

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 529

BY SENATORS WELD AND FERNS

[Introduced March 7, 2017; Referred
to the Committee on Banking and Insurance; and then
to the Committee on Finance]

1 A BILL to amend and reenact §5-16-2 and §5-16-13 of the Code of West Virginia, 1931, as
 2 amended; to amend said code by adding thereto three new sections, designated §5-16-6,
 3 §5-16-27 and §5-16-28, all relating to the Public Employees Insurance Agency; requiring
 4 the agency and the finance board to purchase stop-loss insurance; requiring that spouses
 5 of persons eligible be required to enroll in an employer-sponsored plan if one is made
 6 available to them by their employer; limiting the employers and entities beyond the State
 7 of West Virginia which may purchase insurance through the Public Employees Insurance
 8 plan; creating a pilot program to allow larger state entities to offer self-insurance or
 9 purchase insurance coverage for their employees separate from the Public Employees
 10 Insurance plan; allowing rulemaking to establish and operate the pilot program; and
 11 establishing an effective date.

Be it enacted by the Legislature of West Virginia:

1 That §5-16-2 and §5-16-13 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that said code be amended by adding thereto three new sections, designated
 3 §5-16-6, §5-16-27 and §5-16-28, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is
 2 clearly indicated by the context, have the following meanings:

3 (1) "Agency" means the Public Employees Insurance Agency created by this article.

4 (2) "Director" means the Director of the Public Employees Insurance Agency created by
 5 this article.

6 (3) "Employee" means any person, including an elected officer, who works regularly full
 7 time in the service of the State of West Virginia and, for the purpose of this article only, the term
 8 "employee" also means any person, including an elected officer, who works regularly full time in
 9 the service of a county board of education; a county, city or town in the state; any separate

10 corporation or instrumentality established by one or more counties, cities or towns, as permitted
11 by law; any corporation or instrumentality supported in most part by counties, cities or towns; any
12 public corporation charged by law with the performance of a governmental function and whose
13 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive
14 community mental health center or comprehensive mental retardation facility established,
15 operated or licensed by the Secretary of Health and Human Resources pursuant to section one,
16 article two-a, chapter twenty-seven of this code and which is supported in part by state, county or
17 municipal funds; any person who works regularly full time in the service of the Higher Education
18 Policy Commission, the West Virginia Council for Community and Technical College Education
19 or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any
20 person who works regularly full time in the service of a combined city-county health department
21 created pursuant to article two, chapter sixteen of this code; any person designated as a 21st
22 Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code;
23 and any person who works as a long-term substitute as defined in section one, article one, chapter
24 eighteen-a of this code in the service of a county board of education: *Provided*, That a long-term
25 substitute who is continuously employed for at least one hundred thirty-three instructional days
26 during an instructional term, and until the end of that instructional term, is eligible for the benefits
27 provided in this article until September 1, following that instructional term: *Provided, however*,
28 That a long-term substitute employed fewer than one hundred thirty-three instructional days
29 during an instructional term is eligible for the benefits provided in this article only during such time
30 as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and
31 upon election by a county board of education to allow elected board members to participate in the
32 Public Employees Insurance Program pursuant to this article, any person elected to a county
33 board of education shall be considered to be an "employee" during the term of office of the elected
34 member. Upon election by the state Board of Education to allow appointed board members to
35 participate in the Public Employees Insurance Program pursuant to this article, any person

36 appointed to the state Board of Education is considered an "employee" during the term of office
37 of the appointed member: *Provided further*, That the elected member of a county board of
38 education and the appointed member of the state Board of Education shall pay the entire cost of
39 the premium if he or she elects to be covered under this article. Any matters of doubt as to who
40 is an employee within the meaning of this article shall be decided by the director.

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

43 (†) (A) Participates in a job-sharing arrangement as defined in section one, article one,
44 chapter eighteen-a of this code;

45 (†) (B) Has been designated, in writing, by all other participants in that job-sharing
46 arrangement as the "employee" for purposes of this section; and

47 (†) (C) Works at least one third of the time required for a full-time employee.

48 (4) "Employer" means the State of West Virginia, its boards, agencies, commissions,
49 departments, institutions or spending units; a county board of education; a county, city or town in
50 the state; any separate corporation or instrumentality established by one or more counties, cities
51 or towns, as permitted by law. ~~any corporation or instrumentality supported in most part by~~
52 ~~counties, cities or towns; any public corporation charged by law with the performance of a~~
53 ~~governmental function and whose jurisdiction is coextensive with one or more counties, cities or~~
54 ~~towns; any comprehensive community mental health center or comprehensive mental retardation~~
55 ~~facility established, operated or licensed by the Secretary of Health and Human Resources~~
56 ~~pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported~~
57 ~~in part by state, county or municipal funds; a combined city-county health department created~~
58 ~~pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set~~
59 ~~forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st~~
60 ~~Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code~~
61 ~~but the corporation is not considered an employer with respect to any employee other than a 21st~~

62 ~~Century Learner Fellow~~ Any matters of doubt as to who is an "employer" within the meaning of
63 this article shall be decided by the director. The term "employer" does not include within its
64 meaning the National Guard, any entity, corporation, institution, board, agency, commission,
65 department, or spending unit which is not a unit of the State of West Virginia or any county, city
66 or town of the state.

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

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

73 (7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the
74 managed care plan option or the group life insurance plan offered by the agency.

75 (8) "Retired employee" means an employee of the state who retired after April 29, 1971,
76 and an employee of the Higher Education Policy Commission, the Council for Community and
77 Technical College Education, a state institution of higher education or a county board of education
78 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
79 the effective date of this article, meet the minimum eligibility requirements for their respective
80 state retirement system and whose last employer immediately prior to retirement under the state
81 retirement system is a participating employer in the state retirement system and in the Public
82 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who
83 are not covered by a state retirement system, but who are covered by a state-approved or state-
84 contracted retirement program or a system approved by the director, shall, in the case of
85 education employees, meet the minimum eligibility requirements of the state Teachers Retirement
86 System and in all other cases, meet the minimum eligibility requirements of the Public Employees
87 Retirement System and may participate in the Public Employees Insurance Agency as retired

88 employees upon terms as the director sets by rule as authorized in this article. Employers with
89 employees who are, or who are eligible to become, retired employees under this article shall be
90 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to article
91 sixteen-d of this chapter. Nonstate employers may opt out of the West Virginia other post-
92 employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide
93 benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but
94 may do so only upon the written certification, under oath, of an authorized officer of the employer
95 that the employer has no employees who are, or who are eligible to become, retired employees
96 and that the employer will defend and hold harmless the Public Employees Insurance Agency
97 from any claim by one of the employer's past, present or future employees for eligibility to
98 participate in the Public Employees Insurance Agency as a retired employee. As a matter of law,
99 the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits
100 to a retired employee of a nonstate employer which has opted out of the West Virginia other post-
101 employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

§5-16-6. Required stop-loss insurance.

1 To continue to ensure the financial security of the insurance plan offered pursuant to this
2 article, the director in consultation with the finance board is required to purchase a stop-loss
3 insurance plan to protect against catastrophic claims. The director and the finance board may
4 select stop-loss insurance which is best suited to provide adequate coverage for the plan and its
5 members.

**§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage;
involuntary employee termination coverage; conversion of annual leave and sick
leave authorized for health or retirement benefits; authorization for retiree
participation; continuation of health insurance for surviving dependents of
deceased employees; requirement of new health plan, limiting employer
contribution.**

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

5 (b) *Spouse and dependent coverage.* -- Each employee is entitled to have his or her
6 spouse and dependents included in any group hospital and surgical insurance, group major
7 medical insurance or group prescription drug insurance coverage to which the employee is
8 entitled to participate: *Provided*, That the spouse and dependent coverage is limited to excess or
9 secondary coverage for each spouse and dependent who has primary coverage from any other
10 source: *Provided, however, That any spouse of an employee who has an employer-sponsored*
11 *group health benefit plan available to them through their employer is required to enroll in that*
12 *group health plan and is not eligible to be included in the group plan set forth in this article.* For
13 purposes of this section, the term "primary coverage" means individual or group hospital and
14 surgical insurance coverage or individual or group major medical insurance coverage or group
15 prescription drug coverage in which the spouse or dependent is the named insured or certificate
16 holder. For the purposes of this section, "dependent" includes an eligible employee's unmarried
17 child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a
18 "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue Code. The
19 director may require proof regarding spouse and dependent primary coverage and shall adopt
20 rules governing the nature, discontinuance and resumption of any employee's coverage for his or
21 her spouse and dependents.

22 (c) *Continuation after termination.* -- If an employee participating in the plan is terminated
23 from employment involuntarily or in reduction of work force, the employee's insurance coverage
24 provided under this article shall continue for a period of three months at no additional cost to the
25 employee and the employer shall continue to contribute the employer's share of plan premiums
26 for the coverage. An employee discharged for misconduct shall not be eligible for extended

27 benefits under this section. Coverage may be extended up to the maximum period of three
28 months, while administrative remedies contesting the charge of misconduct are pursued. If the
29 discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed
30 by the employee. If the employee is again employed or recalled to active employment within
31 twelve months of his or her prior termination, he or she shall not be considered a new enrollee
32 and may not be required to again contribute his or her share of the premium cost, if he or she had
33 already fully contributed such share during the prior period of employment.

34 (d) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
35 *retirement for employees who elected to participate in the plan before July, 1988.* -- Except as
36 otherwise provided in subsection (g) of this section, when an employee participating in the plan,
37 who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire
38 before reaching the age of sixty-five, or when a participating employee voluntarily retires as
39 provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited
40 toward an extension of the insurance coverage provided by this article, according to the following
41 formulae: The insurance coverage for a retired employee shall continue one additional month for
42 every two days of annual leave or sick leave, or both, which the employee had accrued as of the
43 effective date of his or her retirement. For a retired employee, his or her spouse and dependents,
44 the insurance coverage shall continue one additional month for every three days of annual leave
45 or sick leave, or both, which the employee had accrued as of the effective date of his or her
46 retirement.

47 (e) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
48 *retirement for employees who elected to participate in the plan after June, 1988.* --
49 Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections
50 (g) and (l) of this section, when an employee participating in the plan who elected to participate
51 in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the
52 age of sixty-five, or when the participating employee voluntarily retires as provided by law, that

53 employee's annual leave or sick leave, if any, shall be credited toward one half of the premium
54 cost of the insurance provided by this article, for periods and scope of coverage determined
55 according to the following formulae: (1) One additional month of single retiree coverage for every
56 two days of annual leave or sick leave, or both, which the employee had accrued as of the
57 effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or
58 her spouse and dependents for every three days of annual leave or sick leave, or both, which the
59 employee had accrued as of the effective date of his or her retirement. The remaining premium
60 cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this
61 subsection, an employee who has been a participant under spouse or dependent coverage and
62 who reenters the plan within twelve months after termination of his or her prior coverage shall be
63 considered to have elected to participate in the plan as of the date of commencement of the prior
64 coverage. For purposes of this subsection, an employee shall not be considered a new employee
65 after returning from extended authorized leave on or after July 1, 1988.

66 *(f) Increased retirement benefits for retired employees with accrued annual and sick leave.*
67 -- In the alternative to the extension of insurance coverage through premium payment provided in
68 subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee
69 participating in the plan may be applied, on the basis of two days' retirement service credit for
70 each one day of accrued annual and sick leave, toward an increase in the employee's retirement
71 benefits with those days constituting additional credited service in computation of the benefits
72 under any state retirement system: *Provided*, That for a person who first becomes a member of
73 the Teachers Retirement System as provided in article seven-a, chapter eighteen of this code on
74 or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may
75 not be applied for retirement service credit. However, the additional credited service shall not be
76 used in meeting initial eligibility for retirement criteria, but only as additional service credited in
77 excess thereof.

78 *(g) Conversion of accrued annual and sick leave for extended insurance coverage upon*

79 *retirement for certain higher education employees.* – Except as otherwise provided in subsection
80 (l) of this section, when an employee, who is a higher education full-time faculty member
81 employed on an annual contract basis other than for twelve months, is compelled or required by
82 law to retire before reaching the age of sixty-five, or when such a participating employee
83 voluntarily retires as provided by law, that employee's insurance coverage, as provided by this
84 article, shall be extended according to the following formulae: The insurance coverage for a retired
85 higher education full-time faculty member, formerly employed on an annual contract basis other
86 than for twelve months, shall continue beyond the effective date of his or her retirement one
87 additional year for each three and one-third years of teaching service, as determined by uniform
88 guidelines established by the University of West Virginia Board of Trustees and the board of
89 directors of the state college system, for individual coverage, or one additional year for each five
90 years of teaching service for family coverage.

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

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

99 (j) *Surviving spouse and dependent participation.* -- A surviving spouse and dependents
100 of a deceased employee, who was either an active or retired employee participating in the plan
101 just prior to his or her death, are entitled to be included in any comprehensive group health
102 insurance coverage provided under this article to which the deceased employee was entitled, and
103 the spouse and dependents shall bear the premium cost of the insurance coverage. The finance
104 board shall establish the premium cost of the coverage.

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

113 (l) *Participation of certain former employees.* -- An employee, eligible for coverage under
114 the provisions of this article who has twenty years of service with any agency or entity participating
115 in the public employees insurance program or who has been covered by the public employees
116 insurance program for twenty years may, upon leaving employment with a participating agency
117 or entity, continue to be covered by the program if the employee pays one hundred five percent
118 of the cost of retiree coverage: *Provided*, That the employee shall elect to continue coverage
119 under this subsection within two years of the date the employment with a participating agency or
120 entity is terminated.

121 (m) *Prohibition on conversion of accrued annual and sick leave for extended coverage*
122 *upon retirement for new employees who elect to participate in the plan after June, 2001.* -- Any
123 employee hired on or after July 1, 2001, who elects to participate in the plan may not apply
124 accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon
125 his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick
126 leave for increased retirement benefits, as authorized by this section: *Provided*, That any person
127 who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this
128 subsection if he or she becomes reemployed with an employer participating in the plan within two
129 years following his or her separation from employment and he or she elects to participate in the
130 plan upon his or her reemployment.

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

§5-16-27. Pilot program for procurement of alternative insurance or self-insurance.

1 (a) Notwithstanding the provisions of this article to the contrary, effective July 1, 2017,
2 larger state entities, as defined in this section, may participate in a pilot program to be
3 administered by the Public Employees Insurance Agency and the Insurance Commissioner to
4 allow them to seek privately offered group health insurance plans for their employees or to provide
5 group self-insurance to their employees.

6 (b) Privately offered insurance.

7 (1) Larger state entities, as defined in this section, may provide a group hospital and
8 surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major
9 medical insurance plan or plans and a group life and accidental death insurance plan or plans
10 from private vendors offered for sale on the federal health insurance marketplace pursuant to the
11 Patient Protection and Affordable Care Act of 1996, P.L. 104-191, 110 Stat. 1936, 42 U.S.C.
12 §1320, or available on the open market.

13 (2) The plan purchased by the larger state entity as provided in this section is required to
14 include all the mandated coverage for insurance plans which are contained in section seven of
15 this article.

16 (3) The group health plan shall be available from a vendor subject to regulation by the
17 Insurance Commissioner, as set forth in chapter thirty-three of this code.

18 (4) The premiums charged to employees shall be required to be within fifteen percent of
19 that currently being paid by the employee under their current plan offered pursuant to the provision
20 of this article.

21 (5) The larger employer may utilize public funds allocated to them in the state budget to
22 purchase the plan for the duration of the pilot project.

23 (6) The larger state entity purchasing private insurers for their employees is exempt from
24 the requirements of chapter five-a, article ten of this code.

25 (c) Self-insurance.

26 (1) A larger state entity may establish and maintain a self-insurance program to provide a
27 group health and accident plan for its employees.

28 (2) To qualify to offer a self-insurance plan, a larger state entity is required to have
29 sufficient capability and financial responsibility to ensure necessary coverage of the self-insurance
30 plan for its employees to be determined by the Insurance Commissioner as set forth in chapter
31 thirty-three of this code.

32 (3) To qualify to establish a self-insurance plan, larger state entities are required to:

33 (A) Submit necessary forms and adhere to rules of the Insurance Commissioner set forth
34 in chapter thirty-three of this code;

35 (B) Provide security or bond in an amount and form determined by the Insurance
36 Commissioner which shall balance the larger state entities financial condition based upon an
37 analysis of its audited financial statements and the full accrued value of current liability for future
38 claim payments based upon generally accepted actuarial and accounting principles of the
39 employer's existing liability;

40 (C) Meet the financial and other responsibilities placed upon the larger state entity as set
41 forth in rules promulgated pursuant to this article; and

42 (D) Obtain and maintain a policy of excess insurance if required to do so by the Insurance
43 Commissioner.

44 (4) The Insurance Commissioner and the Public Employees Insurance Agency shall
45 propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-
46 nine-a of this code, setting forth the following:

47 (A) The manner in which the pilot project is to operate including necessary forms and
48 filings with the Insurance Commissioner;

49 (B) The premiums and fees that will be charged for the product authorized to be sold
50 pursuant to this section;

51 (C) The manner in which the Insurance Commissioner’s rules will be applied to the product
52 authorized by this section, including any rules which should be waived;

53 (D) Optional plans which may be offered;

54 (E) The manner in which the product authorized by this section will be rated;

55 (F) Any additional coverage which the Insurance Commissioner considers necessary in
56 the product authorized by this section;

57 (G) Any conditions on the coverage considered necessary by the agency and the
58 Insurance Commissioner in offering the product authorized pursuant to this section; and

59 (H) Any other provisions necessary to fully implement the provisions of this section.

60 (d) For the purposes of this section a “larger state entity” is a single state budgetary entity
61 with greater than one hundred fifty full time employees. Two or more state entities may not group
62 together to form a larger state entity.

63 (e) The Public Employees Insurance Agency and the Insurance Commissioner shall
64 prepare an annual report to be submitted to the Joint Committee on Government and Finance by
65 December 31, 2017, and each year after that in which the pilot program is in operation.

66 (f) The pilot program terminates on July 1, 2020, unless extended by the Legislature.

§5-16-28. Effective date.

1 The changes made to this section by Legislature during its 2017 Regular Session take
2 effect as of July 1, 2017: *Provided*, That the changes made to section two of this article is not
3 effective until September 1, 2017.

NOTE: The purpose of this bill is to modify the Public Employees Insurance program by:

(1) Requiring the PEIA and the finance board to purchase stop-loss insurance; (2) requiring that spouses of persons eligible be required to enroll in an employer sponsored plans if one is made available to them by their employer; (3) limiting the employers and entities beyond the State of West Virginia which may purchase insurance through the Public Employees Insurance plan; and (4) creating a pilot program to allow larger state entities to offer self-insurance or purchase insurance coverage for their employees separate from the Public Employees Insurance plan.

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