

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3107

BY DELEGATES CRISS, LOVEJOY, J. JEFFRIES AND L. PACK

[Introduced March 12, 2021; referred to the Committee on
Fire Departments and Emergency Medical Services then the
Judiciary]

1 A BILL to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating
2 to allowing workers' compensation benefits for first responders diagnosed with post-
3 traumatic stress disorder resulting from an event or events that occurred during their
4 employment; providing for diagnosis; noting that treatment can be conducted by other
5 licensed mental health professionals once the initial diagnosis has been made by a
6 psychiatrist; making benefits and employer immunity contingent on employers adding
7 PTSD to their scope of workers' compensation coverage; and, requiring the Offices of the
8 Insurance Commission to report annually to the Legislature on first responder PTSD
9 claims.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1f. Certain psychiatric injuries and diseases not compensable; definitions; legislative findings; terms; report required.

1 ~~For~~ (a) Except as provided by this section, for the purposes of this chapter, no alleged
2 injury or disease shall may be recognized as a compensable injury or disease which was solely
3 caused by nonphysical means and which did not result in any physical injury or disease to the
4 person claiming benefits. ~~It~~ Except as otherwise provided in this section, it is the purpose of this
5 section to clarify that so-called mental-mental claims are not compensable under this chapter.

6 (b) For the purposes of this section:

7 (1) "First responder" means a law enforcement officer, firefighter, emergency medical
8 technician, paramedic and emergency dispatcher;

9 (2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for
10 post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic
11 and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of
12 the insurance commissioner; and

13 (3) “Licensed mental health provider” means a psychiatrist, psychologist, licensed
14 professional counselor, licensed marriage and family therapist or licensed social worker who is
15 qualified to treat post-traumatic stress disorder.

16 (4) “Employer” means any entity that controls the paid or volunteer employment of a first
17 responder eligible for benefits under this section.

18 (c) The Legislature finds that post-traumatic stress disorder is a unique medical condition.
19 Although it may manifest itself as a psychiatric condition that would be otherwise precluded from
20 workers’ compensation coverage, post-traumatic stress disorder is an occupational hazard for
21 first responders, similar to members of the military serving in combat. The Legislature further finds
22 that because first responders are required to expose themselves to traumatic events during the
23 course of their employment and thus are at a recognized higher risk of developing post-traumatic
24 stress disorder, and because of the severe nature and deliberative effects of post-traumatic stress
25 disorder, it is the moral obligation of the state to permit coverage to this class of individuals for
26 their work-related disease.

27 (d)(1) Post-traumatic stress disorder suffered by a first responder is a compensable
28 occupational disease under §23-4-1(f) of this code upon a diagnosis by a licensed psychiatrist
29 that the first responder suffers from the disorder, and upon a finding by a licensed psychiatrist
30 that the disorder occurred as the result of an event or events that occurred in the course and
31 within the scope of the first responder’s employment duties: *Provided*, That the provisions of this
32 section shall apply only to a PTSD diagnosis made on or after July 1, 2021, or the first day of the
33 employer’s next workers’ compensation insurance policy or self-insurance program term,
34 whichever is later.

35 (2) While diagnosis must be made by a licensed psychiatrist, mental health treatment
36 consistent with a PTSD diagnosis may be offered by a licensed mental health provider other than
37 the diagnosing psychiatrist.

38 (3) A diagnosis of PTSD under this section shall not include consideration of any layoff,
39 termination, disciplinary action or any similar personnel-related action taken in good faith by an
40 employer.

41 (4) Benefits for a PTSD diagnosis made under this section are contingent upon the
42 employer electing to provide coverage for PTSD from its workers' compensation insurance carrier
43 or to provide for it through its self-insurance program, whichever is applicable.

44 (5) Immunity for damages from PTSD claims shall extend only to employers that offer
45 workers' compensation coverage for PTSD, pursuant to the provisions of §23-2-6 of this code.

46 (6) The receipt of benefits is contingent on a claim being made within three years that a
47 licensed psychiatrist has made the claimant aware of a PTSD diagnosis in accordance with this
48 section.

49 (e) Any employer that elects to offer coverage to first responders for PTSD under this
50 section shall report PTSD claims data to the Offices of the Insurance Commissioner directly or
51 via the employer's private workers' compensation insurance carrier, whichever is applicable,
52 beginning July 1, 2021, or the first day of the employer's next workers' compensation insurance
53 policy or self-insurance program term, whichever is later.

54 (f) The Offices of the Insurance Commissioner shall report annually on claims data related
55 to PTSD claims for first responders to the Joint Committee on Volunteer Fire Department and
56 Emergency Medical Services beginning January 1, 2022.

NOTE: The purpose of this bill is to is to declare that Post-Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders and makes PTSD workers' compensation coverage for first responders a voluntary program for employers.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.