

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 4901**

By Delegates Pritt, Masters, Dean, Green,

Canterbury, Adkins, Clay, and Brooks

[Introduced January 28, 2026; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §23-4-2 of the Code of West Virginia, 1931, as amended, relating to  
2 establishing payment guidelines for pulmonary massive fibroids without current pulmonary  
3 impairment in order to care for those who face future impairment that would otherwise fall  
4 outside of the timeframe for filing a complaint.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

**§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer;**

**legislative declarations and findings; "deliberate intention" defined.**

1 (a) Notwithstanding anything contained in this chapter, no employee or dependent of any  
2 employee is entitled to receive any sum under the provisions of this chapter on account of any  
3 personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of  
4 the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably  
5 appears to have, occurred in the course of and resulting from the employee's employment, the  
6 employer may require the employee to undergo a blood test for the purpose of determining the  
7 existence or nonexistence of evidence of intoxication: *Provided*, That the employer must have a  
8 reasonable and good faith objective suspicion of the employee's intoxication and may only test for  
9 the purpose of determining whether the person is intoxicated. If any blood test for intoxication is  
10 given following an accident, at the request of the employer or otherwise, and if any of the following  
11 are true, the employee is deemed intoxicated and the intoxication is the proximate cause of the  
12 injury:

13 (1) If a blood test is administered within two hours of the accident and evidence that there  
14 was, at that time, more than five hundredths of one percent, by weight, of alcohol in the employee's  
15 blood; or

16 (2) If there was, at the time of the blood test, evidence of either on or off the job use of a  
17 nonprescribed controlled substance as defined in the West Virginia Uniform Controlled  
18 Substances Act, West Virginia Code §60A-2-201, *et seq.*, Schedules I, II, III, IV and V.

19 (b) For the purpose of this chapter, the commission may cooperate with the Office of  
20 Miners' Health, Safety and Training and the State Division of Labor in promoting general safety  
21 programs and in formulating rules to govern hazardous employments.

22 (c) If injury results to any employee from the deliberate intention of his or her employer to  
23 produce the injury or death, the employee, or, if the employee has been found to be incompetent,  
24 his or her conservator or guardian, may recover under this chapter and bring a cause of action  
25 against the employer, as if this chapter had not been enacted, for any excess of damages over the  
26 amount received or receivable in a claim for benefits under this chapter. If death results to any  
27 employee from the deliberate intention of his or her employer to produce the injury or death, the  
28 representative of the estate may recover under this chapter and bring a cause of action, pursuant  
29 to section six, article seven of chapter fifty-five of this code, against the employer, as if this chapter  
30 had not been enacted, for any excess of damages over the amount received or receivable in a  
31 claim for benefits under this chapter. To recover under this section, the employee, the employee's  
32 representative or dependent, as defined under this chapter, must, unless good cause is shown,  
33 have filed a claim for benefits under this chapter.

34 (d)(1) It is declared that enactment of this chapter and the establishment of the workers'  
35 compensation system in this chapter was and is intended to remove from the common law tort  
36 system all disputes between or among employers and employees regarding the compensation to  
37 be received for injury or death to an employee except as expressly provided in this chapter and to  
38 establish a system which compensates even though the injury or death of an employee may be  
39 caused by his or her own fault or the fault of a co-employee; that the immunity established in  
40 sections six and six-a, article two of this chapter is an essential aspect of this workers'  
41 compensation system; that the intent of the Legislature in providing immunity from common  
42 lawsuit was and is to protect those immunized from litigation outside the workers' compensation  
43 system except as expressly provided in this chapter; that, in enacting the immunity provisions of  
44 this chapter, the Legislature intended to create a legislative standard for loss of that immunity of

45 more narrow application and containing more specific mandatory elements than the common law  
46 tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is  
47 the legislative intent to promote prompt judicial resolution of the question of whether a suit  
48 prosecuted under the asserted authority of this section is or is not prohibited by the immunity  
49 granted under this chapter.

50 (2) The immunity from suit provided under this section and under sections six and six-a,  
51 article two of this chapter may be lost only if the employer or person against whom liability is  
52 asserted acted with "deliberate intention". This requirement may be satisfied only if:

53 (A) It is proved that the employer or person against whom liability is asserted acted with a  
54 consciously, subjectively and deliberately formed intention to produce the specific result of injury  
55 or death to an employee. This standard requires a showing of an actual, specific intent and may  
56 not be satisfied by allegation or proof of: (i) Conduct which produces a result that was not  
57 specifically intended; (ii) conduct which constitutes negligence, no matter how gross or  
58 aggravated; or (iii) willful, wanton or reckless misconduct; or

59 (B) The trier of fact determines, either through specific findings of fact made by the court in  
60 a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the  
61 following facts are proven:

62 (i) That a specific unsafe working condition existed in the workplace which presented a  
63 high degree of risk and a strong probability of serious injury or death;

64 (ii) That the employer, prior to the injury, had actual knowledge of the existence of the  
65 specific unsafe working condition and of the high degree of risk and the strong probability of  
66 serious injury or death presented by the specific unsafe working condition.

67 (I) In every case actual knowledge must specifically be proven by the employee or other  
68 person(s) seeking to recover under this section, and shall not be deemed or presumed: *Provided*,  
69 That actual knowledge may be shown by evidence of intentional and deliberate failure to conduct  
70 an inspection, audit or assessment required by state or federal statute or regulation and such

71 inspection, audit or assessment is specifically intended to identify each alleged specific unsafe  
72 working condition.

73 (II) Actual knowledge is not established by proof of what an employee's immediate  
74 supervisor or management personnel should have known had they exercised reasonable care or  
75 been more diligent.

76 (III) Any proof of the immediate supervisor or management personnel's knowledge of prior  
77 accidents, near misses, safety complaints or citations from regulatory agencies must be proven by  
78 documentary or other credible evidence.

79 (iii) That the specific unsafe working condition was a violation of a state or federal safety  
80 statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety  
81 standard within the industry or business of the employer.

82 (I) If the specific unsafe working condition relates to a violation of a commonly accepted  
83 and well-known safety standard within the industry or business of the employer, that safety  
84 standard must be a consensus written rule or standard promulgated by the industry or business of  
85 the employer, such as an organization comprised of industry members: *Provided*, That the  
86 National Fire Protection Association Codes and Standards or any other industry standards for  
87 Volunteer Fire Departments shall not be cited as an industry standard for Volunteer Fire  
88 Departments, Municipal Fire Departments and Emergency Medical Response Personnel as an  
89 unsafe working condition as long as the Volunteer Fire Departments, Municipal Fire Departments  
90 and the Emergency Medical Response Personnel have followed the Rules that have been  
91 promulgated by the Fire Commission.

92 (II) If the specific unsafe working condition relates to a violation of a state or federal safety  
93 statute, rule or regulation that statute, rule or regulation:

94 (a) Must be specifically applicable to the work and working condition involved as  
95 contrasted with a statute, rule, regulation or standard generally requiring safe workplaces,  
96 equipment or working conditions;

(b) Must be intended to address the specific hazard(s) presented by the alleged specific unsafe working condition; and,

99 (c) The applicability of any such state or federal safety statute, rule or regulation is a matter  
100 of law for judicial determination.

101 (iv) That notwithstanding the existence of the facts set forth in subparagraphs (i) through  
102 (iii), inclusive, of this paragraph, the person or persons alleged to have actual knowledge under  
103 subparagraph (ii) nevertheless intentionally thereafter exposed an employee to the specific unsafe  
104 working condition; and

105 (v) That the employee exposed suffered serious compensable injury or compensable  
106 death as defined in section one, article four, chapter twenty-three as a direct and proximate result  
107 of the specific unsafe working condition. For the purposes of this section, serious compensable  
108 injury may only be established by one of the following four methods:

109 (I) It is shown that the injury, independent of any preexisting impairment:

110 (a) Results in a permanent physical or combination of physical and psychological injury  
111 rated at a total whole person impairment level of at least thirteen percent (13%) as a final award in  
112 the employees workers' compensation claim; and

113 (b) Is a personal injury which causes permanent serious disfigurement, causes permanent  
114 loss or significant impairment of function of any bodily organ or system, or results in objectively  
115 verifiable bilateral or multi-level dermatomal radiculopathy; and is not a physical injury that has no  
116 objective medical evidence to support a diagnosis; or

117 (II) Written certification by a licensed physician that the employee is suffering from an injury  
118 or condition that is caused by the alleged unsafe working condition and is likely to result in death  
119 within eighteen (18) months or less from the date of the filing of the complaint. The certifying  
120 physician must be engaged or qualified in a medical field in which the employee has been treated,  
121 or have training and/or experience in diagnosing or treating injuries or conditions similar to those of  
122 the employee and must disclose all evidence upon which the written certification is based.

123 including, but not limited to, all radiographic, pathologic or other diagnostic test results that were  
124 reviewed.

125 (III) If the employee suffers from an injury for which no impairment rating may be  
126 determined pursuant to the rule or regulation then in effect which governs impairment evaluations  
127 pursuant to this chapter, serious compensable injury may be established if the injury meets the  
128 definition in subclause (I)(b).

129 (IV) If the employee suffers from an occupational pneumoconiosis, the employee must  
130 submit written certification by a board certified pulmonologist that the employee is suffering from  
131 complicated pneumoconiosis or pulmonary massive fibrosis with current pulmonary impairment  
132 and that the occupational pneumoconiosis has resulted in pulmonary impairment as measured by  
133 the standards or methods utilized by the West Virginia Occupational Pneumoconiosis Board of at  
134 least fifteen percent (15%) as confirmed by valid and reproducible ventilatory testing. The  
135 certifying pulmonologist must disclose all evidence upon which the written certification is based,  
136 including, but not limited to, all radiographic, pathologic or other diagnostic test results that were  
137 reviewed: *Provided*, That any cause of action based upon this clause must be filed within one year  
138 of the date the employee meets the requirements of the same: *Provided further*, That the  
139 employee asserting a cause of action based upon this clause must prove that the employer  
140 fraudulently concealed or manipulated dust samples or air quality samples.

141 (V) If the employee suffers from pulmonary massive fibrosis without pulmonary  
142 impairment, the employee must submit written certification by a board certified pulmonologist that  
143 the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis  
144 without current pulmonary impairment. The certifying pulmonologist must disclose all evidence  
145 upon which the written certification is based, including, but not limited to, all radiographic,  
146 pathologic or other diagnostic test results that were reviewed: *Provided*, That any cause of action  
147 based upon this clause must be filed within one year of the date the employee meets the  
148 requirements of the same: *Provided, however*, That the employee asserting a cause of action

149 based upon this clause must prove that the employer fraudulently concealed or manipulated dust  
150 samples or air quality samples. The claimant with pulmonary massive fibrosis with no current  
151 pulmonary impairment shall be awarded according to the following guidelines: Category A shall  
152 receive 10 percent, Category B shall receive 20 percent, and Category C shall receive 30 percent.

153 (C) In cases alleging liability under the provisions of paragraph (B) of this subdivision:

154 (i) The employee, the employee's guardian or conservator, or the representative of the  
155 employee's estate shall serve with the complaint a verified statement from a person with  
156 knowledge and expertise of the workplace safety statutes, rules, regulations and consensus  
157 industry safety standards specifically applicable to the industry and workplace involved in the  
158 employee's injury, setting forth opinions and information on:

159 (I) The person's knowledge and expertise of the applicable workplace safety statutes,  
160 rules, regulations and/or written consensus industry safety standards;

161 (II) The specific unsafe working condition(s) that were the cause of the injury that is the  
162 basis of the complaint; and

163 (III) The specific statutes, rules, regulations or written consensus industry safety standards  
164 violated by the employer that are directly related to the specific unsafe working conditions:  
165 *Provided, however, That this verified statement shall not be admissible at the trial of the action and*  
166 *the Court, pursuant to the Rules of Evidence, common law and subclause two-c, subparagraph*  
167 *(iii), paragraph (B), subdivision (2), subsection (d), section two, article four, chapter twenty-three of*  
168 *this code, retains responsibility to determine and interpret the applicable law and admissibility of*  
169 *expert opinions.*

170 (ii) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

171 (iii) Notwithstanding any other provision of law or rule to the contrary, and consistent with  
172 the legislative findings of intent to promote prompt judicial resolution of issues of immunity from  
173 litigation under this chapter, the employer may request and the court shall give due consideration  
174 to the bifurcation of discovery in any action brought under the provisions of subparagraphs (i)

175 through (v), of paragraph (B) such that the discovery related to liability issues be completed before  
176 discovery related to damage issues. The court shall dismiss the action upon motion for summary  
177 judgment if it finds pursuant to rule 56 of the rules of civil procedure that one or more of the facts  
178 required to be proved by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B)  
179 of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a  
180 directed verdict against the plaintiff if after considering all the evidence and every inference  
181 legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that  
182 there is not sufficient evidence to find each and every one of the facts required to be proven by the  
183 provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision; and

184 (iv) The provisions of this paragraph and of each subparagraph thereof are severable from  
185 the provisions of each other subparagraph, subsection, section, article or chapter of this code so  
186 that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of  
187 this act and this code remain valid.

188 (e) Any cause of action brought pursuant to this section shall be brought either in the circuit  
189 court of the county in which the alleged injury occurred or the circuit court of the county of the  
190 employer's principal place of business. With respect to causes of action arising under this chapter,  
191 the venue provisions of this section shall be exclusive of and shall supersede the venue provisions  
192 of any other West Virginia statute or rule.

193 (f) The reenactment of this section in the regular session of the Legislature during the year  
194 2015 does not in any way affect the right of any person to bring an action with respect to or upon  
195 any cause of action which arose or accrued prior to the effective date of the reenactment.

196 (g) The amendments to this section enacted during the 2023 session of the Legislature  
197 shall apply to all injuries occurring on or after July 1, 2023.

NOTE: The purpose of this bill is to establish a set of payment guidelines for pulmonary massive fibroids without current pulmonary impairment in order to care for those who face future impairment that would otherwise fall outside of the timeframe for filing a complaint.

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