

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 559

FISCAL
NOTE

BY SENATORS PREZIOSO, BALDWIN, BEACH, HARDESTY,

IHLENFELD, JEFFRIES, ROMANO, AND FACEMIRE

[Introduced January 21, 2020; 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 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §5-16-6, all relating to
 3 authorizing small private employers to buy-in to PEIA; mandating that PEIA provide
 4 coverage to the employees of small, private employers and their dependents; providing
 5 that coverage for employees of a small employer is voluntary for both the employer and
 6 the employee; prohibiting refusal of coverage on the basis of past or future health care
 7 costs or claim experience; prohibiting administrative costs attributable to coverage to be
 8 paid by the state; and providing that participation does not create an employer-employee
 9 relationship with the state.

Be it enacted by the Legislature of West Virginia:

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, city₁ or town in the state; any separate
 10 corporation or instrumentality established by one or more counties, cities₁ or towns, as permitted
 11 by law; any corporation or instrumentality supported in most part by counties, cities₁ 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, cities₁ 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 §27-2A-1 of
16 this code and which is supported in part by state, county, or municipal funds; any person who
17 works regularly full time in the service of the Higher Education Policy Commission, the West
18 Virginia Council for Community and Technical College Education, or a governing board, as
19 defined in §18B-1-2 of this code; any person who works regularly full time in the service of a
20 combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any
21 person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any
22 person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of
23 a county board of education: *Provided*, That a long-term substitute who is continuously employed
24 for at least 133 instructional days during an instructional term, and until the end of that instructional
25 term, is eligible for the benefits provided in this article until September 1, following that
26 instructional term: *Provided, however*, That a long-term substitute employed fewer than 133
27 instructional days during an instructional term is eligible for the benefits provided in this article
28 only during such time as he or she is actually employed as a long-term substitute. On and after
29 January 1, 1994, and upon election by a county board of education to allow elected board
30 members to participate in the Public Employees Insurance Program pursuant to this article, any
31 person elected to a county board of education shall be considered to be an “employee” during the
32 term of office of the elected member. Upon election by the State Board of Education to allow
33 appointed board members to participate in the Public Employees Insurance Program pursuant to
34 this article, any person appointed to the State Board of Education is considered an “employee”
35 during the term of office of the appointed member: *Provided further*, That the elected member of
36 a county board of education and the appointed member of the State Board of Education shall pay
37 the entire cost of the premium if he or she elects to be covered under this article. Any matters of
38 doubt as to who is an employee within the meaning of this article shall be decided by the director.

39 On or after July 1, 1997, a person shall be considered an “employee” if that person meets
40 the following criteria:

41 ~~(i)~~(1) Participates in a job-sharing arrangement as defined in §18A-1-1-of this code;

42 ~~(ii)~~(2) Has been designated, in writing, by all other participants in that job-sharing
43 arrangement as the “employee” for purposes of this section; and

44 ~~(iii)~~(3) Works at least one third of the time required for a full-time employee.

45 On or after July 1, 2020, a person shall be considered an “employee” if the person works
46 regularly no less than 20 hours a week for a private employer that has 25 or fewer employees.

47 “Employee organization” means an employee advocacy organization with employee
48 members.

49 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,
50 departments, institutions, or spending units; a county board of education; a county, city, or town
51 in the state; any separate corporation or instrumentality established by one or more counties,
52 cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by
53 counties, cities, or towns; any public corporation charged by law with the performance of a
54 governmental function and whose jurisdiction is coextensive with one or more counties, cities, or
55 towns; any comprehensive community mental health center or comprehensive mental retardation
56 facility established, operated, or licensed by the Secretary of Health and Human Resources
57 pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal
58 funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code;
59 and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a
60 21st Century Learner Fellow pursuant to §18-3-11 of this code, but the corporation is not
61 considered an employer with respect to any employee other than a 21st Century Learner Fellow;
62 and a private employer that employs 25 or fewer persons who work regularly, no less than 20
63 hours a week within the state for 20 or more calendar weeks in the calendar year, not including
64 retired employees of a private employer. Any matters of doubt as to who is an “employer” within
65 the meaning of this article shall be decided by the director. The term “employer” does not include
66 within its meaning the National Guard.

67 ~~(5)~~ "Finance board" means the Public Employees Insurance Agency finance board
68 created 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 §5-16D-1 *et*
91 *seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment
92 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the

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

102 “Small employer” means a private business or corporation, based and duly licensed in the
103 State of West Virginia, that is fully compliant with any statutory requirements to conduct business
104 in the state, and is current with any applicable filings with the state and its political subdivisions.

§5-16-6. Authorizing participation by small private employers.

1 (a) Notwithstanding any provisions of this article to the contrary, the agency shall provide
2 for coverage of employees of small employers, and dependents of such employees, under the
3 group hospitalization and medical and surgical insurance plan or plans procured under this article
4 subject to the following conditions:

5 (1) Participation by each small employer and employee shall be on a voluntary basis;

6 (2) Where an employee organization represents employees of a small employer,
7 participation in such plan or plans to be procured under said subsection shall be by mutual
8 agreement of the small employer and the employee organization only and neither party may
9 submit the issue of participation to binding arbitration except by mutual agreement if such binding
10 arbitration is available;

11 (3) A group of employees may not be refused entry into such plan or plans by reason of
12 past or future health care costs or claim experience;

13 (4) Rates paid by the state for its employees under this section are not adversely affected

14 by this subdivision;

15 (5) Administrative costs attributable to coverage provided pursuant to this section may not
16 be paid by the state; and

17 (6) Participation in such plan or plans for a minimum of three years.

18 (b) Participation in group hospitalization and medical and surgical insurance plan or plans
19 procured under this article in no way constitutes an employer-employee relationship between the
20 employee of a private employer and the state nor does it entitle the employee, the employer, or
21 both, to any other rights, privileges, protections, benefits, or any combination thereof afforded to
22 the state, its political subdivisions, or the employees of the state or its political subdivisions.

NOTE: The purpose of this bill is to authorize small employers to buy-in to PEIA.

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