

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

House Bill 3107

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

[Passed April 10, 2021; in effect from passage.]

1 AN ACT to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating
2 to workers' compensation benefits; defining terms; recognizing post-traumatic disorder as
3 an occupational disease when specified circumstances are satisfied; noting that treatment
4 can be conducted by other licensed mental health professionals once the initial diagnosis
5 has been made by a psychiatrist; providing a diagnosis of post-traumatic stress disorder
6 shall not include consideration of any layoff, termination, disciplinary action, or any similar
7 personnel-related action taken in good faith; providing receipt of benefits is contingent on
8 a claim being made within three years from and after a licensed psychiatrist has made the
9 claimant aware of a post-traumatic stress disorder diagnosis; requiring reporting; and
10 providing for a sunset date for the amendments made 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; definitions; legislative findings; terms; report required.

1 (a) Except as provided by this section, for the purposes of this chapter, no alleged injury
2 or disease may be recognized as a compensable injury or disease which was solely caused by
3 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, 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, consistent with the provisions of West
17 Virginia law relating to an employment relationship, the paid or volunteer employment of a first
18 responder eligible for benefits under this section.

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

28 (d)(1) Post-traumatic stress disorder suffered by a first responder may be recognized as
29 a compensable occupational disease under §23-4-1(f) of this code when:

30 (A) The Employer has elected to provide coverage for post-traumatic stress disorder as
31 an occupational disease; and

32 (B) A diagnosis has been made by a licensed psychiatrist that the first responder suffered
33 from post-traumatic stress disorder due to exposure to an event or events that occurred in the
34 course of and resulting from the first responder’s paid or volunteer covered employment:
35 *Provided*, That the provisions of this section shall apply only to a post-traumatic stress disorder
36 diagnosis made on or after July 1, 2021, or the first day of the employer’s next workers’
37 compensation insurance policy or self-insurance program term for which post-traumatic stress
38 disorder coverage has been purchased or elected, whichever is later.

39 (2) While the diagnosis must be made by a licensed psychiatrist, mental health treatment
40 consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental
41 health provider other than the diagnosing psychiatrist.

42 (3) A diagnosis of post-traumatic stress disorder under this section shall not include
43 consideration of any layoff, termination, disciplinary action, or any similar personnel-related action
44 taken in good faith by an employer.

45 (4) Benefits for a post-traumatic stress disorder diagnosis made under this section are
46 contingent upon the employer electing to provide coverage for post-traumatic stress disorder from
47 its workers' compensation insurance carrier or to provide for it through its self-insurance program,
48 whichever is applicable.

49 (5) The receipt of benefits is contingent on a claim being made within three years from
50 and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder
51 diagnosis in accordance with this section.

52 (e) Any employer that elects to offer coverage to first responders for post-traumatic stress
53 disorder under this section shall report post-traumatic stress disorder claims data to the Offices
54 of the Insurance Commissioner directly or via the employer's private workers' compensation
55 insurance carrier, whichever is applicable, beginning July 1, 2021, or from the first day of the
56 employer's next workers' compensation insurance policy or self-insurance program term, which
57 provides such elective coverage, whichever is later.

58 (f) The Offices of the Insurance Commissioner shall report annually on claims data related
59 to post-traumatic stress disorder claims for first responders to the Joint Committee on Volunteer
60 Fire Department and Emergency Medical Services beginning January 1, 2022.

61 (g) The amendments made to this section during the 2021 regular session of the
62 Legislature to recognize post-traumatic stress disorder as a compensable injury subject to the
63 provisions of this section shall expire on July 1, 2026, unless extended by the Legislature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

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day of, 2021.

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Governor