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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Lang and Antani

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SUMMARY

- Provides compensation and benefits to a peace officer, firefighter, or emergency medical worker (a “first responder”) diagnosed with post-traumatic stress disorder (PTSD) without a physical injury received in the course of and arising out of the person’s employment with a public employer as a first responder.
- Prohibits a first responder from receiving compensation or benefits for PTSD with no accompanying physical injury at the same time as the individual is receiving a retirement or disability benefit from Social Security or a disability benefit from a state retirement system.
- Creates the State Post-Traumatic Stress Disorder Coverage Fund, administered by the Director of Public Safety, for the purpose of paying the compensation and benefits provided by the bill.
- Capitalizes the fund with a transfer from unclaimed funds and maintains it by requiring public employers that employ peace officers, firefighters, and emergency medical workers to pay an annual premium calculated by the Director.
- Requires the Director to adopt rules to implement the bill, including rules governing the process for reviewing applications submitted to the Director and determining whether to pay compensation, benefits, or both.
- Grants a public employer that pays premiums into the fund immunity from liability in any lawsuit for a diagnosis of PTSD during the period covered by the premiums, even if the PTSD is not compensable.
- Grants an employee of a public employer immunity from liability in any lawsuit for a diagnosis of PTSD received by the public employer’s first responders so long as the PTSD is compensable through the fund.

- Allows a first responder diagnosed with PTSD to sue an employer that fails to pay premiums for damages caused by the employer's wrongful act, neglect, or default that results in the diagnosis.
- Allows a first responder diagnosed with PTSD who is employed by a noncomplying employer to file a claim for compensation and benefits from the fund as though the employer had paid premiums.

DETAILED ANALYSIS

Compensation and medical benefits for PTSD

The bill grants compensation and medical benefits for up to two years to a peace officer, firefighter, or emergency medical worker (a "first responder") employed by a public employer who is diagnosed by a psychiatrist or licensed clinical psychologist with post-traumatic stress disorder (PTSD) without an accompanying physical injury received in the course of and arising out of the individual's employment. Compensation and benefits are paid from the State Post-Traumatic Stress Disorder Coverage Fund created by the bill and administered by the Director of Public Safety. The fund is initially capitalized through a transfer from unclaimed funds. The fund is maintained through annual premiums paid by public employers that employ first responders. An employer that pays these premiums is immune from liability if the employer's first responders are diagnosed with PTSD received in the course of, and arising out of, employment as first responders.¹

Currently, a first responder is not eligible to receive compensation or benefits under Ohio Workers' Compensation Law² for PTSD unless the PTSD arose from a physical injury incurred by the first responder that is compensable under the Law.³

Compensation

Under the bill, a first responder with PTSD generally receives 66²/₃% of the first responder's average weekly wage so long as the first responder is totally disabled. The first responder cannot, however, receive any more than the state wide average weekly wage (SAWW) as calculated under the Workers' Compensation Law (\$980 in 2020). The first responder cannot receive any less than 33¹/₃% of the SAWW (approximately \$326.67 in 2020), unless the first responder's normal wage is less than 33¹/₃% of the SAWW. In that case, the first responder receives the first responder's full weekly wage.

A first responder who, due to PTSD, suffers a wage loss as a result of returning to employment other than the first responder's former position or of being unable to find employment consistent with the first responder's disability, receives a weekly payment equal to

¹ R.C. 4168.02, 4168.09, and 4168.12; Section 3.

² R.C. Chapters 4121, 4123, 4127, and 4131.

³ R.C. 4123.01(C), not in the bill.

66 $\frac{2}{3}$ % of the difference between the first responder's average weekly wage and the first responder's present earnings. A payment for lost wages cannot exceed the SAWW.

A first responder does not receive compensation unless and until the first responder has been totally disabled for a continuous period of two weeks or more. Once the first responder has been totally disabled for at least two weeks, the first responder receives the first week of payments and any other weekly compensation that is due.⁴

Compensation paid under the bill ceases one year after it begins, unless the Director receives a recommendation from a psychiatrist or licensed clinical psychologist that compensation should be extended. If the Director receives a recommendation, the Director must extend compensation for one year.⁵

Medical benefits

The bill requires the Director to pay from the fund amounts for medical, nurse, and hospital services and medicines as the Director deems proper to treat a first responder diagnosed with PTSD by a psychiatrist or licensed clinical psychologist. The Director must adopt a rule listing approved services and medicine for which reimbursement is available. The list must include the reimbursement rate, which cannot be greater than the reimbursement rate for comparable services and medicines under the Medicare program.

A medical provider (see "**Additional definitions**," below) may provide approved services or medicines to treat a peace officer, firefighter, or emergency medical worker diagnosed with PTSD and receive reimbursement from the fund. A medical provider cannot attempt to collect any excess costs for covered services or supplies from the individual or employer.⁶

The Director also must adopt procedures for disqualifying a medical provider from further reimbursement from the fund if the provider violates any of the Director's rules. A disqualification does not take effect until the Director delivers to the provider a written notice specifying the rule that was violated.⁷

A first responder is not required to apply for compensation to receive medical benefits under the bill. As with compensation, payments for medical benefits cease one year after they begin, unless the Director receives a recommendation from a psychiatrist or licensed clinical psychologist that the medical benefits should be extended. If the Director receives a recommendation, the Director must extend the benefits for one year.⁸

⁴ R.C. 4168.45. See also Bureau of Workers' Compensation, *Compensation Rates 2010 to 2020 TT, LM, PT, WL, %PP, SL, and Death Benefits*, available [here](#).

⁵ R.C. 4168.02(B)(1) and (3).

⁶ R.C. 4168.46 and 4168.80(B).

⁷ R.C. 4168.20 and 4168.80(D).

⁸ R.C. 4168.02(B)(2) and (3) and (D).

Unlike compensation, there is no waiting period in connection with medical benefits.⁹

Claims and determinations

The bill requires the Director to adopt rules establishing a procedure by which a first responder may apply for compensation under the bill. The Director also must adopt procedures for reimbursing a medical provider from the fund for providing approved medical benefits. Claims for compensation or medical benefits must be filed within two years after disability due to PTSD or within six months after diagnosis of PTSD, whichever is longer. The Director must review applications for compensation and benefits submitted to the Director in accordance with the adopted procedures. The Director must then order compensation to be paid to those individuals determined to be eligible and order payment for approved medical benefits.

Claims information gathered by the Director for the purpose of making determinations is for the Director's exclusive use and is not open to the public or admissible in court, unless the court's proceedings relate to an appeal described below. The Director may, however, tabulate and publish the information in statistical form for use by of other state agencies and the public.¹⁰

Appeals

An individual, a public employer, or a medical provider affected by a Director order may appeal the order to a court. The appeal must be filed in the court of common pleas of the county in which the individual resides or in which the medical provider conducts business. A party that wishes to appeal must do so within 60 days after the date the party received the Director's order.¹¹

Payments

If the Director orders payment of compensation, benefits, or both, the payment begins at the time of the order. If the Director denies a payment, but, after an appeal, a court orders the payment, the payment begins on the date the court orders. When the Director orders payments, but a court reverses the order, any payments being made immediately stop. The money previously paid from the fund under the Director's order is ignored for purposes of calculating an employer's premiums (see "**Fixing premium rates**," below).¹²

Additional rules

The bill requires the Director to adopt any additional rules that are necessary to carry out the bill, including rules to establish both of the following:

⁹ R.C. 4168.45.

¹⁰ R.C. 4168.20, 4168.21, 4168.48, and 4168.80(A) and (C).

¹¹ R.C. 4168.60.

¹² R.C. 4168.47.

- Procedures for reimbursing a psychiatrist or licensed clinical psychologist from the fund for time and effort spent diagnosing a first responder who has been found to be eligible for compensation, benefits, or both;
- Blank applications for benefits or compensation, notices to public employers and employees, proofs of medical attendance and hospital and nursing care, proofs of employment and wage earnings, and other necessary blank applications.¹³

Relationship to retirement and disability benefits

Under the bill, a first responder is not entitled to compensation or benefits while the first responder receives a disability benefit or disability retirement, as appropriate, from the Public Employees Retirement System (PERS), the Ohio Police and Fire Pension Fund (OP&F), the School Employees Retirement System (SERS), or the State Highway Patrol Retirement System (SHPRS), or a Social Security retirement or disability benefit.

If an individual receives compensation or benefits from the fund for PTSD while the individual receives a disability benefit or disability retirement from a retirement system or a Social Security retirement or disability benefit, the bill allows the Director of Public Safety to collect both of the following from the first responder:

- The amount of compensation or benefits paid to the first responder from the fund for the time period the first responder received concurrent benefits or retirement;
- Any interest, attorney's fees, and costs the Director incurs in collecting that payment.¹⁴

On determining that a PERS, OP&F, SERS, or SHPRS member's PTSD without an accompanying physical injury qualifies the member for a disability benefit or disability retirement, the bill requires the appropriate retirement system to notify the Director of all of the following: the member's name, that the member's PTSD without accompanying physical injury qualifies the member for a disability benefit or disability retirement, the effective date of the member's disability benefit or disability retirement, and the date on which payments for the disability benefit or disability retirement commence. The bill exempts these reports from current law confidentiality requirements applicable to certain PERS, OP&F, SERS, or SHPRS records.¹⁵

State Post-Traumatic Stress Disorder Coverage Fund

The bill creates the State Post-Traumatic Stress Disorder Coverage Fund. The fund is a custodial fund in the custody of the State Treasurer, but it is not part of the state treasury. The fund can only be used for the following purposes:

¹³ R.C. 4168.80(E) and (F).

¹⁴ R.C. 4168.02(C).

¹⁵ R.C. 145.364, 742.391, 3309.402, and 5505.182.

- Paying compensation to, and the cost of medical benefits for, first responders who are disabled by PTSD without an accompanying physical injury; and
- Paying administrative costs incurred by the Director in administering and enforcing the bill.¹⁶

The Director must deposit all money paid in accordance with the bill into the fund. Any investment earnings are credited to the fund. The bill requires the Director to keep an accurate account of all of the following:

- The money paid in premiums;
- The total losses attributable to PTSD suffered by first responders;
- The losses incurred against the fund on account of claims for PTSD suffered by first responders;
- The losses incurred against the fund to cover the costs of administering the bill.¹⁷

Initial funding

As soon as possible after the bill's effective date, the Director of Budget and Management must request the Director of Commerce to transfer to the fund up to \$44,000,000 of unclaimed funds that have been reported by the holders of unclaimed funds under continuing law. On receipt of the request, the Director of Commerce must make the transfer.¹⁸

Premiums

On or before December 31 of each year, a public employer employing one or more first responders must pay a premium estimated by the Director. The Director estimates the public employer's premium using the rates the Director fixes described below under "**Fixing premium rates**" and the most recent annual payroll report provided by the employer (see "**Payroll reports**," below). The Director must estimate the premium and notify the employer of the estimate annually by November 1.

On or before February 15 of each year, the day by which an employer must submit its payroll report, the Director must adjust the estimated premium to match the premium the employer actually owes. The Director makes the adjustment based on the difference between the estimated and actual gross payrolls from the most recent report. The public employer must pay any balance owed immediately. Any balance due the public employer is credited to the public employer's account.

¹⁶ R.C. 4168.09.

¹⁷ R.C. 4168.10(A)(4).

¹⁸ Section 3.

The Director provides each public employer with a receipt. The receipt certifies that the employer has paid premiums for the year, and it is prima facie evidence that the premium was paid.

The Director must adopt rules for establishing premiums for new public employers and public employers that have not employed first responders for enough time to have been required to file a payroll report. The public employer must pay premiums according to the Director's rules until the employer submits its first payroll report.¹⁹

Fixing premium rates

Similar to the Workers' Compensation Law, the bill requires the Director to classify different types of first responders according to the categories applicable to Ohio employers and established by the National Council on Compensation Insurance. The Director must then determine the risks of the different classes with respect to suffering from PTSD. The Director fixes premium rates for each class the Director identifies based on the total payroll in each of the classes. Premiums must be sufficiently large to maintain the fund at the lowest possible level consistent with paying legitimate claims, administering the bill, and maintaining the fund's solvency.²⁰

Payroll reports

Also similar to the Workers' Compensation Law, every public employer employing one or more peace officers must keep records of and furnish to the Director, any information required by the Director to carry out the bill. Specifically, the public employer must submit a payroll report to the Director on a form prescribed by the Director on or before February 15 of each year. The report must include:

- The number of first responders employed by the public employer in Ohio during the preceding calendar year; and
- The number of first responders employed in each of the classes identified by the Director and the aggregate amount of wages paid to them.

Information contained in the report is for the exclusive use and information of the Director in the discharge of the Director's duties under the bill. The information is not open to the public and cannot be used as evidence in any court action or proceeding, unless the Director is a party to the action or proceeding. The Director may, however, tabulate and publish the information in statistical form for use by other state departments and the public.²¹

Where payroll information cannot be obtained or, in the Director's opinion, is not an adequate measure for determining premium rates, the Director may determine rates using

¹⁹ R.C. 4168.11 and 4168.12.

²⁰ R.C. 4168.10(A) and (B).

²¹ R.C. 4168.11.

another basis. The alternative basis must be consistent with insurance principles and be fair in view of the degree of risk with respect to PTSD.²²

Immunity

A public employer that employs a first responder and that pays the required premiums is immune from liability in any lawsuit for a diagnosis of PTSD during the period covered by the premiums. Like the Workers' Compensation Law, the employer immunity applies whether or not the PTSD is compensable.²³

Additionally, an employee of a public employer that employs a first responder is immune from liability in any lawsuit for a diagnosis of PTSD received by the public employer's employee who is employed as a first responder. The employee immunity only applies if the PTSD is compensable (similar to the Workers' Compensation Law).²⁴

Noncomplying employers

A first responder employed by a public employer that fails to pay the required premiums may sue the noncomplying employer for damages proximately caused by the employer's wrongful act, neglect, or default that results in a diagnosis of PTSD. The bill prohibits the noncomplying employer from raising any of the following defenses in the lawsuit:

- The fellow servant rule;
- Assumption of risk;
- Contributory negligence.²⁵

The bill also allows a first responder diagnosed with PTSD and employed by a noncomplying employer to file an application with the Director of Public Safety for the compensation and medical benefits provided under the bill. The Director must review the application and, if applicable, make an award as though the public employer had paid premiums. Filing with the Director does not bar a separate lawsuit against the employer. However, if the employee recovers damages in a separate lawsuit, the employee must repay any money paid from the fund. The Director must sue a noncomplying employer to recover money paid from the fund to the employer's employee.²⁶

Additional definitions

The bill defines the following terms:

²² R.C. 4168.10(C).

²³ R.C. 4168.75 and R.C. 4123.74, not in the bill.

²⁴ R.C. 4168.76 and R.C. 4123.741, not in the bill.

²⁵ R.C. 4168.78.

²⁶ R.C. 4168.77.

- “Medical provider” means a psychiatrist, licensed clinical psychologist, physician, nurse, licensed professional clinical counselor, or licensed professional counselor.
- “Peace officer” means a person who has arrest powers under the Arrest, Citation, and Disposition Alternatives Law.²⁷
- “Firefighter” means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.
- “Emergency medical worker” means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under the Emergency Medical Services Law,²⁸ whether paid or volunteer.
- “Peace officer,” “firefighter,” and “emergency medical worker” includes an off-duty peace officer, firefighter, or emergency medical worker when responding to an inherently dangerous situation that calls for an immediate response on the part of the peace officer, firefighter, or emergency medical worker, regardless of whether the peace officer, firefighter, or emergency medical worker is within the limits of the jurisdiction of the peace officer’s, firefighter’s, or emergency medical worker’s regular employment or voluntary service when responding, on the condition that the peace officer, firefighter, or emergency medical worker responds to the situation as the peace officer, firefighter, or emergency medical worker otherwise would if the peace officer, firefighter, or emergency medical worker were on duty in the emergency medical worker’s jurisdiction.²⁹

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 03-16-20 |

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²⁷ R.C. 2935.01, not in the bill

²⁸ R.C. Chapter 4765.

²⁹ R.C. 4168.01(A) through (D) and (M).