

1 **H. B. 2083**

2
3 (By Delegate Caputo)

4 [Introduced January 12, 2011; referred to the
5 Committee on Pensions and Retirement then Finance.]
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10 A BILL to amend and reenact §5-16-13 of the Code of West Virginia,
11 1931, as amended, relating to crediting deceased teachers'
12 surviving spouses with accumulated sick leave for purposes of
13 extending insurance coverage; and, providing that if the
14 spouse or other dependents are not covered by public
15 employees' insurance, the spouse or other dependents receive
16 the monetary value of the accumulated sick leave.

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

18 That §5-16-13 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

21 **§5-16-13. Payment of costs by employer and employee; spouse and**
22 **dependent coverage; involuntary employee termination**
23 **coverage; conversion of annual leave and sick leave**
24 **authorized for health or retirement benefits;**

1 **authorization for retiree participation; continuation**
2 **of health insurance for surviving dependents of**
3 **deceased employees; requirement of new health plan,**
4 **limiting employer contribution.**

5 (a) *Cost-sharing.* -- The director shall provide under any
6 contract or contracts entered into under the provisions of this
7 article that the costs of any group hospital and surgical
8 insurance, group major medical insurance, group prescription drug
9 insurance, group life and accidental death insurance benefit plan
10 or plans shall be paid by the employer and employee.

11 (b) *Spouse and dependent coverage.* -- Each employee is
12 entitled to have his or her spouse and dependents included in any
13 group hospital and surgical insurance, group major medical
14 insurance or group prescription drug insurance coverage to which
15 the employee is entitled to participate: *Provided,* That the spouse
16 and dependent coverage is limited to excess or secondary coverage
17 for each spouse and dependent who has primary coverage from any
18 other source. For purposes of this section, the term "primary
19 coverage" means individual or group hospital and surgical insurance
20 coverage or individual or group major medical insurance coverage or
21 group prescription drug coverage in which the spouse or dependent
22 is the named insured or certificate holder. For the purposes of
23 this section, "dependent" includes an eligible employee's unmarried
24 child or stepchild under the age of twenty-five if that child or

1 stepchild meets the definition of a "qualifying child" or a
2 "qualifying relative" in Section 152 of the Internal Revenue Code.
3 The director may require proof regarding spouse and dependent
4 primary coverage and shall adopt rules governing the nature,
5 discontinuance and resumption of any employee's coverage for his or
6 her spouse and dependents.

7 (c) *Continuation after termination.* -- If an employee
8 participating in the plan is terminated from employment
9 involuntarily or in reduction of workforce, the employee's
10 insurance coverage provided under this article shall continue for
11 a period of three months at no additional cost to the employee and
12 the employer shall continue to contribute the employer's share of
13 plan premiums for the coverage. An employee discharged for
14 misconduct shall not be eligible for extended benefits under this
15 section. Coverage may be extended up to the maximum period of
16 three months, while administrative remedies contesting the charge
17 of misconduct are pursued. If the discharge for misconduct be
18 upheld, the full cost of the extended coverage shall be reimbursed
19 by the employee. If the employee is again employed or recalled to
20 active employment within twelve months of his or her prior
21 termination, he or she shall not be considered a new enrollee and
22 may not be required to again contribute his or her share of the
23 premium cost, if he or she had already fully contributed such share
24 during the prior period of employment.

1 (d) *Conversion of accrued annual and sick leave for extended*
2 *insurance coverage upon retirement for employees who elected to*
3 *participate in the plan before July, 1988.* -- Except as otherwise
4 provided in subsection (g) of this section, when an employee
5 participating in the plan, who elected to participate in the plan
6 before July 1, 1988, is compelled or required by law to retire
7 before reaching the age of sixty-five, or when a participating
8 employee voluntarily retires as provided by law, that employee's
9 accrued annual leave and sick leave, if any, shall be credited
10 toward an extension of the insurance coverage provided by this
11 article, according to the following formulae: The insurance
12 coverage for a retired employee shall continue one additional month
13 for every two days of annual leave or sick leave, or both, which
14 the employee had accrued as of the effective date of his or her
15 retirement. For a retired employee, his or her spouse and
16 dependents, the insurance coverage shall continue one additional
17 month for every three days of annual leave or sick leave, or both,
18 which the employee had accrued as of the effective date of his or
19 her retirement.

20 (e) *Conversion of accrued annual and sick leave for extended*
21 *insurance coverage upon retirement for employees who elected to*
22 *participate in the plan after June, 1988.* -- Notwithstanding
23 subsection (d) of this section, and except as otherwise provided in
24 subsections (g) and (l) of this section when an employee

1 participating in the plan who elected to participate in the plan on
2 and after July 1, 1988, is compelled or required by law to retire
3 before reaching the age of sixty-five, or when the participating
4 employee voluntarily retires as provided by law, that employee's
5 annual leave or sick leave, if any, shall be credited toward one
6 half of the premium cost of the insurance provided by this article,
7 for periods and scope of coverage determined according to the
8 following formulae: (1) One additional month of single retiree
9 coverage for every two days of annual leave or sick leave, or both,
10 which the employee had accrued as of the effective date of his or
11 her retirement; or (2) one additional month of coverage for a
12 retiree, his or her spouse and dependents for every three days of
13 annual leave or sick leave, or both, which the employee had accrued
14 as of the effective date of his or her retirement. The remaining
15 premium cost shall be borne by the retired employee if he or she
16 elects the coverage. For purposes of this subsection, an employee
17 who has been a participant under spouse or dependent coverage and
18 who reenters the plan within twelve months after termination of his
19 or her prior coverage shall be considered to have elected to
20 participate in the plan as of the date of commencement of the prior
21 coverage. For purposes of this subsection, an employee shall not
22 be considered a new employee after returning from extended
23 authorized leave on or after July 1, 1988.

24 (f) *Increased retirement benefits for retired employees with*

1 *accrued annual and sick leave.* -- In the alternative to the
2 extension of insurance coverage through premium payment provided in
3 subsections (d) and (e) of this section, the accrued annual leave
4 and sick leave of an employee participating in the plan may be
5 applied, on the basis of two days' retirement service credit for
6 each one day of accrued annual and sick leave, toward an increase
7 in the employee's retirement benefits with those days constituting
8 additional credited service in computation of the benefits under
9 any state retirement system. However, the additional credited
10 service shall not be used in meeting initial eligibility for
11 retirement criteria, but only as additional service credited in
12 excess thereof.

13 (g) *Conversion of accrued annual and sick leave for extended*
14 *insurance coverage upon retirement for certain higher education*
15 *employees.* -- Except as otherwise provided in subsection (l) of
16 this section, when an employee, who is a higher education full-time
17 faculty member employed on an annual contract basis other than for
18 twelve months, is compelled or required by law to retire before
19 reaching the age of sixty-five, or when such a participating
20 employee voluntarily retires as provided by law, that employee's
21 insurance coverage, as provided by this article, shall be extended
22 according to the following formulae: The insurance coverage for a
23 retired higher education full-time faculty member, formerly
24 employed on an annual contract basis other than for twelve months,

1 shall continue beyond the effective date of his or her retirement
2 one additional year for each three and one-third years of teaching
3 service, as determined by uniform guidelines established by the
4 ~~University of West Virginia Board of Trustees and the board of~~
5 ~~directors of the state college system~~ Higher Education Policy
6 Commission, for individual coverage, or one additional year for
7 each five years of teaching service for "family" coverage.

8 (h) Any employee who retired prior to April 21, 1972, and who
9 also otherwise meets the conditions of the "retired employee"
10 definition in section two of this article, ~~shall be~~ is eligible for
11 insurance coverage under the same terms and provisions of this
12 article. The retired employee's premium contribution for any such
13 coverage shall be established by the finance board.

14 (i) *Retiree participation.* -- All retirees under the
15 provisions of this article, including those defined in section two
16 of this article; those retiring prior to April 21, 1972; and those
17 hereafter retiring are eligible to obtain health insurance
18 coverage. The retired employee's premium contribution for the
19 coverage shall be established by the finance board.

20 (j) *Surviving spouse and dependent participation.* -- A
21 surviving spouse and dependents of a deceased employee, who was
22 either an active or retired employee participating in the plan just
23 prior to his or her death, are entitled to be included in any
24 comprehensive group health insurance coverage provided under this

1 article to which the deceased employee was entitled, and the spouse
2 and dependents shall bear the premium cost of the insurance
3 coverage. If the deceased employee is a member of the state
4 Teachers Retirement System as defined in article seven-a, chapter
5 eighteen, the deceased employee's accumulated sick leave is first
6 credited toward the payment of premium cost before the surviving
7 spouse and dependents are required to do so. In the event the
8 surviving spouse or dependents are not covered with insurance
9 pursuant to the deceased employee's past employment, they are
10 entitled to receive the monetary equivalent of wages which the
11 accumulated sick leave would have provided. The finance board
12 shall establish the premium cost of the coverage.

13 (k) *Elected officials.* -- In construing the provisions of this
14 section or any other provisions of this code, the Legislature
15 declares that it is not now nor has it ever been the Legislature's
16 intent that elected public officials be provided any sick leave,
17 annual leave or personal leave, and the enactment of this section
18 is based upon the fact and assumption that no statutory or inherent
19 authority exists extending sick leave, annual leave or personal
20 leave to elected public officials and the very nature of those
21 positions preclude the arising or accumulation of any leave, so as
22 to be thereafter usable as premium paying credits for which the
23 officials may claim extended insurance benefits.

24 (l) *Participation of certain former employees.* -- An employee,

1 eligible for coverage under the provisions of this article who has
2 twenty years of service with any agency or entity participating in
3 the public employees insurance program or who has been covered by
4 the public employees insurance program for twenty years may, upon
5 leaving employment with a participating agency or entity, continue
6 to be covered by the program if the employee pays one hundred five
7 percent of the cost of retiree coverage: *Provided*, That the
8 employee shall elect to continue coverage under this subsection
9 within two years of the date the employment with a participating
10 agency or entity is terminated.

11 (m) *Prohibition on conversion of accrued annual and sick leave*
12 *for extended coverage upon retirement for new employees who elect*
13 *to participate in the plan after June, 2001.* -- Any employee hired
14 on or after July 1, 2001, who elects to participate in the plan may
15 not apply accrued annual or sick leave toward the cost of premiums
16 for extended insurance coverage upon his or her retirement. This
17 prohibition does not apply to the conversion of accrued annual or
18 sick leave for increased retirement benefits, as authorized by this
19 section: *Provided*, That any person who has participated in the
20 plan prior to July 1, 2001, is not a new employee for purposes of
21 this subsection if he or she becomes reemployed with an employer
22 participating in the plan within two years following his or her
23 separation from employment and he or she elects to participate in
24 the plan upon his or her reemployment.

1 (n) *Prohibition on conversion of accrued years of teaching*
2 *service for extended coverage upon retirement for new employees who*
3 *elect to participate in the plan July, 2009.* -- Any employee hired
4 on or after July 1, 2009, who elects to participate in the plan may
5 not apply accrued years of teaching service toward the cost of
6 premiums for extended insurance coverage upon his or her
7 retirement.

NOTE: The purpose of this bill is to credit a deceased teacher's sick leave toward continued insurance coverage for a surviving spouse and other dependents. The bill provides that if a surviving spouse or other dependents are not covered by the deceased spouse's public employee insurance, that they receive the monetary value of the accumulated sick leave.

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