

# HOUSE BILL REPORT

## HB 1593

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**As Reported by House Committee On:**

Labor & Workplace Standards

Appropriations

**Title:** An act relating to industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

**Brief Description:** Concerning industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

**Sponsors:** Representatives Macri, Bronoske, Berry, Simmons, Reeves, Bateman, Ramel, Doglio, Lekanoff, Reed, Callan and Fosse.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 2/8/23, 2/15/23 [DP];

Appropriations: 2/21/23, 2/23/23 [DPS].

**Brief Summary of Substitute Bill**

- Creates a rebuttable presumption that post-traumatic stress disorder is an occupational disease under workers' compensation for direct care registered nurses.
- Allows the presumption to be rebutted by a preponderance of the evidence.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member;

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Connors.

**Staff:** Trudes Tango (786-7384).

**Background:**

Workers' Compensation Coverage for Mental Health Conditions.

Under the state's industrial insurance (workers' compensation) laws, administered by the Department of Labor and Industries (Department), a worker who, in the course of employment, is injured or suffers disability from an occupational disease, is entitled to certain benefits. An occupational disease is one that arises naturally and proximately out of employment.

The Department was required to adopt a rule establishing that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease. Examples in the rule of conditions caused by stress that do not fall within occupational disease include, among other things, those conditions and disabilities resulting from: (a) changes in employment duties; (b) conflicts with a supervisor or relationships with coworkers or the public; (c) work load pressures; (d) subjective perceptions of employment conditions or environment; and (e) fear of exposure to chemicals, radiation biohazards, or other perceived hazards.

Stress resulting from exposure to a single traumatic event, such as actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury, may be considered an industrial injury. The worker must have been exposed to the event either by: (1) directly experiencing the event; (2) witnessing, in person, the event as it occurred to others; or (3) extreme exposure to aversive details of the event. Repeated exposure to traumatic events, none of which are a single traumatic event, is not an industrial injury or an occupational disease. However, a single traumatic event that occurs within a series of exposures may be considered an industrial injury.

Presumption for Certain First Responders.

The Department's rule does not apply to occupational disease claims resulting from post-traumatic stress disorders (PTSD) of certain firefighters, law enforcement officers, and public safety telecommunicators who receive calls for assistance and dispatch emergency services (dispatchers).

For those workers, there is a presumption that PTSD is an occupational disease if certain conditions are met. If the firefighter, law enforcement officer, or dispatcher was hired after a certain date, they must have submitted to a psychological examination that ruled out the presence of PTSD from preemployment exposures, if the employer provided such an examination. The firefighter, law enforcement officer, or dispatcher must also have served for at least 10 years before the PTSD develops.

The presumption may be rebutted by a preponderance of the evidence. Evidence may include the worker's lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

The presumption is extended following termination of service for a period of three calendar months for each year of service, but may not extend more than 60 months following the last date of employment.

The worker's PTSD is not considered an occupational disease if it is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

When a determination involving the presumption is appealed to the Board of Industrial Insurance Appeals (Board) or a court, and the final Board decision or court order allows the claim, the Board or the court must order the opposing party to pay reasonable costs and attorneys' fees to the claimant. When costs of the appeal must be paid by the Department in a state-fund case, the costs must be paid from the Accident Fund and charged to the costs of the claim.

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**Summary of Bill:**

A rebuttable presumption that PTSD is an occupational disease is created for direct care registered nurses covered under the workers' compensation statutes who are employed on a fully compensated basis. A direct care registered nurse is an individual licensed in the state as a nurse providing direct care to patients.

The presumption may be rebutted by clear and convincing evidence. The presumption extends to the claimant for a period of three calendar months for each year the claimant was a direct care registered nurse employed on a fully compensated basis, but may not extend more than 60 months following the last date of employment. The PTSD is not considered an occupational disease if it is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

When a determination involving the presumption is appealed to the Board or a court, and the final Board decision or court order allows the claim, the Board or the court must order the opposing party to pay reasonable costs and attorneys' fees to the claimant. When costs of the appeal must be paid by the Department in a state-fund case, the costs must be paid from the Accident Fund and charged to the costs of the claim.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) Nurses have been on the frontlines and, during the global pandemic, they had to navigate things they never thought they would. They provided full support for patients when families were not allowed to enter the facilities. They are dealing with severe psychiatric conditions, including being afraid of bringing COVID-19 home to their families. Over 100,000 nurses have left the profession due to high stress. The incidents of suicide and extreme depression and PTSD have risen in the last few years. This entire workforce experienced a level of trauma brought on by the pandemic. Nurses are facing an increase in violence in the workplace and are subject to verbal and physical abuse from patients. Staffing issues in the hospitals cause a crisis for nurses. The presumption created for firefighters did not result in a mass of claims. Thirty-three percent of nurses in the United States have experienced PTSD symptoms. They experience trauma when faced with requirements to provide quality care without a supportive system. Unless their needs are addressed, the crisis will continue to grow.

(Opposed) None.

(Other) This presumption is created without any requirement to have served a certain number of years or to take a psychological examination. The standard to rebut the presumption is too high and will be impossible to meet. Not every nurse works in an environment where this presumption is needed, and PTSD is already covered under workers' compensation. Creating presumptions introduces unequal access to the workers' compensation system. It creates a VIP list for some occupations and other occupations have to follow the normal rules. This presumption should have the same elements and standards as the presumption for firefighters. It is unclear why the standards should be different than what applies to firefighters.

**Persons Testifying:** (In support) Representative Nicole Macri, prime sponsor; Ruby Tan; Emily D'Anna; AJ Johnson, Washington State Fire Fighters Council; and Anna Nepomuceno.

(Other) Lisa Thatcher, Washington State Hospital Association; Bob Battles, Association of Washington Business; and Kris Tefft, Washington Self-Insurers Association.

**Persons Signed In To Testify But Not Testifying:** None.

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**HOUSE COMMITTEE ON APPROPRIATIONS**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chandler, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Dye and Schmick.

**Minority Report:** Without recommendation. Signed by 7 members: Representatives Chambers, Assistant Ranking Minority Member; Connors, Couture, Harris, Rude, Sandlin and Steele.

**Staff:** David Pringle (786-7310).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:**

The recommendation of the Appropriations Committee changed the standard required to rebut the presumption that post-traumatic stress disorder is an occupational disease from clear and convincing evidence to a preponderance of the evidence.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 2024.

**Staff Summary of Public Testimony:**

(In support) The wear and tear of the last few years on nurses has been tremendous. A presumption of occupational disease for post-traumatic stress disorder (PTSD) was added for first responders several years ago, and it is time to add front-line nurses to the workers benefitting from this protection. This gives nurses access to crucial mental health supports. The most cost-effective approach is to keep the nurses we have, rather than losing them to PTSD. Each percentage reduction in nursing team turnover saves hospitals \$260,000 per year.

(Opposed) None.

(Other) Since 2018 the Department of Labor and Industries has reported about \$60 million in claims for first responders. These are enormous claims costs. There are sideboards that should be added to this bill. The clear and convincing standard is too difficult to rebut, even with strong evidence. The cost of this benefit will be astronomical, given the number of claims that are anticipated.

**Persons Testifying:** (In support) Representative Nicole Macri, prime sponsor; and

Katharine Weiss, Washington State Nurses Association.

(Other) Kris Tefft, Washington Self-Insurers Association; and Bob Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.