

TESTIMONY

FROM: Tony Andersen
Kansas Self-Insurers Association

TO: Senate Commerce Committee

RE: Opposition to SB 491

DATE: February 21, 2022

Madam Chairwoman and members of the committee, on behalf of the members of the Kansas Self-Insurers Association (KSIA), thank you for the opportunity to submit written testimony on SB 491.

Established in 1994, KSIA represents the interests of employers and self-insured pools across the state. KSIA's members include large private employers, state and local governmental entities, as well as business associations organized to advance common interests in the great State of Kansas.

KSIA opposes SB 491. As drafted, the bill creates a new type of compensable injury, changes well-established legal principles to do so, imposes significant new financial burdens on cities and municipalities, and likely will not achieve the legislative goal of providing quality mental health care for first responders.

The Kansas Workers Compensation Act has long required that in order to obtain benefits, a worker must show they sustained a personal injury by accident arising out of and in the course of his/her employment. Courts have held that mental-only injuries, absent a corresponding physical injury, do not meet the statutory definition of a personal injury by accident. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397 (1989) Further, after 2011, the employee had to prove the work accident was the prevailing factor in the resulting injury and disability. if a mental injury follows an on-the-job physical injury, the mental injury will be treated and compensated under the workers compensation act. Thus, if a police officer or firefighter sustains a physical injury and PTSD follows, the employer will pay for the PTSD treatment and any disability that follows.

SB 491 upends this long-standing and well-serving legal framework. If enacted, a new subclass of workers (first responders) will receive more benefits with a less evidentiary proof.

SB 491 eliminates the requirement that a first responder prove they sustained a personal injury by accident as it has been traditionally defined. It also discards any requirement that the work event be the prevailing factor in the development of PTSD.

Take for example a volunteer firefighter with a long history of mental illness who is under active psychological treatment. On his way to pick up groceries for the firehouse, he taps the rear-end of another vehicle in the grocery store parking lot. He suffers no cuts, bruises, abrasions, lacerations, or broken bones. A few days later, he reports to his psychologist he suffers flashbacks to the accident, and it wakes him at night. The psychologist reports this in her notes and, along with other psychological conditions, includes a diagnosis of PTSD. In this scenario, the volunteer fire department would be obligated to provide ongoing treatment and disability benefits. Why? Because SB491 does not require a physical injury or that the accident is the prevailing factor in volunteer's psychological disability. SB 491 merely requires a diagnosis of PTSD by a psychologist who ties the PTSD to work as a first responder.

KSIA agrees that workers compensation benefits should be paid for mental injuries that follow physical injuries. But it opposes creating a new class of compensable claims with a lower evidentiary burden for first responders.

Further, the workers compensation system is a delicate balance between the liability of an employer and the benefits that are owed to an injured worker. Tilting the balance in either direction generally has harmful effects on the system.

To KSIA's knowledge, there has been no study of how adoption of SB 491 will affect the workers compensation system as a whole. Governmental and quasi-governmental units will bear the cost of benefits provided under SB 491. Psychological treatment, in general, takes longer than treatment for physical injuries. It also can be more costly. Cities, counties and governmental units will have to allot more tax dollars to cover increased premiums. Will these cost increases decrease the delivery of essential services from government? What effect will it have on taxpayers in the state? The absence of this financial impact information feels like the Legislature is driving blind in a snowstorm without its lights on, hoping it won't crash before it reaches its destination. KSIA believes it is prudent to study how SB 491 will affect all Kansans before considering passage of this bill.

Finally, KSIA is not convinced inclusion of PTSD benefits for first responders under the workers compensation system will meet the noble goal of providing mental health services to first responders in a timely and compassionate manner. The workers compensation system is not a frictionless, non-adversarial system. The interests of employer and employees are naturally divergent. Conflicts are inherent in workers compensation claims. System-driven conflict may be an impediment to a first responder's recovery from his/her mental wounds.

Perhaps a better way to approach first-responder PTSD injuries is a non-adversarial, state-wide program funded by the State as a whole. Such a program would allow for a system of specialized care for first-responder's PTSD claims. A statewide system could be established to meet the challenge of treating PTSD in a non-confrontational setting. This treats the PTSD but keeps it out of the contentious, litigious world of workers compensation.

For the above reasons, KSIA opposes SB 491.