



**Testimony Before the Senate Rules Committee
SB 507 – 8 amendment**

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Director's Association
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Members of the committee, my name is Hasina Wittenberg and I appear before you today to present testimony regarding the -8 amendment to SB 507 on behalf of the Special Districts Association of Oregon (SDAO) and the Special Districts Insurance Services (SDIS). SDIS was formed in the mid-1980s in response to an extremely adverse public liability insurance market. Currently, SDAO has approximately 956 members statewide and approximately 60% of those districts obtain workers' compensation coverage from the SDIS insurance pool; nearly 200 rural fire protection districts participate in our workers compensation plan. Rural fire protection districts are the largest type of special district that belongs to our association (approximately 253 of the 956 special districts). SDIS's pool includes but is not limited to the following types of special districts: rural fire protection districts; park and recreation districts; water districts; sanitary districts; and port districts.

The Oregon Fire District Directors Association's membership represents the elected officials (approximately 800 fire district director board members) of 162 rural fire protection districts.

SDAO and OFDDA opposed the original version of SB 507 and testified in opposition to the bill before the Management Labor Advisory Committee (MLAC) and Senate Workforce Committee. MLAC formed a subcommittee to encourage the proponents and opponents to attempt to achieve some sort of consensus with respect to Post-Traumatic Stress Disorder (PTSD) presumption legislation. After putting a great deal of effort into negotiating with SB 507's proponents, SDAO and OFDDA have no objection to the adoption of the -8 amendments to the bill and will not object to the bill's adoption with the -8 amendments.

We originally raised significant concerns with the following provisions of the bill:

- Inclusion of volunteers and not limited to full time paid career public safety employees
- Effective on day one of employment (no minimum employment timeline standard)
- No end to the life of the presumption (no tail after terminating career service)
- Extremely broad definition of stress and trauma related disorders
- Broad category of providers who could diagnose stress and trauma related disorders
- Presumption not rebuttable by employer
- Retroactively affected claims without a bright line of effective on or after date

The -8 amendment addresses each and every concern we raised with the original bill. For clarity sake the following explanation of what the bill will do with the -8 amendments follows.

Who is covered?

The proposal covers Oregon public sector full-time paid (career-type) firefighters, emergency medical services providers, police officers, corrections and youth corrections officers, emergency dispatchers, 911 operators, and parole and probation officers.

What conditions are presumptively compensable?

The presumption of compensability only applies to PTSD and Acute Stress Disorder. These are the only diagnoses in the DSM-V for which exposure to life threatening/life changing trauma is necessary for the condition to occur.

How and when does the presumption apply?

Where cumulative traumas exist, the proposal provides for a presumption only if the employee has worked in one of the listed Oregon public safety fields for a minimum of five years. There is also a fixed endpoint beyond which the presumption no longer applies; the claim must be filed while the employee remains in public safety employment or within seven years of leaving such employment. If an employee has been exposed to a significant single traumatic event that the DSM-V recognizes as sufficient to trigger PTSD or Acute Stress Disorder, the five-years of employment minimum does not apply. In that case, the presumption is available to employees who have experienced such a significant single event regardless of how long the employee has been employee in a covered public safety category.

Are there any pre-conditions to availability of the presumption?

Yes. The proposal makes clear that it is the employee's burden to establish that it is medically probable that he or she has PTSD or Acute Stress Disorder per the DSM-V before the presumption is available. To satisfy that burden, the employee must come forth with expert medical evidence from a psychiatrist or psychologist saying that the employee meets the DSM-V diagnostic criteria for PTSD or Acute Stress Disorder. The employer may then choose to seek independent expert input on whether the diagnosis of PTSD or Acute Stress Disorder is correct. The intent of the bill with the -8 amendment is that the Workers' Compensation Board and its judges are to then consider and weigh opinions of experts saying that the employee has PTSD or Acute Stress Disorder against any opinions of experts saying that the employee does not have such a condition. Through an evaluation of which opinions are the most well-reasoned, and therefore most persuasive, the Board and its judges will then rule on whether the employee likely has met his/her burden of proving that the PTSD and Acute Stress Disorder diagnoses are valid. Only if the Board or its judges decide that the persuasive evidence

establishes that the employee has PTSD or Acute Stress Disorder will the presumption of compensability then apply.

Who can diagnose PTSD and Acute Stress Disorder?

For the presumption to apply, the diagnosis must come from a licensed psychiatrist or psychologist. The opinions of other medical professionals do not trigger the presumption.

Is the presumption rebuttable?

Yes. Once the employee establishes that he or she has PTSD or Acute Stress Disorder such that the condition is presumptively compensable, an employer may rebut that presumption by proving through clear and convincing evidence (i.e., by proving it highly likely) that the employee's duties in the covered public safety fields were not of real importance or great consequence in causing the diagnosed condition. Essentially, if the employer shows that work duties were not a substantial or significant factor in causing the condition, the presumption is rebutted.

Can employers issue a current condition denial after a claim for PTSD or Acute Stress Disorder is accepted?

Yes. The -8 amendment allows for issuance of current condition or "ceases-type" denials. It is the employer's burden to support such a denial with clear and convincing evidence that the employee's duties working in covered employment are no longer of real importance or great consequence in causing the disability and need for treatment of the diagnosed condition.

Will the presumption apply to claims filed by City of Portland police, fire, and other public safety employees?

Yes.

If this bill passes, will claims already filed be affected?

No. Under the proposal the new law will apply only to new claims filed on or after the effective date of the law. The -8 amendment provides that the effective date of the bill's provisions would be 90 days after the Governor signs the bill.