

2019 Regular Session

SENATE BILL NO. 107

BY SENATORS GATTI, BISHOP, CARTER AND JOHNS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC EMPLOYEES. Adds post traumatic stress disorder to the list of injuries which are compensable for injured public employees. (8/1/19)

AN ACT

To amend and reenact R.S. 40:1374 and to enact R.S. 23:1036.1 and R.S. 33:2581.2, relative to financial security for certain public employees; to provide for workers' compensation; to provide for certain fire employees; to provide for certain volunteer firefighters; to provide for certain emergency medical services personnel; to provide for certain employees of police departments; to provide for certain employees of state police; to provide for post traumatic stress disorder as a compensable injury when the injury is suffered by certain employees; to provide for definitions; to provide for legal presumptions; to provide for rebuttal evidence; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1036.1 is hereby enacted to read as follows:

**§1036.1. Volunteer firefighters; coverage for post traumatic stress injury; presumption of compensability; rebuttal evidence**

**A. Any workers' compensation policy which provides coverage for a volunteer member of a fire company, pursuant to R.S. 23:1036, shall include coverage for post traumatic stress injury.**

1                    **B. For purposes of this Section, the following definitions shall apply:**

2                    **(1) "Post traumatic stress injury" means those injuries which are defined**  
3                    **as "post traumatic stress disorder" by the most recently published edition of the**  
4                    **Diagnostic and Statistical Manual of Mental Disorders by the American**  
5                    **Psychiatric Association.**

6                    **(2) "Psychiatrist" shall have the same meaning as it is defined pursuant**  
7                    **to R.S. 23:1371.1.**

8                    **(3) "Psychologist" shall have the same meaning as it is defined pursuant**  
9                    **to R.S. 23:1371.1.**

10                   **(4) "Volunteer member" shall have the same meaning as it is defined**  
11                   **pursuant to R.S. 23:1036.**

12                   **(5) "Volunteer service" means that service performed by a volunteer**  
13                   **member, for one or more fire companies, who is entitled to workers'**  
14                   **compensation benefits pursuant to R.S. 23:1036.**

15                   **C.(1) Any volunteer member who is diagnosed by a psychiatrist or**  
16                   **psychologist with post traumatic stress injury, either during his period of**  
17                   **voluntary service or thereafter, shall be presumed, prima facie, to have a**  
18                   **disease or infirmity connected with his volunteer service.**

19                   **(2) Once diagnosed with post traumatic stress injury as provided for in**  
20                   **Paragraph (1) of this Subsection, the volunteer member affected or his**  
21                   **survivors shall be entitled to all rights and benefits as granted by state laws to**  
22                   **one suffering an occupational disease and is entitled as service connected in the**  
23                   **line of duty, regardless of whether he is engaged in volunteer service at the time**  
24                   **of diagnosis. Such disease or infirmity shall be presumed, prima facie, to have**  
25                   **developed during the period of volunteer service and shall be presumed, prima**  
26                   **facie, to have been caused by or to have resulted from the nature of the work**  
27                   **performed.**

28                   **D.(1) The presumptions in Subsection C of this Section may be rebutted**  
29                   **only by clear and convincing evidence.**

1           (2) In determining whether the evidence presented has successfully  
2 rebutted the presumptions in Subsection C, the trier of facts may consider any  
3 of the following factors:

4           (a) The length of time between the beginning and the end of the period  
5 of volunteer service and the date of the diagnosis.

6           (b) Whether there has been any trauma or traumatic events between the  
7 beginning and the end of the period of volunteer service as a volunteer member  
8 and the date of the diagnosis.

9           (c) Whether the individual diagnosed had been previously diagnosed  
10 with post traumatic stress injury prior to his volunteer service.

11 Section 2. R.S. 33:2581.2 is hereby enacted to read as follows:

12 §2581.2. Post Traumatic Stress Injury; presumption of compensability;  
13 rebuttal evidence

14           A. Except as provided in Subsection E of this Section, any benefit  
15 payable to any emergency medical services personnel, any employee of a police  
16 department, or any fire employee for temporary and permanent disability when  
17 the employee suffers an injury or disease arising out of and in the course and  
18 scope of their employment, shall include coverage for post traumatic stress  
19 injury.

20           B. For purposes of this Section, the following definitions shall apply:

21           (1) "Emergency medical services personnel" shall have the same  
22 meaning as it is defined pursuant to R.S. 40:1075.3 so long as the emergency  
23 medical services personnel is employed pursuant to this Chapter.

24           (2) "Employee of a police department" shall have the same meaning as  
25 it is defined pursuant to R.S. 33:2211.

26           (3) "Fire employee" means any person employed in the fire department  
27 of any municipality, parish, or fire protection district that maintains full-time  
28 regularly paid fire department employment, regardless of the specific duties of  
29 such person within the fire department. "Fire employee" also includes

1 employees of nonprofit corporations under contract with a fire protection  
2 district or other political subdivision to provide fire protection services,  
3 including operators of the fire-alarm system when such operators are members  
4 of the regularly constituted fire department.

5 (4) "Post traumatic stress injury" means those injuries which are defined  
6 as "post traumatic stress disorder" by the most recently published edition of the  
7 Diagnostic and Statistical Manual of Mental Disorders by the American  
8 Psychiatric Association.

9 (5) "Psychiatrist" shall have the same meaning as it is defined pursuant  
10 to R.S. 23:1371.1.

11 (6) "Psychologist" shall have the same meaning as it is defined pursuant  
12 to R.S. 23:1371.1.

13 C. Except as provided in Subsection E of this Section:

14 (1) Any emergency medical services personnel, any employee of a police  
15 department, any fire employee, or any volunteer fireman who is diagnosed by  
16 a psychiatrist or psychologist with post traumatic stress injury, either during  
17 employment in the classified service in the state of Louisiana pursuant to this  
18 Chapter or thereafter, shall be presumed, prima facie, to have a disease or  
19 infirmity connected with his employment.

20 (2) Once diagnosed with post traumatic stress injury as provided for in  
21 Paragraph (1) of this Subsection, the employee affected or his survivors shall be  
22 entitled to all rights and benefits as granted by state law to one suffering an  
23 occupational disease and who is entitled as service connected in the line of duty,  
24 regardless of whether the employee is employed at the time of diagnosis. Such  
25 disease or infirmity shall be presumed, prima facie, to have developed during  
26 employment and shall be presumed, prima facie, to have been caused by or to  
27 have resulted from the nature of the work performed.

28 D. Except as provided in Subsection E of this Section:

29 (1) The presumptions in Subsection C of this Section may be rebutted

1 only by clear and convincing evidence.

2 (2) In determining whether the evidence presented has successfully  
3 rebutted the presumptions in Subsection C, the trier of facts may consider any  
4 of the following factors:

5 (a) The length of time between the beginning and the end of the period  
6 of employment and the date of the diagnosis.

7 (b) Whether there has been any trauma or traumatic events between the  
8 beginning and the end of the period of employment as an employee and the date  
9 of the diagnosis.

10 (c) Whether the individual diagnosed had been previously diagnosed  
11 with post traumatic stress injury prior to his employment in the classified  
12 service in the state of Louisiana.

13 E. (1) Nothing in this Section shall modify the qualifications necessary  
14 to establish eligibility to receive benefits or the calculation of benefits to be paid  
15 under any Louisiana public pension or retirement system, plan, or fund.

16 (2) In case of a conflict between any provision of Title 11, including any  
17 provision in Subpart E of Part II of Chapter 4 of Title 11, and any provision of  
18 this Section, the provision of Title 11 shall control.

19 Section 3. R.S. 40:1374 is hereby amended and reenacted to read as follows:

20 §1374. ~~Worker's~~ **Workers'** compensation law; employees deemed within;  
21 **coverage for post traumatic stress injury; presumption of**  
22 **compensability; rebuttal evidence**

23 **A.** Every employee of the division of state police, except the head thereof,  
24 shall be considered an employee of the state within the meaning of the ~~worker's~~  
25 **workers'** compensation law of this state and entitled to the benefits of all the  
26 provisions of that law applicable to state employees.

27 **B.** **Any workers' compensation policy which provides coverage for an**  
28 **employee of the division of state police, pursuant to this Section, shall include**  
29 **coverage for post traumatic stress injury.**

1                    C. For purposes of this Section, the following definitions shall apply:

2                    (1) "Post traumatic stress injury" means those injuries which are defined  
3                    as "post traumatic stress disorder" by the most recently published edition of the  
4                    Diagnostic and Statistical Manual of Mental Disorders by the American  
5                    Psychiatric Association.

6                    (2) "Psychiatrist" shall have the same meaning as it is defined pursuant  
7                    to R.S. 23:1371.1.

8                    (3) "Psychologist" shall have the same meaning as it is defined pursuant  
9                    to R.S. 23:1371.1.

10                  D.(1) Any employee of the division of state police who is diagnosed by a  
11                  psychiatrist or psychologist with post traumatic stress injury, either during  
12                  employment in the classified service in the state of Louisiana pursuant to this  
13                  Chapter or thereafter, shall be presumed, prima facie, to have a disease or  
14                  infirmity connected with his employment for purposes of workers'  
15                  compensation benefits.

16                  (2) Once diagnosed with post traumatic stress injury as provided for in  
17                  Paragraph (1) of this Subsection, the employee affected or his survivors shall be  
18                  entitled to all rights and benefits as granted by state workers' compensation law  
19                  to one suffering an occupational disease and is entitled as service connected in  
20                  the line of duty, regardless of whether the employee is employed at the time of  
21                  diagnosis. Such disease or infirmity shall be presumed, prima facie, to have  
22                  developed during employment and shall be presumed, prima facie, to have been  
23                  caused by or to have resulted from the nature of the work performed.

24                  E.(1) The presumptions in Subsection D of this Section may be rebutted  
25                  only by clear and convincing evidence.

26                  (2) In determining whether the evidence presented has successfully  
27                  rebutted the presumptions in Subsection D, the trier of facts may consider any  
28                  of the following factors:

29                  (a) The length of time between the beginning and the end of the period

1           of employment and the date of the diagnosis.

2                   **(b) Whether there has been any trauma or traumatic events between the**  
 3           **beginning and the end of the period of employment as an employee and the date**  
 4           **of the diagnosis.**

5                   **(c) Whether the individual diagnosed had been previously diagnosed**  
 6           **with post traumatic stress injury prior to his employment in the classified**  
 7           **service in the state of Louisiana.**

8                   **F.(1) Nothing in this Section shall modify the qualifications necessary to**  
 9           **establish eligibility to receive benefits or the calculation of benefits to be paid**  
 10           **under any Louisiana public pension or retirement system, plan, or fund.**

11                   **(2) In case of a conflict between any provision of Title 11, including any**  
 12           **provision in Subpart E of Part II of Chapter 4 of Title 11, and any provision of**  
 13           **this Section, the provision of Title 11 shall control.**

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tammy Crain-Waldrop.

SB 107

DIGEST  
2019 Regular Session

Gatti

Present law declares that the services provided by volunteer fire departments are vital for fire prevention and suppression to the safety of the citizens of the state. Present law requires the state fire marshal obtain workers' compensation coverage for volunteer members who participate in the normal functions of the fire company.

Proposed law retains present law but requires that, upon the purchase of a new policy or renewal of an existing policy, that any workers' compensation policy which provides coverage for a volunteer member of a fire company, pursuant to present law, will include coverage for post traumatic stress injury.

Proposed law provides that the following definitions shall apply to any workers' compensation policy which provides coverage for a volunteer member of a fire company:

- (1) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.
- (2) "Psychiatrist" shall have the same meaning as it is defined pursuant to present law.
- (3) "Psychologist" shall have the same meaning as it is defined pursuant to present law.
- (4) "Volunteer member" shall have the same meaning as it is defined pursuant to present law.

- (5) "Volunteer service" means that service performed by a volunteer member, for one or more fire companies, who is entitled to workers' compensation benefits pursuant to present law.

Proposed law provides that any volunteer member of a fire company who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during his period of voluntary service or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his volunteer service.

Proposed law provides that, once diagnosed with post traumatic stress injury as provided for in proposed law, the volunteer member affected or his survivors shall be entitled to all rights and benefits as granted by present law to one suffering from an occupational disease is entitled as service connected in the line of duty, regardless of whether he is engaged in volunteer service at the time of diagnosis.

Proposed law provides that, once a fire department volunteer member is diagnosed with post traumatic stress injury, the presumption may only be rebutted by clear and convincing evidence. Proposed law provides that, in determining whether the evidence presented has successfully rebutted the presumptions in proposed law, the trier of facts may consider any of the following factors:

- (1) The length of time between the beginning and the end of the period of volunteer service and the date of the diagnosis.
- (2) Whether there has been any trauma or traumatic events between the beginning and the end of the period of volunteer service as a volunteer member and the date of the diagnosis.
- (3) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his volunteer service.

Proposed law provides that, except as provided in proposed law, any benefit payable to any local emergency medical services personnel, any employee of a local police department, or any local fire employee for temporary and permanent disability when the employee suffers an injury or disease arising out of and in the course and scope of their employment, shall include coverage for post traumatic stress injury.

Proposed law defines "fire employee" as any person employed in the fire department of any municipality, parish, or fire protection district that maintains full-time regularly paid fire department employment, regardless of the specific duties of such person within the fire department. "Fire employee" also includes employees of nonprofit corporations under contract with a fire protection district or other political subdivision to provide fire protection services, including operators of the fire-alarm system when such operators are members of the regularly constituted fire department."

Proposed law provides that the following definitions shall apply to post traumatic stress injury benefits payable to a local emergency medical services personnel, any employee of a local police department, or any local fire employee:

- (1) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.
- (2) "Psychiatrist" shall have the same meaning as it is defined pursuant to present law.
- (3) "Psychologist" shall have the same meaning as it is defined pursuant to present law.

Proposed law provides that, except as provided in proposed law, any local emergency

medical services personnel, any employee of a local police department, or any local fire employee who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during employment or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his employment.

Proposed law provides that, once diagnosed with post traumatic stress injury any local emergency medical services personnel, any employee of a local police department, or any local fire employee affected or his survivors will be entitled to all rights and benefits as granted by state law to one suffering an occupational disease and is entitled as service connected in the line of duty, regardless of whether the employee is employed at the time of diagnosis.

Proposed law provides that, except as provided in proposed law, the presumption that the post traumatic stress was attributable to employment as a local emergency medical services personnel, any employee of a local police department, or any local fire employee may only be rebutted by clear and convincing evidence. Proposed law provides that, in determining whether the evidence presented has successfully rebutted the presumptions in proposed law, the trier of facts may consider any of the following factors:

- (1) The length of time between the beginning and the end of the period of employment and the date of the diagnosis.
- (2) Whether there has been any trauma or traumatic events between the beginning and the end of the period of employment as an employee and the date of the diagnosis.
- (3) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his employment.

Proposed law provides that in case of any conflict between provisions of proposed law and any retirement law then retirement law provisions control.

Present law provides that every employee of the division of state police, except the head thereof, shall be considered an employee of the state within the meaning of the workers' compensation law of this state and entitled to the benefits of all the provisions of that law applicable to state employees.

Proposed law retains present law but adds that any purchase of a new policy of renewal of an existing workers' compensation policy which provides coverage for an employee of the division of state police, pursuant to present law, shall include coverage for post traumatic stress injury.

Proposed law provides that the following definitions shall apply to benefits payable to an employee of the division of state police:

- (1) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.
- (2) "Psychiatrist" shall have the same meaning as it is defined pursuant to present law.
- (3) "Psychologist" shall have the same meaning as it is defined pursuant to present law.

Proposed law provides that an employee of the division of state police who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during employment or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his employment for purposes of workers' compensation benefits.

Proposed law provides that, once diagnosed with post traumatic stress injury the employee

of the division of state police affected or his survivors shall be entitled to all rights and benefits as granted by state workers' compensation law to which one suffering an occupational disease and is entitled as service connected in the line of duty, regardless of whether the employee is employed at the time of diagnosis.

Proposed law provides that the presumption that the post traumatic stress was attributable to employment as an employee of the division of state police may only be rebutted by clear and convincing evidence. Proposed law provides that, in determining whether the evidence presented has successfully rebutted the presumptions in proposed law, the trier of facts may consider any of the following factors:

- (1) The length of time between the beginning and the end of the period of employment and the date of the diagnosis.
- (2) Whether there has been any trauma or traumatic events between the beginning and the end of the period of employment as an employee and the date of the diagnosis.
- (3) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his employment.

Proposed law shall not modify the qualifications necessary to establish eligibility to receive benefits or the calculation of benefits to be paid under any Louisiana public pension or retirement system, plan, or funds.

Proposed law provides that in case of any conflict between provisions of proposed law and any retirement law then the retirement law provisions control.

Effective August 1, 2019.

(Amends R.S. 40:1374; adds R.S. 23:1036.1, and R.S. 33:2581.2)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill

1. Adds employees of nonprofit corporations under contract with a fire protection district to the definition of "fire employee".

##### Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Clarifies that the proposed law shall not modify the qualifications necessary to establish eligibility to receive benefits or the calculation of benefits to be paid under any Louisiana public pension or retirement system, plan, or funds.
3. Removes provisions applicable to sheriffs and deputy sheriffs.