

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2190

By Delegate Burkhammer

[Introduced January 11, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §23-4-2a, relating to eligibility for workers' compensation benefits by persons
3 that suffer a traumatic personal injury; requiring blood tests of persons being treated for a
4 traumatic personal injury by the medical provider to determine whether the person is
5 intoxicated under certain circumstances; requirements for testing; circumstances when a
6 blood test may not be administered; exceptions; denial of benefits upon refusal to submit to
7 a blood test; disclosure to certain persons of test information and results and of refusal of
8 test; and limiting criminal and civil liability of persons administering tests.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2a. Administration of blood test after traumatic injury to determine intoxication; disqualification for benefits upon refusal.

1 (a) Notwithstanding any provision of this code to the contrary, a medical provider for a
2 person that has suffered a traumatic personal injury that occurred within 12 hours before
3 presenting for treatment by a medical provider, for which the person asserts, or which reasonably
4 appears to have, occurred in the course of and resulting from the person's employment, shall
5 require the person to undergo a blood test for the purpose of determining the existence or
6 nonexistence of evidence of intoxication, according to the standards and criteria set forth in §23-4-
7 2 of this code. The test must be completed within 12 hours of the occurrence of the injury and prior
8 to the administration of medication or the consumption of other substances after the occurrence of
9 the injury that could alter the test results.

10 (b) Only a doctor of medicine, a doctor of osteopathy, a registered nurse, or a trained
11 medical technician, acting at the request and direction of the medical provider, may withdraw blood
12 to determine the alcohol concentration in the blood, or the concentration in the blood of a
13 controlled substance, drug, or any combination thereof. In withdrawing blood to determine the
14 alcohol concentration in the blood, or the presence in the blood of a controlled substance, drug, or

15 any combination thereof, only a previously unused and sterile needle and sterile vessel may be
16 utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A
17 nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. Upon the
18 request of the person who is tested, full information concerning the test taken pursuant to
19 subsection (a) of this section shall be made available to him or her.

20 (c) In the event the person refuses to consent to submit to a blood test or lacks capacity to
21 consent to the administration of the test, the test shall not be given: *Provided*, That the provisions
22 of this section shall not prohibit the administering of blood tests medically necessary for the
23 treatment of a person. Upon requesting that a person submit to the test, the person shall be given
24 the written and verbal warnings that refusal to submit to the test will disqualify the person and his or
25 her dependents from entitlement to any benefits under this chapter for the injury. After the person
26 is given the required written and verbal warnings, the person shall have the opportunity to submit
27 to, or refuse to submit to, the test. A refusal to submit to the test is considered final after 15 minutes
28 have passed since the refusal: *Provided, however*, That during the 15 minutes following the
29 refusal, the person may revoke his or her refusal and shall be provided the opportunity to submit to
30 the test. After the 15 minutes have passed following a refusal to submit to the test, the medical
31 provider has no further duty to provide the person with an opportunity to take the test, and the
32 refusal shall be final.

33 (d) After the person's refusal to take the test has become final, the right of the person and
34 his or her dependents to any benefits under the provisions of this chapter as compensation for the
35 injury are forfeited and revoked.

36 (e) The person tested may, at his or her own expense, have a doctor of medicine or
37 osteopathy, a registered nurse, or trained medical technician of his or her own choosing,
38 administer a chemical test in addition to the test administered pursuant to subsection (a) of this
39 section.

40 (f) Upon request, the medical provider shall provide the person tested and the employer of

41 the person tested, with the results of the test, or, if the test is refused, an affidavit or other
42 documentation as evidence or proof of the person's refusal to submit to the test.

43 (g) No person who administers a test pursuant to subsection (a) of this section, or medical
44 provider in or with which such person is employed or is otherwise associated or in which such test
45 is administered, and no other person, firm or corporation by whom or with which such person is
46 employed or is in any way associated, shall be in any way criminally liable for the administration of
47 a test administered pursuant to subsection (a) of this section, or civilly liable in damages to the
48 person tested unless for gross negligence or willful or wanton injury.

49 (h) This section shall become effective on July 1, 2023.

NOTE: The purpose of this bill is to require blood tests of certain persons that suffer a traumatic personal injury that occurred within 12 hours before presenting for treatment by a medical provider, for injuries for which the person asserts, or which reasonably appears to have, occurred in the course of and resulting from the person's employment. to determine whether or not the person is intoxicated. The bill provides that if a person refuses to take the blood test, both the person and his or her dependents are disqualified for workers compensation benefits.

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