

1 **H. B. 2684**

2
3 (By Delegate Rodighiero)

4 [Introduced January 20, 2011; referred to the
5 Committee on Banking and Insurance then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §5-16-2 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §8-15-8b of said
12 code, all relating to permitting members of volunteer fire
13 departments to participate in the state's public employees
14 insurance plan; adding to the definitions of employer and
15 employee; and authorizing the payment of the costs of the
16 insurance coverage.

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

18 That §5-16-2 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that §8-15-8b of said code be amended
20 and reenacted, all to read as follows:

21 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
22 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD**
23 **OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,**

1 Health and Human Resources pursuant to section one, article two-a,
2 chapter twenty-seven of this code and which is supported in part by
3 state, county or municipal funds; any person who works regularly
4 full time in the service of the Higher Education Policy Commission,
5 the West Virginia Council for Community and Technical College
6 Education or a governing board, as defined in section two, article
7 one, chapter eighteen-b of this code; any person who works
8 regularly full time in the service of a combined city-county health
9 department created pursuant to article two, chapter sixteen of this
10 code; any person designated as a twenty-first Century Learner
11 Fellow pursuant to section eleven, article three, chapter eighteen-
12 a of this code; and any person who works as a long-term substitute
13 as defined in section one, article one, chapter eighteen-a of this
14 code in the service of a county board of education: *Provided*, That
15 a long-term substitute who is continuously employed for at least
16 one hundred thirty-three instructional days during an instructional
17 term, and until the end of that instructional term, is eligible for
18 the benefits provided in this article until September 1 following
19 that instructional term: *Provided, however*, That a long-term
20 substitute employed fewer than one hundred thirty-three
21 instructional days during an instructional term is eligible for the
22 benefits provided in this article only during such time as he or
23 she is actually employed as a long-term substitute. On and after
24 January 1, 1994, and upon election by a county board of education

1 to allow elected board members to participate in the Public
2 Employees Insurance Program pursuant to this article, any person
3 elected to a county board of education shall be considered to be an
4 "employee" during the term of office of the elected member. Upon
5 election by the state Board of Education to allow appointed board
6 members to participate in the Public Employees Insurance Program
7 pursuant to this article, any person appointed to the state Board
8 of Education is considered an "employee" during the term of office
9 of the appointed member: *Provided further,* That the elected member
10 of a county board of education and the appointed member of the
11 state Board of Education shall pay the entire cost of the premium
12 if he or she elects to be covered under this article. Any matters
13 of doubt as to who is an employee within the meaning of this
14 article shall be decided by the director.

15 On or after July 1, 1997, a person shall be considered an
16 "employee" if that person meets the following criteria:

17 (i) Participates in a job-sharing arrangement as defined in
18 section one, article one, chapter eighteen-a of this code;

19 (ii) Has been designated, in writing, by all other
20 participants in that job-sharing arrangement as the "employee" for
21 purposes of this section; and

22 (iii) Works at least one third of the time required for a
23 full-time employee.

24 On or after July 1, 2011, a person is also considered an

1 "employee" if that person meets the following criteria:

2 (i) Is a volunteer firefighter of a volunteer fire company
3 that receives revenues from the Municipal Pensions and Protection
4 Fund or the Fire Protection Fund pursuant to section eight-a,
5 article fifteen, chapter eight of this code;

6 (ii) Complies with all the responsibilities of a volunteer
7 firefighter as set forth in Part II, article fifteen, chapter eight
8 of this code, including, but not limited to, required and necessary
9 firefighters training; and

10 (iii) Fulfills all the duties of a volunteer firefighter
11 required by the volunteer fire company.

12 (4) "Employer" means the State of West Virginia, its boards,
13 agencies, commissions, departments, institutions or spending units;
14 a county board of education; a county, city or town in the state;
15 any separate corporation or instrumentality established by one or
16 more counties, cities or towns, as permitted by law; any
17 corporation or instrumentality supported in most part by counties,
18 cities or towns; any public corporation charged by law with the
19 performance of a governmental function and whose jurisdiction is
20 coextensive with one or more counties, cities or towns; any
21 comprehensive community mental health center or comprehensive
22 mental retardation facility established, operated or licensed by
23 the Secretary of Health and Human Resources pursuant to section
24 one, article two-a, chapter twenty-seven of this code and which is

1 supported in part by state, county or municipal funds; a combined
2 city-county health department created pursuant to article two,
3 chapter sixteen of this code; a volunteer fire company that
4 receives revenues from the Municipal Pensions and Protection Fund
5 or the Fire Protection Fund pursuant to section eight-a, article
6 fifteen, chapter eight of this code; and a corporation meeting the
7 description set forth in section three, article twelve, chapter
8 eighteen-b of this code that is employing a twenty-first Century
9 Learner Fellow pursuant to section eleven, article three, chapter
10 eighteen of this code but the corporation is not considered an
11 employer with respect to any employee other than a twenty-first
12 Century Learner Fellow. Any matters of doubt as to who is an
13 "employer" within the meaning of this article shall be decided by
14 the director. The term "employer" does not include within its
15 meaning the National Guard.

16 (5) "Finance board" means the Public Employees Insurance
17 Agency finance board created by this article.

18 (6) "Person" means any individual, company, association,
19 organization, corporation or other legal entity, including, but not
20 limited to, hospital, medical or dental service corporations;
21 health maintenance organizations or similar organization providing
22 prepaid health benefits; or individuals entitled to benefits under
23 the provisions of this article.

24 (7) "Plan", unless the context indicates otherwise, means the

1 medical indemnity plan, the managed care plan option or the group
2 life insurance plan offered by the agency.

3 (8) "Retired employee" means an employee of the state who
4 retired after April 29, 1971, and an employee of the Higher
5 Education Policy Commission, the Council for Community and
6 Technical College Education, a state institution of higher
7 education or a county board of education who retires on or after
8 April 21, 1972, and all additional eligible employees who retire on
9 or after the effective date of this article, meet the minimum
10 eligibility requirements for their respective state retirement
11 system and whose last employer immediately prior to retirement
12 under the state retirement system is a participating employer in
13 the state retirement system and in the Public Employees Insurance
14 Agency: *Provided*, That for the purposes of this article, the
15 employees who are not covered by a state retirement system, but who
16 are covered by a state-approved or state-contracted retirement
17 program or a system approved by the director, shall, in the case of
18 education employees, meet the minimum eligibility requirements of
19 the state Teachers Retirement System and in all other cases, meet
20 the minimum eligibility requirements of the Public Employees
21 Retirement System and may participate in the Public Employees
22 Insurance Agency as retired employees upon terms as the director
23 sets by rule as authorized in this article. Employers with
24 employees who are, or who are eligible to become, retired employees

1 under this article shall be mandatory participants in the Retiree
 2 Health Benefit Trust Fund created pursuant to article sixteen-d of
 3 this chapter. Nonstate employers may opt out of the West Virginia
 4 other post-employment benefits plan of the Retiree Health Benefit
 5 Trust Fund and elect to not provide benefits under the Public
 6 Employees Insurance Agency to retirees of the nonstate employer,
 7 but may do so only upon the written certification, under oath, of
 8 an authorized officer of the employer that the employer has no
 9 employees who are, or who are eligible to become, retired employees
 10 and that the employer will defend and hold harmless the Public
 11 Employees Insurance Agency from any claim by one of the employer's
 12 past, present or future employees for eligibility to participate in
 13 the Public Employees Insurance Agency as a retired employee. As a
 14 matter of law, the Public Employees Insurance Agency shall not be
 15 liable in any respect to provide plan benefits to a retired
 16 employee of a nonstate employer which has opted out of the West
 17 Virginia other post-employment benefits plan of the Retiree Health
 18 Benefit Trust Fund pursuant to this section.

19

CHAPTER 8. MUNICIPAL CORPORATIONS.

20 **ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL**

21

SERVICE FOR PAID FIRE DEPARTMENTS.

22 **§8-15-8b. Authorized expenditures of revenues from the municipal**

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pensions and protection fund and the fire protection

1 **fund.**

2 Revenues allocated to volunteer and part volunteer fire
3 companies and departments may be expended only for the items listed
4 in subdivisions (1) through ~~(15)~~ (16) of this section.

5 Funds received from the state for volunteer and part volunteer
6 fire companies and departments, pursuant to sections fourteen-d and
7 thirty-three, article three, and section seven, article twelve-c,
8 all of chapter thirty-three of this code, may not be commingled
9 with funds received from any other source. Expenditures may be
10 made for the following:

11 (1) Personal protective equipment, including protective head
12 gear, bunker coats, pants, boots, combination of bunker pants and
13 boots, coats and gloves;

14 (2) Equipment for compliance with the national fire protection
15 standard or automotive fire apparatus, NFPA-1901;

16 (3) Compliance with insurance service office recommendations
17 relating to fire departments;

18 (4) Rescue equipment, communications equipment and ambulance
19 equipment: *Provided*, That no moneys received from the municipal
20 pensions and protection fund or the fire protection fund may be
21 used for equipment for personal vehicles owned or operated by
22 volunteer fire company or department members;

23 (5) Capital improvements reasonably required for effective and
24 efficient fire protection service and maintenance of the capital

1 improvements;

2 (6) Retirement of debts;

3 (7) Payment of utility bills;

4 (8) Payment of the cost of immunizations, including any
5 laboratory work incident to the immunizations, for firefighters
6 against hepatitis-b and other blood borne pathogens: *Provided,*
7 That the vaccine shall be purchased through the state immunization
8 program or from the lowest cost vendor available: *Provided,*
9 *however,* That volunteer and part volunteer fire companies and
10 departments shall seek to obtain no cost administration of the
11 vaccinations through local boards of health: *Provided further,*
12 That in the event any volunteer or part volunteer fire company or
13 department is unable to obtain no cost administration of the
14 vaccinations through a local board of health, the company or
15 department shall seek to obtain the lowest cost available for the
16 administration of the vaccinations from a licensed health care
17 provider;

18 (9) Any filing fee required to be paid to the Legislative
19 Auditor's Office under section fourteen, article four, chapter
20 twelve of this code relating to sworn statements of annual
21 expenditures submitted by volunteer or part volunteer fire
22 companies or departments that receive state funds or grants;

23 (10) Property/casualty insurance premiums for protection and
24 indemnification against loss or damage or liability;

1 (11) Operating expenses reasonably required in the normal
2 course of providing effective and efficient fire protection
3 service, which include, but are not limited to, gasoline, bank
4 fees, postage and accounting costs;

5 (12) Dues paid to national, state and county associations;

6 (13) Workers' Compensation premiums;

7 (14) Life insurance premiums to provide a benefit not to
8 exceed \$20,000 for firefighters; and

9 (15) Educational and training supplies and fire prevention
10 promotional materials, not to exceed \$500 per year.

11 (16) The employer's portion of the costs of insurance coverage
12 provided by the West Virginia Public Employees Insurance Act for
13 qualified volunteer firefighters.

NOTE: This bill permits qualified volunteer firefighters to be covered by the state's public health insurance plan. The bill also adds "volunteer firefighter" to the definition of employee and "volunteer fire company" to the definition of employer, and permits the payment of the employer's portion of the costs relating to the plan to be paid from funds available to volunteer fire companies.

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