

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2321**

BY DELEGATES LOVEJOY, MILLER, CANESTRARO,  
ROHRBACH, N. BROWN, WILSON, ROBINSON, BYRD,  
MAYNARD, HORNBUCKLE AND ANGELUCCI

[ Introduced January 11, 2019; 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, all relating  
2 to allowing workers' compensation benefits for first responders diagnosed with post-  
3 traumatic stress disorder resulting from an event that occurred during their employment;  
4 providing for diagnosis; noting that treatment can be conducted by other licensed mental  
5 health professionals once the initial diagnosis has been made by a psychiatrist; providing  
6 that continuing benefits are contingent upon continued treatment; and, requiring the Joint  
7 Committee on Volunteer Fire Departments and Emergency Medical Services to study the  
8 implementation of this provision and report to the Legislature with modifications or  
9 additions to this section.

*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.**

1 (a) Except as provided by this section, for the purposes of this chapter, no alleged injury  
2 or disease shall may be recognized as a compensable injury or disease which was solely caused  
3 by nonphysical means and which did not result in any physical injury or disease to the person  
4 claiming benefits. Except as otherwise provided in this section, it is the purpose of this section to  
5 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, or paramedic; and

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.

13 (b) The Legislature finds that post-traumatic stress disorder is a unique medical condition,  
14 although it may manifest itself as a psychiatric condition that would be otherwise precluded from

15 workers' compensation coverage, for first responders, post-traumatic stress disorder, similar to  
16 members of the military serving in combat, is an occupational hazard. The Legislature further  
17 finds that because first responders are required to expose themselves to post-traumatic stress  
18 disorder causing events during the course of their employment, and because of the severe nature  
19 and deliberative effect of post-traumatic stress disorder, it is the moral obligation of the state to  
20 provide coverage to this class of individuals for their work-related injury.

21 (c)(1) Post-traumatic stress disorder suffered by a first responder is a compensable injury  
22 under this chapter upon a diagnosis by a licensed psychiatrist that the first responder suffers from  
23 the disorder and upon a finding that the disorder occurred as the result of an event or events that  
24 occurred in the course and within the scope of the first responder's employment duties: *Provided,*  
25 That while diagnosis must be made by a licensed psychiatrist, mental health treatment consistent  
26 with that diagnosis may be offered by a licensed psychologist or licensed counselor.

27 (2) The continued receipt of wage indemnity benefits, if any, by a claimant is contingent  
28 upon the claimant actively participating in the treatment ordered by the appropriate treating health  
29 care provider.

30 (d) The Joint Committee on Volunteer Fire Departments and Emergency Medical  
31 Services shall report back to the Legislature by December 31, 2020, on the implementation and  
32 effectiveness of the provisions added to this section, and with recommendations for modifications  
33 to this or other existing legislation and, if needed, any additional legislation on the topic of post-  
34 traumatic stress disorder and related issues affecting West Virginia's first responders, including,  
35 but not limited to, firefighters, emergency medical services, paramedics, law enforcement,  
36 dispatchers, corrections and other classes of similarly situated persons.

NOTE: The purpose of this bill is to provide workers' compensation to first responders diagnosed with Post-Traumatic Stress Disorder by a psychiatrist from an event that occurred during their employment.

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