



September 18, 2023

The Honorable Governor Gavin Newsom
 1021 O Street, Suite 9000
 Sacramento, CA 95814

RE: SB 623 (Laird) – Workers’ Compensation Presumption for PTSI
REQUEST FOR VETO

Dear Governor Newsom,

The undersigned organizations unfortunately remain opposed to **SB 623 (Laird)** and respectfully urge you to **veto** the bill and send it back to the legislature with additional instructions. SB 623 moved through the legislature as a substantial expansion in the application of California’s workers’ compensation presumption for Post Traumatic Stress Disorder (PTSD) but was amended into a study bill and sunset extension at the very end of the legislative session. Unfortunately, the scope of the study outlined in SB 623 is insufficient and needs to be expanded if it is to appropriately inform further legislative action in this area. Since the existing PTSD presumption doesn’t sunset until 1/1/2025 there is no harm in vetoing this legislation and suggesting that the legislature appropriately expands the scope of the study.

Our members recognize that police officers and firefighters serve our state with distinction in some of the most difficult circumstances imaginable. Our members include some of the largest employers of public safety officers in the state, and we

have a healthy respect and admiration for people who choose every day to serve their communities. Fundamentally, we do not believe that SB 623 is necessary to provide California employees with fair access to the workers' compensation system for psychiatric injuries. Our coalition doesn't reject the idea that first responders suffer psychiatric injuries related to their work that warrant access to the workers' compensation system. We do, however, reject the unproven assertion that the current system is broken and that a presumption is needed for workers to fairly access benefits.

California's workers' compensation system treats psychiatric injuries somewhat differently than physical injuries or illnesses, and that is because the rules acknowledge that psychiatric injury tends to be far more complex in terms of causation. While work can be a stressor in the life of an employee, far more of our lives are lived outside of the workplace and psychiatric injuries are subjective in terms of causation. Because of this, California law requires that "the actual events of employment" be the predominant cause (51%) of psychiatric injury. If the psychiatric injury is the result of violence or a violent event in the workplace, then the threshold is lower (35-40%). California law also protects employers from claims of psychiatric injury if a good faith, nondiscriminatory personnel action (bad review, termination, etc.) was largely responsible for the psychiatric injury. Psychiatric injuries have been repeatedly used as a center of fraud and abuse in California's workers' compensation system, and the protections in existing law are there for a reason. Undermining those protections with a presumption without any evidence of a problem only serves to open the door to abuse and fraud.

The legislature initially established a PTSD presumption for some public safety officers through SB 542 (Stern, 2019) despite a lack of objective information or analysis to suggest that a presumption was necessary to solve a problem with access to benefits. Retired Assemblymember Tom Daly, then Chair of the Assembly Insurance Committee, penned a letter to the Executive Director of the Commission on Health and Safety and Workers' Compensation (CHSWC) asking for extensive analysis be completed about this bill and noting that "presumptions should be narrowly tailored on the basis of sound empirical data". The Commission did study the issue, but the report wasn't adequately structured to inform the legislature about whether there was a need for the presumption.

We support the move to ask the Commission on Health and Safety and Workers' Compensation to study PTSD Presumption policy in two distinct ways, but we have concerns with each portion of the study that keeps us unfortunately opposed:

Effectiveness of Current Presumption

Section 3212.15(f)(1) asks CHSWC to analyze "the effectiveness" of the presumption created by SB 542 and currently in operation, and it limits the data available to be used in the analysis to claims between January 1, 2020 and December 31, 2025. We think this is unnecessarily limiting because it would exclude any consideration of the status quo before the implementation of the presumption and it's vague as to what it means to be "effective".

Instead of asking whether the presumption is effective, SB 623 should ask if it was ever necessary in the first place, and it should look at the specific negative

impacts to local governments and taxpayers. The study should look at whether there was a problem for which the appropriate policy solution is a presumption, but the scope of the study is too limited to evaluate this question.

The presumption has been in effect since 2020, and the scope of the study only allows the use of claims data from 2020 through 2025. This specifically excludes any analysis of pre-presumption data that could illuminate the need for the policy – something that was not evaluated when initially passed by the legislature.

This portion of the study should evaluate the need for the presumption, the performance of the presumption, an evaluation of the negative impacts to employers and taxpayers, and CHSWC shouldn't be limited in the data available for their evaluation.

Evaluation of Proposed SB 623 Expansion

Section 3212.15(f)(2) is more complete because the scope of the study includes an evaluation of whether an expansion of the presumption to dispatchers and other emergency communicators is necessary based on current claims data. We do support a thorough evaluation of the need for an expanded presumption, although we are concerned that this portion of the bill also unnecessarily limits the dataset available to researchers.

The scope of this portion of the study is appropriately broad and points CHSWC toward evaluating the need for an expanded presumption, and we support that change. However, we do believe that the data available to researchers is unreasonably limited to claims filed between 2020 and 2023.

A veto of SB 623 hurts nobody, but it could lead the legislature to recalibrate in 2024 and pursue more complete research to inform this significant public policy. The only conceivably urgent provision in SB 623 is the sunset extension for the existing presumption, but that doesn't sunset until 1/1/2025. A veto that pushes the author and sponsors to appropriately construct the study would be beneficial for all parties, and nobody would lose benefits from the brief delay. For these reasons and more, we respectfully urge you to **VETO SB 623** and urge the legislature to recalibrate their efforts.

Sincerely,

American Property Casualty Insurance Association
California Association of Joint Powers Authorities
California Coalition on Workers' Compensation
California Schools Joint Powers Authority
California Special District Association
California State Association of Counties
County of Monterey
Exclusive Risk Management Authority of California
Golden State Risk Management Authority
League of California Cities
Northern California Cities Self Insurance fund

Northern California Special Districts Insurance Authority
Public Entity Risk Management Authority
Public Risk Innovation, Solutions, and Management
Redwood Empire Schools Insurance Group
Rural County Representatives of California
Self Insurance Risk Management Authority
Small Cities Organized Risk Effort
The Public Entity Risk Management Authority
West San Gabriel Workers Compensation JPA