

2023-02-21 SB 406 (Support).pdf

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Position: FAV

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February 21, 2023

TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB 406 – Workers’ Compensation – Occupational Disease Presumptions –
First Responders (Support)

The Office of Attorney General supports SB 406, Senator Kagan’s legislation to provide that a first responder who is diagnosed by a licensed psychologist or psychiatrist with post-traumatic stress disorder (“PTSD”) is presumed to have an occupational disease that was suffered in the line of duty and compensable under workers’ compensation law.

According to the Institutes of Health Multi-Specialty Clinics, “[m]ore than 80 percent of first responders experience traumatic events on the job” and, consequently, “first responders are at a high risk of developing PTSD as a work-related injury or condition.”¹ Senate Bill 406 merely recognizes these realities and provides first responders with a rebuttable presumption that their diagnosed PTSD was precipitated by a traumatic work experience.

We think Senator Kagan’s legislation sets a proper tone by doing right by our first responders. Of course, the legislation may lead to more approved claims for workers’ compensation and should be adequately funded.

For the foregoing reasons, we urge a favorable report on SB 406.

cc: Committee Members

¹ See Institutes of Health: Multi-Specialty Clinics, available online at: <https://institutesofhealth.org/ptsd-in-first-responders/> (last visited on Feb. 20, 2023).

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

MPA Testimony 2023 - Support - Senate Bill 406 - W

Uploaded by: Pat Savage

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February 20, 2023

Senator Melony Griffith, Chair
Senator Katherine Klausmeier, Vice Chair
Finance Committee
Miller Senate Office Building, 3 East
Annapolis, MD 21401

RE: SB 406 Workman's Compensation – Occupational Disease Presumptions – First Responders

Position: **Support**

Dear Chair Griffith, Vice-Chair Klausmeier and Members of the Committee:

The Maryland Psychological Association represents over 1000 doctoral level psychologists throughout the state. We write in **support of SB 406**, which would provide that a first responder who is diagnosed by a licensed psychologist or psychiatrist with post-traumatic stress disorder is presumed, under certain circumstances, to have an occupational disease that was suffered in the line of duty and is compensable under workers' compensation law. This ensures closure of a gap that creates an inequality in coverage and would allow these effected first responders to get the essential care they need.

For the reasons noted above the Maryland Psychological Association asks for a **FAVORABLE** report on SB 406.

Thank you for considering our comments on SB 406. If we can be of any further assistance as the Senate – Finance Committee considers this bill, please do not hesitate to contact MPA's Legislative Chair, Dr. Pat Savage at mpalegislativcommittee@gmail.com.

Respectfully submitted,

Rebecca Resnik, Psy.D.

Rebecca Resnick, Psy.D.
President

R. Patrick Savage, Jr., Ph.D.

R. Patrick Savage, Jr., Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs

FOP35 Testimony SB406 FAV.pdf

Uploaded by: Roger Manno

Position: FAV



Fraternal Order of Police
Montgomery County Lodge 35

Phone 301.948.4286
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February 21, 2023

TESTIMONY

LEE HOLLAND, PRESIDENT, MONTGOMERY COUNTY FRATERNAL ORDER OF POLICE
LODGE 35

SB 406 - WORKERS' COMPENSATION - OCCUPATIONAL DISEASE PRESUMPTIONS -
FIRST RESPONDERS

FAVORABLE

Dear Chair Griffith and honorable members of the Senate Finance Committee:

On behalf of Montgomery County Fraternal Order of Police Lodge 35 and our more than 1400 active and retired Montgomery County Law Enforcement Officers, I write in strong support of SB406, and I ask for a favorable report.

Post Traumatic Stress Disorder (PTSD) is pervasive among our members, Montgomery County Police, as well as other first responders. For Police specifically, we regularly respond to and are exposed to dangerous and horrific events that are traumatic both physically and emotionally. In many cases, these are among the most tragic and horrific situations and scenes imaginable, including extreme acts of violence, maimed bodies, life-threatening conditions, and other scenarios that are traumatic, heartbreaking and difficult to reconcile. While a single event can be enough to trigger PTSD, exposure to potentially hundreds or thousands of such events over the course of a Police Officer's career, can have long-lasting debilitating effects that impair that Officer's health and ability to function productively.

Workers Compensation law covers Heart Disease and Hypertension as conditions that are presumed to be service connected, given the extraordinary stress and traumatic conditions of our work. However, the law does not currently recognize Post Traumatic Stress Disorder that often times parallels Heart Disease and other service connected health conditions. This legislation appropriately recognizes Post Traumatic Stress Disorder as a condition that should be presumed to be service connected.

For these reasons, we thank Senator Kagan for sponsoring SB604, and we ask for a favorable committee report.

Respectfully,

Lee G. Holland
President
Montgomery County Fraternal Order of Police Lodge 35

SB406-SponsorTestimony

Uploaded by: Senator Kagan

Position: FAV

CHERYL C. KAGAN
Legislative District 17
Montgomery County

Vice Chair
Education, Energy, and
the Environment Committee

Joint Audit and Evaluation Committee
Joint Committee on Federal Relations



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB406: Workers' Compensation - Occupational Disease Presumptions - First Responders
Senate Finance Committee
Tuesday, February 21, 2023 1PM

“9-1-1-- What is the location of your emergency?”

Imagine answering the phone to hear a desperate parent whose child is not breathing. After you hang up, the next call is from an injured driver involved in a ten-car pile-up. Once emergency personnel reach the scene, you take a breath, only to pick up the phone and hear from a woman who had just been raped. A 9-1-1 Specialist’s daily job is demanding, harrowing, and essential to public health and safety. The courageous women and men under the headsets are surely our **“First, First Responders.”**

[The National Emergency Numbers Association reported](#) that “There is a staffing crisis in 9-1-1. Public Safety Answering Points [9-1-1 Centers] across the nation are chronically understaffed, leading to a workforce that is continually stressed, overworked, and burned out. New hires and trainees are frequently gone before their probationary periods end.”

Research suggests that [8-24% of 9-1-1 Specialists experience PTSD](#) (Post-Traumatic Stress Disorder) when psychologically evaluated, and [23.9% exhibited symptoms of probable major depression](#). The effects of trauma will only worsen as Maryland continues its transition to Next Generation 9-1-1, when they will be exposed to gruesome photos and videos as well. These audible and/or visual experiences leave 9-1-1 Specialists even more vulnerable to psychological trauma.

The trauma associated with answering 9-1-1 calls is not hypothetical and cannot be overstated. In recent years, these First First Responders have died by suicide or had significant emotional breakdowns. That includes incidents here in Maryland.

But our 9-1-1 Specialists are not alone in facing significant trauma due to their life-saving public service jobs. Unlike last year’s version, SB406 proposes to include:

- A FIREFIGHTER;
- AN EMERGENCY MEDICAL SERVICES PROVIDER;
- A RESCUE SQUAD MEMBER;
- A SWORN MEMBER OF THE OFFICE OF THE STATE FIRE MARSHAL;
- A MEMBER OF A VOLUNTEER FIRE OR RESCUE COMPANY;
- A 9–1–1 SPECIALIST;
- A LAW ENFORCEMENT OFFICER; OR
- A CORRECTIONAL OFFICER.

[SB406](#) would establish a Workers' Compensation presumption for First Responders who suffer from clinically diagnosed, work-related PTSD. This would shift the burden of proving the diagnosis from the suffering First Responders.

The eligibility for this presumption is specific and narrow. A First Responder seeking compensation must be examined and diagnosed by a psychologist or psychiatrist licensed to practice in the jurisdiction where the First Responder would be treated. Mental health conditions **must** meet the criteria specified in the [American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders](#) to qualify. Individuals must apply while employed as a First Responder or within 18 months immediately following employment.

On behalf of the NG911 Commission, and with respect and gratitude to our dedicated, tenacious, and courageous public servants who save lives every day, **I implore you to give SB406 a favorable report.**

SB406 testimony.pdf

Uploaded by: Robert Phillips

Position: FWA

MARYLAND STATE FIREFIGHTER'S ASSOCIATION

REPRESENTING THE VOLUNTEER FIRE, RESCUE, AND EMS PERSONNEL OF MARYLAND.



Robert P. Phillips

Chair

Legislative Committee

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SB 406: Workers' Compensation – Occupational Disease Presumptions – First Responders

My name is Robert Phillips and I am the Legislative Committee Chair for the Maryland State Firefighters Association (MSFA)

I wish to present testimony in favor with amendments of Senate Bill 406: Workers' Compensation – Occupational Disease Presumptions – First Responders

The MSFA is in favor of and support this bill with an amendment. We would like an amendment removing the time limit on treatment. PTSD does not have a time stamp on recovery. This "disorder" does not start and stop abruptly, it is different for each and every person affected. We would like to see the limit of treatment left up to the Licensed Psychologist or Psychiatrist treating the patient not a code, law or standard.

I thank the committee for their time and attention to this important bill and ask that you vote favorable on Senate Bill 406 with an amendment to remove the treatment time limit.

I will now be glad to answer any questions, or my contact information is listed above and welcome any further inquiries you might have.

SB0406-FIN_MACo_OPP.pdf

Uploaded by: Brianna January

Position: UNF



Senate Bill 406

Workers' Compensation - Occupational Disease Presumptions - First Responders

MACo Position: **OPPOSE**

To: Finance Committee

Date: February 21, 2023

From: Brianna January

The Maryland Association of Counties (MACo) **OPPOSES** SB 406. This bill would categorize Post-Traumatic Stress Disorder (PTSD) as a presumed occupational disease eligible for workers' compensation for a lengthy list of public sector workers.

County opposition to the bill is not opposition to PTSD claims being determined as work-related and therefore compensable. The opposition is to the bill's presumption of compensability, which would place an undue burden on counties as the major employer of these professions, with potentially staggering fiscal impact on local government. **No state has created this PTSD presumption.**

Maryland's workers' compensation law already creates a nearly "perfect storm" where a series of statutory presumptions prompt consideration of workplace exposures leading to compensability. Maryland's courts have effectively ruled that these presumptions are irrebuttable in compensability proceedings, so the outcome of presumption-related cases is virtually assured. Adding even more tenuous categories to this already biased structure would overburden public employers, causing them to shoulder burden for an even longer list of employee concerns that never arose from the workplace.

Counties honor and support our first responders, who, without question, experience challenging work requirements. However, SB 406 creates an unreasonable and unenforceable standard. The bill skips past the process to determine if an individual suffers from PTSD because of their professional capacity, and instead applies an effectively irrebuttable presumption that all such cases are work-related.

The financial implications of the presumption set by SB 406 would be significant. Not only would SB 406 include PTSD diagnosis as a presumed occupational disease, but it would also include any lingering and permanent conditions related to PTSD. Counties would not only have to approve and pay workers' compensation claims related to diagnosis, but they would also have to do so potentially indefinitely for each claimant. With more staff potentially awarded broadly defined compensated leave under SB 406, local governments would need to hire additional personnel to ensure that law enforcement agencies, 9-1-1 call center staff, firehouses, and emergency response departments are appropriately staffed and resourced at all times, otherwise, Marylanders may experience longer wait times for emergency intake and response. This would make Maryland less safe and would further strain emergency resources at a time when counties are challenged to fully support these functions.

For these reasons, MACo **OPPOSES** SB 406 and urges an **UNFAVORABLE** report.

MDCWrittenTestimonySB406.pdf

Uploaded by: Julie Murray

Position: UNF



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SB 406 Chesapeake-IWIF Testimony.pdf

Uploaded by: Lyndsey Meninger

Position: UNF



Testimony of Chesapeake Employers’ Insurance Company and Injured Workers’ Insurance Fund in Opposition to Senate Bill 406

Senate Bill 406 proposes to add an occupational disease presumption under Labor and Employment, § 9-503 for “first responders”; including, but not limited to: firefighters (paid and volunteer), emergency medical services providers, rescue squad members, 9-1-1 specialists, law enforcement officers, and correctional officers for post-traumatic stress disorder (hereinafter, “PTSD”) diagnosed by a licensed psychologist or psychiatrist for treatment limited to a two-year period following the diagnosis.

Of note, Chesapeake Employers’ Insurance and the Injured Workers’ Insurance Fund have claims for PTSD filed and accepted with benefits paid. This is not limited to “first responders” and is from case law: *Means v. Baltimore County*, 344 Md. 661 (1997), which deals with a paramedic that suffered from PTSD as a result of responding to a severe accident. The Appellate Court of Maryland found that “the Claimant’s PTSD could be reasonably characterized as due to the general character of her employment as a paramedic.” In summary, the Court found that PTSD may be compensable as an occupational disease under the Workers’ Compensation Act in Maryland, and Chesapeake Employers’ Insurance and the Injured Workers’ Insurance Fund have responded accordingly. Additionally, due to the liberal application of *Belcher v. T. Rowe Price*, 329 Md. 709 (1992), Chesapeake Employers’ Insurance and the Injured Workers’ Insurance Fund also have PTSD claims for specific situations filed as an accidental injury.

The chart below includes all claims in the last five years that either have PTSD in the accident/occupational disease description or have a paid medical bill with a PTSD diagnosis for Chesapeake Employer’s Insurance and the Injured Workers’ Insurance Fund.

Accident Year	Chesapeake	State	Total
2018	29	54	103
2019	32	44	83
2020	27	29	73
2021	15	27	53
2022	10	14	27
Grand Total	113	168	281

Some PTSD claims arise from a physical accidental injury, but of those that are stand-alone PTSD claims, the average paid amount for those claims is \$29,045.07. Of note, these claims do not include a two-year limitation of treatment, and Chesapeake Employer's Insurance and the Injured Workers' Insurance Fund is unsure if this bill is meant to exclude these "first responders" to indemnity benefits. Approximately 173 of the total claims above fit into the "first responders" as defined in Senate Bill 406. (The bill does not define "9-1-1 Specialist", and therefore, we are unaware if the State's approximately 150 employees that are 9-1-1 Operators/Specialists would be included or excluded in this statute. Of note, last year's SB 374 (2022) defined "9-1-1 Specialist" as the meaning stated in Public Safety § 1-301, which did not include State employees. The current bill has no such definition.)

Currently, under Labor and Employment, § 9-503, various police officers are covered by a presumption for heart disease and hypertension; various firefighters are covered by a presumption for heart disease, hypertension, lung disease, and certain types of cancers (leukemia, prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, bladder, kidney, renal, or breast), and various paid employees of the Department Natural Resources have a presumption for Lyme disease. In the last ten years (2013 – 2022), Chesapeake Employers' Insurance and the Injured Workers' Insurance Fund have incurred a total of \$31,926,184.45 over 619 claims (an average cost of \$51,577.03 per claim).

The purpose and concept around the current presumptions focus on a general skepticism as to the compensability of the above-mentioned diseases and cancers as related to employment as they could also come from a pre-existing and/or family condition without the ability to know if the condition is employment related or otherwise. Therefore, presumptions allow for compensability, even when a question arises of the disease source. This concept simply is not the case with PTSD, as an injured worker is able to pinpoint a situation or several situations which caused the medical concern and later diagnosis. A presumption is not needed given that PTSD is already a compensable condition as described above.

Given that presumptions already bring a significant cost to both the State and local governments, and PTSD is already being a compensable condition via case law, Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund respectfully oppose Senate Bill 406.

*Contact: Carmine G. D'Alessandro, Esq.
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Chesapeake Employers Insurance Company/IWIF
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SB 406 WC First Responders APCIA oppose 022123 FIN

Uploaded by: Nancy Egan

Position: UNF



Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

Senate Bill 406 - Workers' Compensation - Occupational Disease Presumptions - First Responders

February 21, 2023

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) is a national trade organization whose members write approximately 65 percent of the U.S. property-casualty insurance market, including 90% percent of Maryland's workers' compensation market. APCIA appreciates the opportunity to provide written comments in opposition to Senate Bill 406.

APCIA opposes Senate Bill 406, which would create a new and unwarranted presumption of compensability for post-traumatic stress disorder (PTSD) for a broad range of first responders. While first responders deserve the respect and admiration of all, in the interests of fairness they should retain the same modest burden of proving the work-relatedness of an injury or illness that other claimants have – and PTSD is already a compensable condition.

In general, mental stress claims are compensable where the work stress was both the predominant cause of the mental injury and extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment. A higher compensability standard for so-called "mental-mental" claims (mental stress resulting in mental injuries) is both typical and appropriate in view of the greater challenge these claims present in connecting the injury to the workplace.

Consistent with this bedrock principle, the Maryland Court of Appeals held in *Means v. Baltimore County* (1997) that PTSD is compensable as an occupational disease if the claimant can prove that the disorder (i) was contracted as the result of and in the course of employment; (ii) caused the claimant to become incapacitated; and (iii) was due to nature of an employment in which the hazards of the occupational disease exist.

Senate Bill 406 would establish extremely weak criteria for creating a presumption of compensability that would require only a diagnosis of PTSD by a licensed psychiatrist or psychologist; two or more years of service as a first responder; and filing a claim either while employed or within 18 months afterwards. In contrast, legislation enacted a few years ago in Florida in response to the horrific Pulse nightclub shooting provides that PTSD in the absence of a physical injury suffered by a first responder must be demonstrated by clear and convincing medical evidence and result from one of eleven specified scenarios in which the first responder was exposed to the death of a minor, directly witnessed a homicide, or was in some way exposed to the death or ultimately fatal injuries of a person that involved "grievous bodily harm of a nature that shocks the conscience."

According to NCCI's analysis of the Florida bill, "Due to the high prevalence of PTSD in firefighters, EMTs, and other first responders...the increase in compensable mental-physical claims or severity of mental-mental claims could be significant for these occupational classifications. Additionally, the award of indemnity benefits provides additional incentive to claim mental-mental benefits, which may result in increased utilization of the workers' compensation system."

For all of these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 406.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

Nancy.egan@APCIA.org Cell: 443-841-4174