

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 374  
Finance

(Senator Kagan, *et al.*)

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**Workers' Compensation - Occupational Disease Presumptions - 9-1-1 Specialists**

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This bill establishes a workers' compensation occupational disease presumption for 9-1-1 specialists (as defined in the Public Safety Article) who are diagnosed with post-traumatic stress disorder (PTSD) by a licensed psychologist or psychiatrist.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect State operations or finances as individuals in any such State positions do not meet the definition in the bill.

**Chesapeake Employers' Insurance Company (Chesapeake) Effect:** Chesapeake expenditures may increase beginning in FY 2023 to the extent that the bill results in additional workers' compensation benefits payments on behalf of county governments insured by Chesapeake. Revenues increase to the extent that premiums are raised as a result of claims experienced under the bill's occupational disease presumption.

**Local Effect:** Baltimore City and county government expenditures may increase beginning in FY 2023 due to the occupational disease presumption established by the bill. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Occupational Disease Presumptions*

Workers' compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees' work and, therefore, require no additional evidence in the filing of a claim for workers' compensation. As shown below, generally, presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	Heart disease, hypertension, or lung disease that results in partial or total disability or death  Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, bladder, kidney or renal cell, testicular, or breast cancer under specified conditions
Police officers; deputy sheriffs, correctional officers, and detention officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

A covered employee who receives a presumption is entitled to workers' compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system in which the individual participated at the time of the claim. However, the weekly total of workers' compensation and retirement benefits may not exceed the weekly salary that was paid to the individual; any necessary adjustment is made against the workers' compensation benefits.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of “is presumed” in reference to occupational diseases in current law, specifying that the term “without contrary qualification, should be read to be a presumption, although rebuttable, of fact.” (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff’d, 298 Md. 245, 468 A.2d 625 (1983).) However, the Court of Special Appeals has stated that, “after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote.” (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

### *9-1-1 Specialists*

The State’s 9-1-1 system operates primarily through public safety answering points (PSAPs), which are generally owned and operated by local governments. 9-1-1 specialists working within PSAPs answer, redirect, and take action on 9-1-1 calls received based on the location of the originating 9-1-1 call.

“9-1-1 specialist” means an employee of a county PSAP, or an employee working in a county PSAP, whose duties and responsibilities include (1) receiving and processing 9-1-1 requests for emergency services; (2) other support functions directly related to 9-1-1 requests for emergency services; or (3) dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency.

**Local Expenditures:** Any increase in expenditures for Baltimore City and county governments depends on (1) how many 9-1-1 specialists are diagnosed with PTSD and consequently qualify for the occupational disease presumption and (2) whether any of those employees would have received workers’ compensation for PTSD absent the bill. The Department of Legislative Services advises that a covered employee may still receive workers’ compensation for PTSD under current law; the presumption established under the bill ensures no additional evidence is required to qualify for benefits. Nevertheless, Baltimore City and county government expenditures may increase beginning in fiscal 2023 due to the new occupational disease presumption.

*For illustrative purposes*, Chesapeake advises that, from 2017 through 2021, it has experienced 339 claims (213 claims for the State and 126 claims for employers insured by Chesapeake) that included a diagnosis of PTSD. While many PTSD claims arise concurrent with physical accidental injuries, Chesapeake estimates that the average cost for a stand-alone PTSD claim is \$30,881. This cost may be spread over multiple years, as an employee receives ongoing care and treatments.

**Chesapeake Fiscal Effect:** As the workers' compensation insurer for many county governments affected by the bill, Chesapeake may experience more PTSD claims due to the newly established occupational disease presumption beginning in fiscal 2023. To the extent more claims occur, Chesapeake expenditures and revenues increase correspondingly as Chesapeake pays the additional claims and increases its premiums to account for the additional liability.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 439 (Delegate Hill) - Economic Matters.

**Information Source(s):** Harford County; Maryland Department of Emergency Management; Chesapeake Employers' Insurance Company; Uninsured Employers' Fund; Subsequent Injury Fund; Department of Legislative Services

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