

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2025

By Delegate Statler

[Introduced January 11, 2023; Referred to the
Committee on Fire Departments and Emergency
Medical Services then Health and Human Resources
then Finance]

1 A BILL to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended; relating to
 2 who may diagnose post-traumatic stress disorder as a compensable injury or disease
 3 under workers compensation.

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 or
 2 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 the
 12 insurance commissioner; and

13 (3) "Licensed mental health provider" means a licensed psychiatrist, licensed psychologist,
 14 licensed professional counselor, licensed marriage and family therapist, or licensed social worker
 15 who:

16 (A) Holds a master's degree or higher;

17 (B) Holds a terminal license within their profession; and

18 (C) is is qualified to treat post-traumatic stress disorder.

19 (4) "Employer" means any entity that controls, consistent with the provisions of West

20 Virginia law relating to an employment relationship, the paid or volunteer employment of a first
21 responder eligible for benefits under this section.

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

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

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

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

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

45 (3) (2) A diagnosis of post-traumatic stress disorder under this section shall not include

46 consideration of any layoff, termination, disciplinary action, or any similar personnel-related action
47 taken in good faith by an employer.

48 (4) ~~(3)~~ Benefits for a post-traumatic stress disorder diagnosis made under this section are
49 contingent upon the employer electing to provide coverage for post-traumatic stress disorder from
50 its workers' compensation insurance carrier or to provide for it through its self-insurance program,
51 whichever is applicable.

52 ~~(5)~~ (4) The receipt of benefits is contingent on a claim being made within three years from
53 and after a licensed ~~psychiatrist~~ mental health provider has made the claimant aware of a post-
54 traumatic stress disorder diagnosis in accordance with this section.

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

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

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

NOTE: The purpose of this bill is to expand the professionals who may diagnose post-traumatic stress disorder.

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