



Washington Self-Insurers Association

March 9, 2018

Hon. Jay Inslee  
Governor  
Office of the Governor  
PO Box 40002  
Olympia, WA 98504-0002

RE: Veto Request, Substitute Senate Bill 6214

Dear Governor Inslee:

On behalf of the Washington Self-Insurers Association (WSIA), I write to request your veto of [Substitute Senate Bill 6214](#).

Alternatively, should you determine not to veto SSB 6214 in its entirety, we request you veto section 3 of the bill, which creates a costly new presumption of occupational disease in our workers' compensation system without consideration of either the scientific basis of such a presumption or the financial impact on our cities and counties. Vetoing section 3 would leave occupational disease coverage for PTSD intact without a presumption.

### **Introduction**

WSIA is the statewide membership organization representing the workplace safety and workers' compensation programs of major Washington employers who have been certified by the Department of Labor & Industries to self-insure for industrial insurance. WSIA's membership includes most of the 18 cities and 14 counties who are self-insured. These local governments are large (Seattle; King County) and small (Walla Walla; Lewis County), and cover all corners of the state, from Bellingham to Clallam County, from Vancouver to Ferry County.

These are the local governments, along with their sister cities and counties insured by Washington's Industrial Insurance State Fund, impacted by the passage of SSB 6214.

### **What SSB 6214 does**

SSB 6214 creates a new exception to the longstanding rule in workers' compensation that occupational disease claims based on stress or stress-related conditions are not covered as occupational diseases. Stress-related conditions already may be, and frequently are, covered as part of a valid claim for industrial injury.

This new exception is created for law enforcement officers and fire fighters who are part of the LEOFF retirement system. The bill would now cover post-traumatic stress disorder (PTSD) as an occupational disease, as an exception to the general rule for this workforce.

Section 3 of SSB 6214 amends the narrow presumption of occupational disease for firefighters for certain cancers, infections, and acute cardiac events to add a presumption that PTSD is an occupational disease not only for firefighters, but for law enforcement officers as well.

These presumptions depart from the ordinary rule of workers' compensation that a worker bears the initial burden of demonstrating the causality and work-relatedness of a contended condition and instead shifts the burden to the employer to demonstrate the condition is not work-related.

Because presumptions go against the normal rule, they have been very narrowly crafted in our system; have applied only to firefighters; have applied only to objectively verifiable conditions; and have been created and extended only to conditions where agreed-to scientific evidence demonstrates a sufficient epidemiological link between the condition and greater mortality among firefighters than the general public. *See RCW 51.32.185.*

### **Objections to SSB 6214**

SSB 6214 is problematic workers' compensation policy for several reasons:

- Abandons the rule that stress-based claims cannot be occupational diseases (though they may be part of an accepted injury claim);
- Abandons the rule only for a discrete group of employees, creating an entitlement that other injured workers, including those in statistically more dangerous employment, do not have, leading to inequity;
- Expands the presumption statute with a new condition and new occupation without any consideration of the scientific or epidemiological basis for doing so, in complete contravention of the standards by which the presumption statute itself came into existence;
- Covers and presumes an occupational disease that by its very nature is difficult to support with objective medical findings, and therefore nearly impossible to rebut.

Because presumed conditions are much more likely to result in a covered claim, SSB 6214 substantially expands the workers' compensation costs of cities and counties, with no offsetting appropriation. It represents an unfunded mandate on cities and counties that must come from squeezed public safety budgets either in the form of direct benefit payments (for self-insurers) or increased State Fund premiums for insured municipalities.

Specifically, according to [the final fiscal note for SSB 6214](#):

- The Department of Labor & Industries estimates an increase in claims costs from \$42 million to \$115 million for claims that will accrue from prior periods, and then between \$2.6 million and \$7 million per year for new periods; and
- The Office of State Actuary estimates a 25-year increase of \$15.8 million to the state and \$23.6 million to local governments, or \$34.9 million total, in increased LEOFF disability retirements.

### **Grounds for Veto of Section 3**

If you determine that despite these concerns, coverage of PTSD for LEOFF members as an occupational disease is an appropriate expansion of our workers' compensation law, there are nevertheless independent grounds for rejecting Section 3.

Section 3 creates the presumption. It goes further than mere coverage, which itself is a policy expansion, to bias these claims in favor of acceptance in almost all cases. And unlike the firefighter presumption which it amends, it creates a presumption in the total absence of any scientific analysis or justification.

Further, the presumption that coverage will be granted is a major factor behind the substantial costs estimated in the agencies' fiscal notes, and creates a substantial likelihood that costs will be shifted into the workers' compensation system that are non-occupational in nature.

Past Governors have exercised section vetoes over proposed additions to the presumption statute, regardless of their personal support of the underlying policy or how many votes the bill received in the Legislature.

For example, when the first round of expansions to the firefighter statute passed the Legislature unanimously in 2002, Laws of 2002 ch. 337 (2SHB 2663), Governor Locke voted Section 1 of the bill, stating:

[T]he assumptions in section 1 of this bill have not been clearly validated by science and medicine. Allowing those assumptions to become law could have several unintended consequences, including modifying the legal basis of the presumptions in section 2 of the bill, providing an avenue for the allowance of disease claims in other industries; and unnecessarily limiting the use of new scientific information in administering occupational disease claims.

[Veto Message on 2SHB 2663 \(2002\)](#).

Further, when the most recent round of expansions to the firefighter statute passed the Legislature with near unanimity in 2007, Laws of 2007 ch. 490 (ESHB 1833), Governor Gregoire vetoed section 1 of the bill, because the Legislature's statement of intent "makes broad generalizations about the incidence of cardiovascular disease" among firefighters" that may lead to "unintended interpretations." [Veto Message on ESHB 1833 \(2007\)](#).

With the presumption proposed in SSB 6214, we have no validation by science and medicine, and not even an argument that science and medicine has established a heightened link between PTSD in first responders as opposed to other occupations.

Further, while SSB 6214 does not include an intent section, a casual review of the testimony in support of the bill in both chambers of the Legislature and the floor speeches of legislators in support of the measure demonstrate that the measure was backed by nothing more than "broad generalizations about the incidence" of PTSD among these occupations.

Vetoing Section 3 would not eliminate a major policy victory for LEOFF members, as PTSD would still be covered as an occupational disease for the first time in our state's history. It would only mean that LEOFF members would need to demonstrate a preponderance of the evidence that a contended case of PTSD is more probably than not work-related, as would be the case for any other occupational disease claimant.

For these reasons, we respectfully ask that you return SSB 6214 to the Legislature without your approval, if not in its entirety than with a veto of section 3. A veto of section 3 would still permit coverage of PTSD as an occupational disease for LEOFF members.

Please do not hesitate to contact us should further information be helpful.

Respectfully submitted this 9<sup>th</sup> day of March, 2018,



Kristopher I. Tefft  
Executive Director and General Counsel