

## HB0209S01 compared with HB0209

~~{deleted text}~~ shows text that was in HB0209 but was deleted in HB0209S01.

Inserted text shows text that was not in HB0209 but was inserted into HB0209S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Karen Kwan proposes the following substitute bill:

### MENTAL HEALTH PROTECTIONS FOR FIRST } RESPONDERS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Kwan**

Senate Sponsor: {\_\_\_\_\_} Karen Mayne

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#### LONG TITLE

##### General Description:

This bill ~~{makes amendments regarding}~~ establishes a working group to study a first responder's workers' compensation ~~{claims of first responders}~~ claim due to mental stress.

##### Highlighted Provisions:

This bill:

- ▶ defines "first ~~{responders}~~ responder"; and
- ▶ ~~{makes amendments regarding}~~ establishes a temporary working group to study a first responder's workers' compensation claim due to mental stress.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**34A-2-102**, as last amended by Laws of Utah 2017, Chapter 363

~~34A-2-402~~63I-2-234, as ~~renumbered and~~last amended by Laws of Utah

~~1997~~2017, Chapter ~~375~~116

### ENACTS:

**34A-2-107.2, Utah Code Annotated 1953**

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-2-102** is amended to read:

#### **34A-2-102. Definition of terms.**

(1) As used in this chapter:

(a) "Average weekly wages" means the average weekly wages as determined under

Section 34A-2-409.

(b) "Award" means a final order of the commission as to the amount of compensation

due:

(i) an injured employee; or

(ii) a dependent of a deceased employee.

(c) "Compensation" means the payments and benefits provided for in this chapter or

Chapter 3, Utah Occupational Disease Act.

(d) (i) "Decision" means a ruling of:

(A) an administrative law judge; or

(B) in accordance with Section 34A-2-801:

(I) the commissioner; or

(II) the Appeals Board.

(ii) "Decision" includes:

(A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or

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(B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.

(e) "Director" means the director of the division, unless the context requires otherwise.

(f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(g) "Division" means the Division of Industrial Accidents.

(h) "First responder" means:

(i) a law enforcement officer, as defined in Section 53-13-103;

(ii) an emergency medical technician, as defined in Section 26-8c-102;

(iii) an advanced emergency medical technician, as defined in Section 26-8c-102;

(iv) a paramedic, as defined in Section 26-8c-102; ~~or~~

(v) a firefighter, as defined in Section 34A-3-113; ~~or~~

(vi) a dispatcher, as defined in Section 53-6-102.

~~(h)~~ (i) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.

~~(i)~~ (j) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

~~(j)~~ ~~(k)~~ (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.

~~(k)~~ (l) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.

(2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

(a) "Brother or sister" includes a half brother or sister.

(b) "Child" includes:

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- (i) a posthumous child; or
- (ii) a child legally adopted prior to an injury.

Section 2. Section ~~{34A-2-402}~~34A-2-107.2 is ~~{amended}~~enacted to read:

~~{34A-2-402}~~34A-2-107.2. ~~{~~ Mental stress claims:

~~—— (1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable under this chapter only when there is a sufficient legal and medical causal connection between the employee's injury and employment.~~

~~—— (2) (a) Legal causation requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment.~~

~~—— (b) The extraordinary and sudden nature of the alleged mental stress is judged according to an objective standard in comparison with contemporary national employment and nonemployment life.~~

~~—— (3) Medical causation requires proof that the physical, mental, or emotional injury was medically caused by the mental stress that is the legal cause of the physical, mental, or emotional injury.~~

~~—— (4) Good faith employer personnel actions including disciplinary actions, work evaluations, job transfers, layoffs, demotions, promotions, terminations, or retirements, may not form the basis of compensable mental stress claims under this chapter.~~

~~—— (5) Alleged discrimination, harassment, or unfair labor practices otherwise actionable at law may not form the basis of compensable mental stress claims under this chapter.~~

~~—— (6) An employee who alleges a compensable industrial accident involving mental stress bears the burden of proof to establish legal and medical causation by a preponderance of the evidence.~~

~~—— (7) The legal and medical causal connection}~~ Mental Health Protections for First Responders Workgroup.

(1) There is created the Mental Health Protections for First Responders Workgroup within the commission consisting of the following members:

(a) the commissioner or the commissioner's designee;

(b) one member of the Senate, appointed by the president of the Senate, and one

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member of the House, appointed by the speaker of the House;

(c) three representatives of the workers' compensation insurance industry appointed by the chair, one of whom is a voting member of the employer side of the Workers' Compensation Advisory Council, as follows:

(i) one member representing the insurance carrier designated to write coverage for the residual market;

(ii) one member representing an insurance carrier other than the carrier described in Subsection (1) ~~is satisfied if an individual is~~ (c)(i); and

(iii) one member representing self-insured employers;

(d) one member representing the Division of Risk Management;

(e) four representatives of first responders appointed by the chair, one of whom is a voting member of the employee side of the Workers' Compensation Advisory Council;

(f) one representative from the Utah League of Cities and Towns;

(g) one representative from the Utah Association of Special Districts;

(h) the director of the Division of Substance Abuse and Mental Health, or the director's designee; and

(i) as appointed by the chair, one or more individuals with expertise in mental stress or occupational medicine to serve as ex officio, nonvoting members of the workgroup.

(2) The commissioner or the commissioner's designee is the chair of the workgroup.

(3) (a) A majority of the members of the workgroup constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the workgroup.

(4) (a) The salary and expenses of each member of the workgroup who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(b) A member of the workgroup who is not a legislator may not receive compensation, benefits, per diem, or travel expenses for the member's service on the workgroup.

(5) The commission shall provide staff support to the workgroup.

(6) The workgroup shall review and make recommendations on the following issues:

(a) the alleviation of barriers, including financial barriers, to mental health treatment for first responders inside and outside of the workers' compensation system;

(b) statutory requirements for compensability of mental stress claims from first

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responders under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act;

(c) improving a first ~~responder.~~

### Legislative Review Note

Office of Legislative Research and General Counsel; responder's accessibility to mental health treatment; and

(d) any additional issue that the workgroup:

(i) determines is an important issue related to workers' compensation for first responders; and

(ii) decides to review.

(7) The workgroup shall present a final report on the items described in Subsection (6), including any legislative recommendations, to the Business and Labor Interim Committee on or before September 30, 2019.

Section 3. Section 63I-2-234 is amended to read:

**63I-2-234. Repeal dates -- Title 34A.**

(1) Section 34A-2-107.1 is repealed November 30, 2017.

(2) Section 34A-2-107.2 is repealed January 1, 2020.