates substantial costs to local governments, but notes such costs would most likely not be state-reimbursable. The Commission on State Mandates has previously held that workers' compensation benefits impact both public and private employers and are therefore not reimbursable.

VOTES

SENATE FLOOR: 35-0-5

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

ABS, ABST OR NV: Grove, Jones, Nguyen, Niello, Seyarto

ASM INSURANCE: 13-0-1

YES: Calderon, Essayli, Berman, Cervantes, Chen, Vince Fong, Gipson, Grayson, Jones-Sawyer, Ortega, Soria, Valencia, Wood

ABS, ABST OR NV: Rodriguez

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Soria, Weber, Wilson

ABS, ABST OR NV: Dixon

UPDATED

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