

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 856

BY SENATOR RUCKER

[Introduced March 20, 2025; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §23-2C-5, §23-4-1f, §33-2-15a, and §33-2-21a of the Code of West
2 Virginia, 1931, as amended; and to repeal §23-1-2, §23-1-17, §33-20-19, §33-20B-6, and
3 §33-20B-8, relating to the repeal or modification of reporting requirements; removing the
4 reporting requirement of the Insurance Commissioner to the Joint Committee on
5 Government and Finance regarding workers' compensation funds; removing the reporting
6 requirement of the Insurance Commissioner and Occupational Pneumoconiosis Board to
7 the Governor regarding occupational pneumoconiosis claims; removing the reporting
8 requirement of the Industrial Council to the Joint Committee on Government and Finance
9 regarding employer safety initiatives; removing the reporting requirement of employers to
10 the Insurance Commissioner regarding post-traumatic stress disorder claims; removing
11 the reporting requirement of the Insurance Commissioner to the Joint Committee of
12 Volunteer Fire Department and Emergency Medical Services regarding post-traumatic
13 stress disorder claims; requiring the Insurance Commissioner to post a flood insurance
14 notification to public entities on the agency's website; removing the reporting requirement
15 of the Insurance Commissioner to the Joint Committee on Government and Finance
16 regarding the status of the state agency workers' compensation program; removing the
17 publishing requirement of the Insurance Commissioner regarding automobile insurance
18 rates; removing the reporting requirement of the Insurance Commissioner to the Joint
19 Standing Committee of the Judiciary regarding medical malpractice insurance; and
20 removing the reporting requirement of insurance companies to the Insurance
21 Commissioner regarding civil actions filed against medical providers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-2. Oversight of the workers' compensation commission.

1 [Repealed.]

**§23-1-17. Annual report by the Insurance Commissioner and Occupational
Pneumoconiosis Board.**

[Repealed.]

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-5. Creation of the industrial council; duties.

(a) There is hereby created within the Office of the Insurance Commissioner an industrial council.

(b) On or before July 1, 2005, the Governor, with the advice and consent of the Senate, shall appoint five voting members to the industrial council who meet the requirements and qualifications prescribed in this subsection. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall appoint the legislative members to the board. No more than three of the legislative members may be of the same political party. The Insurance Commissioner shall serve as an advisory nonvoting member of the board.

(1) (A) Five members shall be appointed by the Governor with the advice and consent of the Senate for terms that begin upon appointment after the effective date of this legislation and expire as follows:

(i) One member shall be appointed for a term ending June 30, 2007;

(ii) Two members shall be appointed for a term ending June 30, 2008; and

(iii) Two members shall be appointed for a term ending June 30, 2009.

(B) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending June 30 of the fourth year following the year the preceding term expired. In the event a vacancy occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the council may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, or gross immorality.

(C) No appointed member may be a candidate for or hold elected office. Members may be reappointed for no more than two full terms.

(2) Each of the appointed voting members of the council shall be appointed based upon his or her demonstrated knowledge and experience to effectively accomplish the purposes of this chapter. They shall meet the minimum qualifications as follows:

(A) Each shall hold a baccalaureate degree from an accredited college or university: *Provided*, That no more than one of the appointed voting members may serve without a baccalaureate degree from an accredited college or university if the member has a minimum of 15 years' experience in his or her field of expertise as required in this subdivision;

(B) Each shall have a minimum of 10 years' experience in his or her field of expertise. The Governor shall consider the following guidelines when determining whether potential candidates meet the qualifications of this subsection: Expertise in insurance claims management; expertise in insurance underwriting; expertise in the financial management of pensions or insurance plans; expertise as a trustee of pension or trust funds of more than 200 beneficiaries or \$300 million; expertise in workers' compensation management; expertise in loss prevention and rehabilitation; expertise in occupational medicine demonstrated by licensure as a medical doctor in West Virginia and experience, board certification, or university affiliation; or expertise in similar areas of endeavor;

(C) At least one shall be a certified public accountant with financial management or pension or insurance audit expertise; at least one shall be an attorney with financial management experience; one shall be an academician holding an advanced degree from an accredited college or university in business, finance, insurance, or economics; and one shall represent organized labor;

(D) The council shall appoint one member to serve as chairperson. The chairperson shall serve for a one-year term and may serve more than one consecutive term. The council shall hold meetings at the request of the chairperson or at the request of at least three of the members of

the council, but no less frequently than once every three months. The chairperson shall determine the date and time of each meeting. Three members of the council constitute a quorum for the conduct of the business of the council. No vacancy in the membership of the council shall impair the right of a quorum to exercise all the rights and perform all the duties of the council. No action shall be taken by the council except upon the affirmative vote of three members of the council.

(3)(A) Each voting appointed member of the council shall receive compensation of not more than \$350 per day for each day during which he or she is required to and does attend a meeting of the board.

(B) Each voting appointed member of the council is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(C) Each member of the council shall be provided appropriate liability insurance, including, but not limited to, errors and omissions coverage, without additional premium, by the state Board of Risk and Insurance Management established pursuant to §29-12-1 *et seq.* of this code.

(c) The industrial council shall:

(1) In consultation with the Insurance Commissioner, establish operating guidelines and policies designed to ensure the effective administration of the workers' compensation insurance market in West Virginia.

(2) Review and approve, reject or modify rules that are proposed by the Insurance Commissioner for operation and regulation of the workers' compensation insurance market before the rules are filed with the Secretary of State. The rules adopted by the industrial council are not subject to §29A-3-9 through §29A-3-16 of this code. The industrial council shall follow the remaining provisions of said chapter for giving notice to the public of its actions and for holding hearings and receiving public comments on the rules.

73 (3) In accordance with the laws and rules of West Virginia, establish and monitor
74 performance standards and measurements to ensure the timeliness and accuracy of activities
75 performed under chapter 23 of this code and applicable rules.

76 (4) Submit for approval by the Legislature, as an isolated and clearly discernable
77 component of the Insurance Commissioner's budget, a budget for the sufficient administrative
78 resources and funding requirements necessary for their duties under this article.

79 (5) Perform all record and information gathering functions necessary to carry out its duties
80 under this code.

81 ~~(6) Every two years, conduct an overview of the safety initiatives currently being utilized~~
82 ~~or which could be utilized in the workers' compensation insurance market and report said finding~~
83 ~~to the Joint Committee on Government and Finance. Each private carrier and self-insured~~
84 ~~employer shall cooperate with the council in the performance of its duties to evaluate insurer~~
85 ~~services provided to employers in controlling losses and providing information on the prevention~~
86 ~~of industrial accidents or occupational diseases. Each employer, private carrier and self-insured~~
87 ~~employer shall provide to the council, upon request, any information, statistics or data in its~~
88 ~~records requested by the council in the performance of these duties.~~

89 ~~(7)~~ (6) Perform all other duties as specifically provided in this chapter for the industrial
90 council and those duties incidental thereto.

91 ~~(8)~~ (7) Establish a method of indexing claims of injured workers that will make information
92 concerning the injured workers of one insurer available to other insurers.

93 (A) Every insurer shall provide information, as required by the industrial council, for
94 establishing and maintaining the claims index.

95 (B) If an employee files a claim with an insurer, the insurer is entitled to receive from the
96 administrator a list of the prior claims of the employee. If the insurer desires to inspect the files
97 related to the prior claims, he or she must obtain the written consent of the employee or the

98 Insurance Commissioner or his or her designee. The use of the information contained in the files
99 is limited to the administration of the claim.

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

first responders, similar to members of the military serving in combat. The Legislature further finds that because first responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing post-traumatic stress disorder, and because of the severe nature and debilitating effects of post-traumatic stress disorder, it is the moral obligation of the state to permit coverage to this class of individuals for their work-related disease.

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

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

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

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

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

(4) Benefits for a post-traumatic stress disorder diagnosis made under this section are contingent upon the employer electing to provide coverage for post-traumatic stress disorder from

its workers' compensation insurance carrier or to provide for it through its self-insurance program, whichever is applicable.

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

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

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

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

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-15a. Annual flood insurance ~~communication~~ notification to public entities by commissioner.

~~(a) The commissioner shall annually issue a communication to West Virginia state and local governmental entities and nonprofit organizations which shall have post a notification on the agency's website with the following objectives:~~

(1) To make state and local governmental entities and nonprofit organizations aware of the 1988 amendments to the federal Robert T. Stafford Emergency Assistance and Disaster Relief Act which impose penalties in the form of reductions in Federal Emergency Management Agency disaster relief funds on public entities who fail to purchase adequate flood insurance on all property located in identified flood hazard areas;

(2) To make state and local governmental entities and nonprofit organizations generally aware of the magnitude of risk exposure and potential financial loss that may result from these penalties; and

(3) To make state and local governmental entities and nonprofit organizations aware that low-cost, federally subsidized flood insurance may be available through the National Flood Insurance Program.

~~(b) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.~~

§33-2-21a. State agency workers' compensation programs.

(a) The intent of this section is to provide a means of managing workers' compensation coverage for persons directly employed by the State of West Virginia. For the purposes of this section:

(1) "Discretionary participant" means the Parkways Authority, offices of the State Auditor, the State Treasurer, the Secretary of State, the Attorney General, the Department of Agriculture, the State Senate and House of Delegates or their related entities, the Supreme Court of Appeals, the State Police, and any other spending unit of the state that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget: *Provided*, That the term "discretionary participant" does not include any executive state entity other than the State Police and the Parkways Authority, any county board

of education, any other county entity or its instrumentality, or any municipality or its instrumentality.

(2) "Executive state entity" means the Governor's Office and its affiliated entities, Bureau of Senior Services, or any state department, division, fund, office, position, system, survey, or other entity of state government, however designated, transferred to and incorporated in one of the executive departments created in §5F-1-2 of this code, except the State Police, and that is required by §11B-2-12 of this code to provide a detailed expenditure schedule to the Secretary of Revenue in his or her capacity as Director of the Budget.

(b) Notwithstanding any provision of this code to the contrary, the commissioner has sole responsibility for managing the workers' compensation risks of all executive state entities and for supervising and controlling the workers' compensation programs for such entities: *Provided*, That any discretionary participant may participate in the program upon application to the commissioner under the same terms and conditions as are applicable to executive state entities: *Provided*, ~~further~~ however, That a discretionary participant is, in accordance with rules governing the program, permitted to withdraw from continued participation in the program.

(c) The commissioner may assess such fees or surcharges on participants in the program necessary to manage the workers' compensation risks of those participants. All premiums, fees, and surcharges shall be established in accordance with generally acceptable actuarial standards applicable to workers' compensation coverage as to each participant and as to all participants in the aggregate. The commissioner shall establish criteria for assessments of premiums, fees, and surcharges designed to provide the most cost-efficient coverage for all participants.

(d) The provisions of §5A-3-1 *et seq.* of this code relating to the Purchasing Division of the Department of Administration do not apply to any contract entered into by the commissioner in furtherance of the requirements of this section: *Provided*, That those contracts shall be awarded on a competitive basis.

(e)(1) There is hereby established the State Entities Workers' Compensation Program Fund. All premiums, surcharges, assessments, deposits, or any other moneys or funds deposited or otherwise designated or accruing to the fund as well as all earnings payable to it, shall be deposited in the State Treasury to the credit of the fund. Expenditures from the fund shall be for the purposes set forth in this section, are authorized from collections, and shall not revert to the General Fund. The fund shall be a separate and distinct fund upon the books and records of the Auditor and Treasurer, and disbursements therefrom shall be made upon requisitions signed by the Insurance Commissioner.

(2) Any premiums, assessments or deposits or any other moneys or funds received for the purposes of this section shall be invested by the State Treasurer at the request of the commissioner.

(3) The Insurance Commissioner may borrow funds as is determined necessary from the Insurance Commission Fund, created in ~~section thirteen-b, article three, chapter thirty-three~~ §33-3-13b of this code, for the initial operations of the workers' compensation program for state entities: *Provided*, That any borrowed funds shall be deposited to the credit of the State Entities Workers' Compensation Program Fund: *Provided, however*, That these borrowed funds shall be repaid, without interest, and redeposited to the credit of the Insurance Commission Fund as determined by the Insurance Commissioner.

(f) The commissioner may promulgate emergency rules and shall propose for legislative approval legislative rules, in accordance with the provisions of §29A-3-1 *et seq.* of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

~~(g) The commissioner shall submit reports on the status and progress of the program established in this section to the joint committee on government and finance monthly and upon request, together with any other specific information on the program requested by the committee.~~

60 ~~(h)~~ (g) The commissioner shall consult with the State Board of Risk and Insurance
61 Management to solicit any applicable experience and expertise in establishing and managing a
62 program to provide insurance coverage to state agencies.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-19. Publication of automobile insurance rates.

1 [Repealed.]

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-6. Rate review and reporting.

1 [Repealed.]

**§33-20B-8. Insurers required to report results of civil actions against physicians or
podiatrists; penalties for failure to report; notice and hearing.**

1 [Repealed.]