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HB 197 – AN ACT RELATING TO MENTAL HEALTH PARITY FOR WORKERS’ COMPENSATION

Statement of the American Insurance Association in Opposition

April 13, 2017

The American Insurance Association (AIA) is a leading national trade association representing approximately 320 major property and casualty insurance companies that collectively underwrite nearly \$125 billion in direct property and casualty premiums nationwide, including in the State of Vermont. In Vermont, AIA member companies write nearly 40% of the workers’ compensation market.

AIA must respectfully oppose House Bill 197, which would provide a presumption of workers’ compensation coverage for first responders diagnosed with PTSD and expand coverage for mental stress claims for all Vermont employees. AIA members have serious concerns with this legislation, as it represents a major expansion of workers’ compensation coverage in Vermont that could have a detrimental impact on local governments and businesses by forcing them to cover additional costs.

Vermont has made excellent progress in improving the competitiveness of the workers’ compensation market in recent years. Just a few months ago, Governor Scott announced a significant decrease (8%) in workers’ compensation premiums for 2017, the largest decrease in more than eight years. H.197, if enacted, would represent a step in the wrong direction – potentially undoing this recent progress. We believe that additional studies should be conducted in order to fully understand the costs and implications associated with H.197.

While we recognize the need to properly address mental health issues in the workplace, mental stress claims are both complex and subjective in nature and, as the Vermont Supreme Court noted in *Crosby v. City of Burlington (2003)*, medical authorities often disagree on the “precise etiology of most mental disorders” and “many sources outside of the employment setting, including culture, hereditary, social relationships and family relationships—may cause or contribute to psychological injuries.” Medical opinions relating to the cause of mental stress claims are often based on the claimant’s subjective viewpoint.

AIA is concerned with the overly broad language in the bill in that it may lead to abusive and fraudulent claims. Without appropriate limitations, mental stress claims can overburden the

claim resolution system and significantly increase costs for employers and delay resolution of all claims. It is important to note that mental stress claims are already compensable under Vermont's Workers' Compensation System and there has been no testimony submitted before any committees from employees other than emergency responders who have been negatively impacted by the current system.

We believe that the *Crosby* decision establishes an appropriate test for evaluating mental stress claims. H.197 would undo this test and expand it significantly by providing that the mental stress must be extraordinary and unusual as compared to "*the average employee across all occupations.*" As the *Crosby* decision stated, comparing employees across all occupations "offer[s] little in the way of assuring the validity of claims." As such, we would strongly urge that the entire section (subsection J) be eliminated.

If subsection (J) is retained, however, it should be amended to make the comparison apply to employees in the same or similar occupation. This standard provides employees with compensation for legitimate work-related injuries while at the same time protecting against claims that are not work related.

To be clear, AIA recognizes the significant contribution that our first responders make to the community and are highly sympathetic to their cause. However, we have serious concerns with the broad language in the bill relating to a rebuttable presumption for first responders who are diagnosed with PTSD. H.197 broadly allows any mental health professional to make a diagnosis of PTSD and is not limited to a licensed psychiatrist or psychologist. This opens the door to less qualified medical professionals making psychiatric diagnoses. We believe that a licensed psychiatrist or psychologist possesses the necessary qualifications to make a PTSD diagnosis. There are also no parameters in the bill to provide for re-evaluations of the first responder's PTSD diagnosis beyond the initial diagnosis, nor are there any specific treatment protocols that must be followed.

Further, AIA also is concerned with the 3-year period in which first responders can receive a PTSD diagnosis in order to submit a claim for workers' compensation claim in that it is far too long. Under the bill, the actual event where the PTSD manifested could have occurred at any point during employment, so the timeframe could even be much longer. Such an extended period in which to file a claim makes it difficult for insurers to take critical action to review the claim, gather evidence, investigate witnesses and evidence, and make sure that employees are treated in a timely manner.

Thank you for the opportunity to provide comments and share our concerns on this issue. For the foregoing reasons, AIA opposes H.197 and respectfully requests that the legislation be either rejected or amended to address the concerns raised above. We would welcome the opportunity to discuss this with you further to develop a workable solution for all stakeholders.

Alison Cooper
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