Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

**HB2398**

By: Hays of the House and Rosino of the Senate

Title: Workers’ compensation; first responders; injuries related to mental health; disability benefits; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
   That the attached Conference Committee Substitute be adopted.

Respectfully submitted,
### SENATE CONFEREES

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House Action _________________ Date ___________  Senate Action _________________ Date ___________
STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2398 By: Hays and West (Josh) of the
House

and

Rosino of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending
85A O.S. 2021, Section 13, which relates to certain
injuries related to mental health; providing for
computation of benefits for certain persons;
providing for temporary pension benefits; imposing
limit on total period for disability benefits;
providing for award of permanent total disability
based upon maximum medical improvement; providing for
payment of benefits based on certain injury; imposing
time limit on benefits; imposing limit on employer
responsibility for prescription medicine; defining
terms; providing for transfer of payment for claims
or increased premiums incurred by cities or towns;
prescribing procedures; providing for terminology in
official publications; and providing an effective
date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85A O.S. 2021, Section 13, is
amended to read as follows:
Section 13.  A.  1.  A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence or to a law enforcement officer, firefighter, or emergency medical technician on a full-time basis by a municipality, county, or the State of Oklahoma, or a volunteer firefighter who suffers post-traumatic stress disorder, as defined herein, while responding to an emergency. For the purpose of this section, such employee shall be referred to as a first responder.

2.  No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

B.  1. Notwithstanding any other provision of this act, where a claim is for mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits unless it is shown by clear and convincing evidence that benefits should continue for a set period of time, not to exceed a total of fifty-two (52) weeks. If the treating physician is of the opinion that the first responder is temporarily unable to perform his or her job or any alternative
work offered by the employer, he or she shall be entitled to receive compensation which is the greater of the weekly benefit provided for in a collective bargaining agreement or according to the policy of the employer, or seventy percent (70%) of the injured employee's average weekly wage not to exceed the state average weekly wage. If the employee has a temporary pension benefit available at no additional cost to the employee and the benefit is equal to or greater than the temporary award in this system the employer may elect to exercise the temporary pension benefit. In no event shall disability benefits extend beyond fifty-two (52) weeks.

2. Notwithstanding any other provision of this section, a person who receives benefits provided herein for a mental injury or illness not caused by a physical injury who, after reaching maximum medical improvement, is unable to perform the essential functions of their employment position and who is not eligible to receive a disability retirement through their pension or retirement system shall be eligible to be awarded permanent disability benefits not to exceed Fifty Thousand Dollars ($50,000.00) as provided for in this act.

3. a. In cases where death results directly from the mental injury or illness within a period of one (1) year, compensation shall be paid the dependents as provided in other death cases under this act.
b. Death directly or indirectly related to the mental injury or illness occurring one (1) year or more from the incident resulting in the mental injury or illness shall not be a compensable injury.

C. 1. In the event the Workers' Compensation Commission finds that a first responder has suffered post-traumatic stress disorder not accompanied by a physical injury, as defined herein, the employer shall provide reasonable and necessary medical treatment for such injury, subject to the Oklahoma Workers' Compensation Fee Schedule, for a period of no longer than one (1) year. The employer shall not be responsible for medical treatment in the form of prescription medicine in excess of Ten Thousand Dollars ($10,000.00).

2. During any period in which a first responder is temporarily unable to perform his or her job, the employer shall pay to maintain health insurance coverage for the first responder, if such health insurance was in effect on the date of the injury.

D. "Post-traumatic stress disorder", for the purpose of this section, means an injury or condition in which a first responder has been exposed to a traumatic event and:

1. Has experienced, witnessed, or was confronted with an event that involved actual or threatened death or serious injury, or a threat to the physical integrity of others, and the response involved fear, helplessness, or horror;
2. The traumatic event is persistently re-experienced in one or more of the following ways:
   a. recurrent and intrusive distressing recollections of the event,
   b. recurrent distressing dreams,
   c. acting or feeling as if the traumatic event were recurring,
   d. intense psychological distress at exposure to cues that symbolize an aspect of the traumatic event, or
   e. physiological reactivity on exposure to cues that symbolize an aspect of the traumatic event;

3. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness such as efforts to avoid thoughts, feelings or conversations associated with the trauma, markedly diminished interest or participation in significant activities, or a feeling of detachment or estrangement from others;

4. Persistent symptoms of increased arousal such as difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, or hypervigilance;

5. The duration of the disturbance is more than one (1) month; and

6. The disturbance causes clinically significant distress or impairment in social, occupational and other important areas of functioning.
E. "Volunteer firefighter", for the purpose of this section, means a person who is enrolled as a member of a volunteer fire department with two or less salaried firefighters and who serves in such capacity without receiving a regular salary.

F. "Emergency medical technician", for the purpose of this section, means a person who holds a license as an emergency medical technician, an intermediate or advanced emergency medical technician, or a paramedic, such license issued by the State Department of Health to perform emergency medical services in accordance with the Oklahoma Emergency Response Systems Development Act and the rules and standards promulgated by the State Commissioner of Health.

G. Any city or town in this state that incurs a claim relating to post-traumatic stress disorder may, at the city or town's option, transfer the payment of all or any portion of the claim or increased workers' compensation premiums to the judgment rolls of the geographic area or areas serviced by the department of the injured worker and shall be listed on official publications as "First Responder PTSD".

SECTION 2. This act shall become effective January 1, 2024.

59-1-8404 MAH 05/22/23