SDAO Special Districts Association of Oregon

Testimony Before the
Management Labor Advisory Committee
In Opposition to SB 507/HB 2418

Presented by: Hasina Wittenberg, Special Districts Association of Oregon
January 11, 2019

Members of the committee, my name is Hasina Wittenberg and I appear before you today to present testimony in opposition to SB 507/HB 2418 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.

SDAO and SDIS oppose SB 507/HB 2418 for the following reasons:

- **The bill covers many employees beyond professional firefighters, police & corrections officers, EMTs, and 911 operators/dispatchers.**

The proponents of the bill offered testimony before MLAC in December to the effect that the bill would be limited to firefighters, police & corrections officers, EMTs, and 911 operators/dispatchers. Under the provisions of the bill many other employees are covered including but limited to the following:

- ✓ Volunteer firefighters (regardless of how frequently or infrequently they may volunteer). **There are just over 11,000 firefighters in the state and nearly 70% are volunteer firefighters**;
- ✓ Volunteer or less-than-full-time "reserve officers";
- ✓ "Regulatory specialists," e.g. OLCC inspectors;
- ✓ And most notably, any employee of a "public or private safety agency" with job duties "related to" firefighting, police, ambulance, or emergency medical services. This includes, secretaries, janitors, administrative staff, and other random employees of a "public or private safety agency" whose job duties are however tangentially "related to" the principal operations of the agency—firefighting, police, ambulance, etc.

- **The presumption proposed under the bill is functionally irrebuttable.**

The proponents of the bill indicate that the presumption created by SB 507/HB 2418 would be rebuttable in a manner that is similar to how the compensability presumption firefighters are given for cancer. However, this presumption is not the same type of presumption as the cancer presumption. SB 507/HB 2418's presumption is theoretically rebuttable but functionally it cannot be rebutted by the employer. In order to rebut the presumption under SB 507/HB 2418, an employer would have to prove by "clear and convincing evidence" that the claimed mental health problem is "unrelated" to employment—totally, 100 percent unrelated. "Clear and convincing" evidence is that which is "highly probable." On a percentage basis this likely equates to a greater than 75+% likelihood. In comparison, a "preponderance of evidence" means only more likely than not, meaning a 51% or more likelihood. As written the bill would require an employer to prove through expert testimony that it is highly likely (75% or more) work was in no way related (0% contribution) to the causation of the claimed mental condition. The existence and characterization of mental disorders is typically established through the report of subjective symptoms. Where it is reported that symptoms were triggered by work exposures, under the bill as written it would seem no defense based on no relationship between work and the mental disorder is in reality available. In that scenario, simply reporting the history establishes a sufficient work relationship.

- **There is no exception for workers with pre-existing mental health conditions and there is no length of service requirement; anyone covered by the bill would get the benefit of the presumption on day 1 of their employment and maintain access to the presumption during their lifetime.**

The proponents of the bill indicated in their December testimony before the committee that under the bill, employers would "take workers as they found them". As discussed above the presumption in SB 507/HB 2418 is functionally irrebuttable. It is effectively impossible to prove in any case that it is highly likely that a worker's mental health problems are 100 percent unrelated to employment.

Take for example, a worker with a long-standing, well-established pre-existing mental health issue. If there is a slight chance that a worker's employment conditions contributed even minimally to a subjective worsening of the problem, the worker would likely have a compensable claim under SB 507/HB 2418, after only a single day of employment. In addition, as written subjection 7(b) makes this worker's claim compensable because preexisting conditions are not one of the 3 listed conditions precedent to the presumption being applied.

- **There is no meaningful limitation on the types of psychological conditions covered under the bill.**

The proponents entitled the bill "PTSD PRESUMPTION", and describe the bill accordingly. Before MLAC, which on its agenda describes the topic as "PTSD PRESUMPTION", there has been testimony to the effect that the bill would be limited in application to certain specific types

of mental/psychological claims specified in the DSM-V—the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. Specifically, the proponents claim that the presumption would be limited to PTSD and "other trauma-stress related disorders." This is inaccurate. The DSM-V lists seven main diagnoses under the category "Trauma- and Stressor-Related Disorders," two of which apply only to children. Therefore there are essentially five "Trauma- and Stressor-Related Disorders" that would theoretically be covered by the presumption if it was accurate the presumption as set out in SB 507/HB 2418 would be limited to the DSM-V designated "Trauma- and Stressor-Related Disorders." However, no such limitation is in the bill.

The language of the proposed bill does limit the presumption to those five "Trauma- and Stressor-Related Disorders." As a substitute for the DSM-V set of delineated disorders, the bill instead covers the undefined concept of "a mental or emotional trauma **or** a stress-related disorder". This language includes mental or emotional trauma. "Trauma" is, of course an event, not a diagnosis. Trauma may cause a condition, but is not itself a condition. The bill goes on to also include a separate undefined category of "stress-related disorder[s]." There is no limitation here, so **all** stress related disorders are covered.

- **There is no tail period after which the presumption would no longer apply.**

Just as workers would be covered on day 1, as SB 507/HB 2418 is currently written they would get the benefit of the presumption long after they retired from service, as well. Under the bill covered employees who retire will be able to file claims for mental or emotional problems.

In the past five years SDIS has had 25 stress related disorder claims submitted for firefighters. Of those claims, 56% were accepted (14 accepted and 11 denied). This compares to a historic percentage of accepted stress related claims for other professions of 7%.

SDAO Firefighter Stress Related Claims – 5 Year History

Year	2014	2015	2016	2017	2018	Total
Approved	0	9	1	2	2	14
Denied	0	1	0	5	5	11
Total	0	10	1	7	7	25

Many of the claims that were denied, were denied because the predominating causes were determined to be items like: spouse recently passed away, custody issues with children after divorce, history of sexual abuse, ex-spouse murdered, mother recently died, employment performance issues – including termination from past employment, significant-other living in another state, conflict with the district's board of directors, and pre-existing depression disorder.

Of the 11 claims that were denied, 7 were settled under a disputed claims settlement process for amounts ranging from $2,000 to $50,000.

SDAO does not believe there is any reason to make statutory changes to the workers compensation system at this time as it relates to a PTSD presumption.

SDAO does believe that there is a mental health issue that should be addressed for emergency service providers. It is important that we support our public safety workers ability to secure mental health treatment with a focus on preventative treatment. To that extent we are proactively addressing this issue with the Oregon State Firefighters Council by launching a specialized EAP program for every career fire service first responder. I have attached a summary of the new program's benefits to this testimony.

Thank you for the opportunity to express our opposition to this legislation.

MEMORANDUM

DATE: January 11, 2019

TO: Management Labor Advisory Committee (MLAC)

SUBJECT: EAP Program for Oregon Career Professional Fire Fighters

The Special Districts Association of Oregon (SDAO) has partnered with Public Safety EAP a Division of ESI to provide all career professional firefighters in Oregon an Employee Assistance Program (EAP) specifically designed for emergency responders. The program will be unveiled to all local government career professional fire fighters in January 2019 free of charge to the individual. Although SDAO only insures fire districts the program is available to cities and fire districts for whom we do not provide workers compensation coverage.

The program is specifically designed for fire and public safety and utilizes mental health professionals that specialize in fire and EMS issues.

The EAP program offers many services and benefits for its users. It is a simple process to get help, there is one phone number for Oregon's career professional fire fighters to call.

The benefits include:

Employee Benefits and Services

- Unlimited 24/7 phone access to confidential counseling – Family members are covered as well
- Up to 6 in person counseling sessions per year, per issue
- Work-Life Benefits
    - Legal, financial, caregiver benefits, adoption benefits, special needs benefits, personal assistant, information resources, public safety resource center, tools for tough time, pet information
- ESI Training and Personal Benefits
    - Personal development, personal finance and education center, management academy
- Wellness Resource Center and Lifestyle Benefits
- Stress Assessment and Services

Peak Performance Coaching and Benefits and Services

- Certified financial coaching, balancing life at work and home coaching, resilience coaching, effective communication coaching, yoga and relaxation coaching for beginners, workplace conflict coaching, certified student debt coaching, home purchase coaching, retirement coaching, succeeding as a supervisor coaching

Certified Wellness Coaching

Administrative Services

- EAP member and supervisor orientation, EAP ongoing communication and engagement, automated digital communication, EAP mobile App

Manager, Supervisor and HR Services

- Human Resource consultations, Administrative Referral, Supervisor resource center, drug free workplace, HR web café

Public Safety EAP
A division of ESI

GETTING HELP IS SIMPLE

Just call **888.327.1060** 24/7 to reach a professional counselor.

CAREER DEVELOPMENT AND TRAINING BENEFITS

Our online training and resources help with personal growth. If you are a supervisor or hope to become one, we offer an entire online supervisory training resource. You can balance your work, life and career objectives with the help of tutorials, exercises and worksheets.

PEAK PERFORMANCE COACHING

Personal and professional coaching is available from senior-level ESI coaches. Get one-to-one telephonic coaching and support, as well as online self-help resources and trainings.
Coaching is available for:

- Certified Financial Coaching
- Balancing Life at Work and Home
- Resilience
- Effective Communication
- Home Purchasing
- Student Debt
- Yoga & Relaxation for Beginners
- Workplace Conflict
- Retirement
- Succeeding as a Supervisor

You protect the public, but where can you turn for support?

OREGON STATE FIREFIGHTERS COUNCIL

Call any time for confidential assistance.
To reach a counselor 24 hours a day, call toll free:

888.327.1060

or log on to **PublicSafetyEAP.com**

©2018 ESI

SDAO Special Districts Association of Oregon

SDIS Special Districts Insurance Services

WHAT IS PUBLIC SAFETY EAP?

Public Safety EAP is a confidential counseling and support service staffed by trained professionals 24 hours a day to assist public safety personnel and their families. We currently serve thousands of sworn police officers, firefighters, state troopers, EMS personnel, corrections officers, civilian staff and their families. Public Safety EAP is one of the most experienced in the country and nearly 99% of those who use the EAP are satisfied with the experience.

MORE BENEFITS FOR YOU

Your EAP provides access to more problem solving solutions than any other EAP. Detailed here are just some of the many resources available.

HOW DOES THE EAP WORK?

Getting the help you need is simple. You can call the EAP 24 hours a day, 7 days a week to reach a professional counselor. Call our toll free number or log on to our website to access other benefits.

888-327-1060

PublicSafetyEAP.com

COUNSELING BENEFITS

Many complex issues are best resolved with counseling assistance from a behavioral health professional. You will want to consider calling for help if you encounter problems such as:

- Relationship and family issues
- Depression, stress, or anxiety
- Grief or loss of a loved one
- Eating disorders or substance abuse
- Workplace difficulties

When you call, you connect immediately with a counselor. Each of our experienced counselors has a Masters or Ph.D. level of training. Should you need to be referred to a local counselor for personal visits, we have more than 40,000 providers available to ensure that you will have a counselor near your home or workplace.

WORK/LIFE BENEFITS

Assistance for personal, family, financial, and legal issues is available for your everyday work/life problems, including:

- Debt counseling and restructuring
- Legal problems not related to employment or medical concerns
- Child care and elder care assistance
- Financial information
- Caregiver help and resources
- Real estate and tenant/landlord concerns
- Interpersonal skills with family and co-workers
- Pet Help Center

PUBLIC SAFETY RESOURCE CENTERS

Public Safety EAP addresses specifiC stressors and issues that public safety personnel and their families face every day.

- Challenges of military deployment and homecoming
- Budget helpers for public safety personnel
- Mental health issues for first responders
- Social media for first responders
- Public safety family matters

SELF-HELP RESOURCES

Self-help Resources give you access to a vast collection of thousands of tools and informative articles covering virtually every problem you might face. You can log on to the website to access these benefits. Some available resources include:

- Behavioral Health - information on everything from alcohol abuse to personal stress
- Financial - articles, tools and information to help with virtually every financial question
- Legal Information - topics ranging from adoption to wills
- Tools for Tough Times - resources to assist with difficult financial issues

LIFESTYLE BENEFITS

Your Lifestyle Benefits include discounts to help you enhance your quality of life. Call or check the website for nutrition, fitness and weight loss discounts.

Public Safety EAP
A division of ESI

Information Resources:

A vital benefit to help with everyday issues

Public safety professionals face daunting challenges: budget crises, rapidly changing technology and the impact of social media are just a few emerging issues. Public Safety EAP offers extensive links, tools, discounts, and resources to help public safety personnel deal with these and other professional challenges.

- **Challenges of Military Deployment & Homecoming**
- **Budget Helpers, Grants & More for Public Safety Personnel**
- **CISM, Stress, Depression & Other Mental Health Issues**

To access this benefit, you can call the EAP or log on to the website, **www.PublicSafetyEAP.com**, for thousands of articles, videos and tools to help you resolve personal problems. Find information on thousands of topics including:

- **Adoption & Childcare**
- **Financial Planning**
- **Consumer Rights**
- **Mental Health**
- **Divorce**
- **Home Ownership**
- **Legal Issues**
- **Loss and Grief**
- **Stress**
- **Elder Care & Childcare Locators**
- **Family Violence**
- **Work-Life Balance**
- **Wills and Other Legal Forms**
- **Training & Education**

More benefits than any other EAP.

www.PublicSafetyEAP.com • 1-888-327-1060

TO ACCESS THE WEBSITE AND RESOURCES FOR EMPLOYEES

1. Log on to **PublicSafetyEAP.com**
2. Click **Employee & Family Login**
3. If you've already created a User Name and Password, simply enter that information in the appropriate boxes. **If you have not registered, complete steps 4 - 7.**
4. Click on REGISTER HERE
5. Enter your employer's name and click Continue
6. Your employer's name will appear; select the button and click Continue
7. Fill out the Registration Form and create your own User Name and Password, then click Continue. **You only need to register once.**

SDAO Special Districts Association of Oregon

SDIS Special Districts Insurance Services

You'll find an entire library of problem-solving resources including assessments, trainings, videos, tools and calculators such as 2,000+ Harvard Medical School articles • Thousands of Legal articles • 800,000 Child/Elder care providers • Personal Growth programs • Mental and Physical Health assessments • Financial tools and calculators • Career Development information • 900 Health videos • Plus, important new resources that include:

CAREGIVER CENTER

A vast array of tools designed to help those providing care for a chronically ill, disabled, or aging family member or friend.

TRAINING CENTER

Access hundreds of personal and professional development trainings and courses.

LOCATORS

Search for childcare and eldercare resources in your local area.

RESILIENCE JOURNEY

An interactive new benefit to help you develop your maximum potential, experience less stress, less depression and improve physical and emotional health.

ESI WELLNESS CENTER

Articles, health assessments, courses, videos, and FAQs related to dieting, nutrition, stress, smoking, and physical fitness.

More benefits than any other EAP.

www.PublicSafetyEAP.com • 1-888-327-1060