



*BEFORE THE SENATE INSURANCE & FINANCIAL INSTITUTIONS COMMITTEE  
OPPONENT TESTIMONY ON HOUSE BILL 80*

Chairman Hackett, Vice Chair Hottinger, Ranking Member Criag, and members of the Senate Insurance and Financial Institutions Committee, thank you for the opportunity to provide testimony on Substitute House Bill 80 (HB 80). My name is Kevin Shimp and I am the Director of Labor and Legal Affairs for the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate, and we represent over 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to champion economic competitiveness, the Ohio Chamber is opposed to the substantial and fundamental changes in the BWC budget bill included by the House.

First, HB 80 changes the ground rules for compensating a particular form of mental condition, Post-Traumatic Stress Disorder or PTSD, under Ohio's workers' compensation law.

Ohio law has always required that an employee have a physical harm or injury in order to participate in workers' compensation benefits. The so-called "mental-mental" claim – a psychological condition that arises solely from stress – has never been compensated in Ohio. This exclusion was originally a part of the judge-made, common law. Then, in 1986 the General Assembly made this "mental-mental" exclusion a part of the Revised Code at Section 4123.01(C)(1). In 2006, in response to an Ohio Supreme Court decision expanding the scope of stress related-claims that could be compensated, the General Assembly amended that section and re-emphasized that in order for a mental or psychological condition to be compensated, the condition must arise out of a physical injury to the injured worker.

These previous legislative changes reinforce that the design of Ohio's workers' compensation system is to compensate physical injuries and only those mental conditions that arise directly from such physical injuries. This committee has before it legislation that proposes a significant change in the law by doing away with the requirement of a physical harm prior to compensating a particular form of mental disability, PTSD, sustained by a specific classification of employees.

The Ohio Chamber believes that such a significant change in the law with the potential to greatly expand the number of workers' compensation claims should only be made after further consideration and after having a broader conversation about where PTSD arising in the course of employment is

most effectively and appropriately financed – private health insurance, workers’ compensation insurance, or a completely different model.

In addition, to our concerns about allowing purely mental claims to be compensated by workers’ compensation there are numerous other changes that have brought us to oppose the bill.

The House included policy changes that would redefine who is an employee for purposes for workers’ compensation, unemployment compensation, and Ohio’s income tax. This proposed change ignores the complexity of individual industries and fails to account for the varying employment relationships that drive our state’s economy. Moreover, the change comes with an overly punitive \$500 per day fine on employers for each employee they misclassify once a complaint is filed.

The budget bill before you today would also prohibit most employers from objecting to a final settlement offer once the claim is out of their experience rating. Without a right to reject a settlement, employers are at risk of facing higher premiums and compensating the same injury multiple times because an employee can open a new claim and seek compensation for aggravating their prior injury once a settlement is reached.

Another policy change included in the BWC budget bill is a provision that would make it more difficult for employers to track the potential overpayment of benefits by essentially prohibiting employer policies that call for employees to use accrued sick leave in lieu of temporary total disability. These policies also provide a benefit to employees because it prevents the employee from facing a wage loss since sick leave is typically paid at one hundred percent of an employee’s salary. Whereas, under temporary total disability benefits, an employee is unable to receive more than two thirds of their weekly wage.

Taken together, these changes put Ohio employers at risk of higher premiums, more litigation based upon their classification of independent contractors, and jeopardizes the stability of the workers’ compensation system.

Further, due to the last-minute inclusion of these significant changes by the House, we do not know the fiscal impact of all these changes because the Bureau has not had the time to perform an actuarial analysis. Likewise, we do not know the impact PTSD coverage for first responders might have on public sector employers and whether the cost might compromise their ability to provide services to the public. However, a previous BWC actuarial analysis that looked at the cost of PTSD coverage for first responders estimated the annual price tag at \$182 million. This study was performed in response to Senate Bill 5 from the 131<sup>st</sup> General Assembly, and the coverage provided by that bill mirrors the coverage included in HB 80.

Lastly, I want to thank the Senate for listening to our concerns in the short time you have been considering HB 80. We appreciate your willingness to listen and to have an open process.

In conclusion, the Ohio Chamber opposes the House passed version of the BWC budget due to its inclusion of several significant and fundamental policy changes that will have a negative impact on all employers in Ohio. Therefore, we respectfully request that the Senate Insurance and Financial Institution Committee remove those harmful provisions and pass the as-introduced version of HB 80.

Moreover, we make this recommendation despite the inclusion of policy changes we support, which includes making intent to settle language retroactive and altering the trigger for the BWC’s and

Industrial Commission's continuing jurisdiction. We made this decision because the bill's negative impacts will vastly outweigh the positive benefits of these two minor changes.

Thank you for the opportunity to provide testimony today and I will be happy to answer any questions the committee may have.