

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Engrossed**

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

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

52           (f) The Offices of the Insurance Commissioner shall report annually on claims data related  
53 to PTSD claims for first responders to the Joint Committee on Volunteer Fire Department and  
54 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.