

SB 473

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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## ENROLLED

SENATE BILL NO. 473

(By Senator WALKER)

PASSED MARCH 9, 1996  
In Effect NINETY DAYS FROM Passage

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SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 473**

(BY SENATOR WALKER)

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[Passed March 9, 1996; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, three, seven and twenty-two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the administration of the West Virginia public employees insurance agency; definitions; salary of director; chief financial officer; providing that for plans which include maternity benefits that these plans not deny payment for specified minimum time periods where deemed medically necessary by the attending physician; optional life and accidental death insurance; and employer contributions.

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

That sections two, three, seven and twenty-two, article

sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, 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,  
2 unless a different meaning is clearly indicated by the  
3 context, have the following meanings:

4 (1) "Advisory board" means the public employees  
5 insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance  
7 agency created by this article.

8 (3) "Director" means the director of the public employ-  
9 ees insurance agency, created by this article.

10 (4) "Employee" means any person, including elected  
11 officers, who works regularly full time in the service of  
12 the state of West Virginia and, for the purpose of this  
13 article only, the term "employee" also means any person,  
14 including elected officers, who works regularly full time  
15 in the service of a county board of education; a county,  
16 city or town in the state; any separate corporation or  
17 instrumentality established by one or more counties,  
18 cities or towns, as permitted by law; any corporation or  
19 instrumentality supported in most part by counties,  
20 cities or towns; any public corporation charged by law  
21 with the performance of a governmental function and  
22 whose jurisdiction is coextensive with one or more  
23 counties, cities or towns; any comprehensive community  
24 mental health center or comprehensive mental retarda-  
25 tion facility established, operated or licensed by the  
26 secretary of health and human resources pursuant to  
27 section one, article two-a, chapter twenty-seven of this  
28 code, and which is supported in part by state, county or  
29 municipal funds; any person who works regularly full  
30 time in the service of the university of West Virginia  
31 board of trustees or the board of directors of the state  
32 college system; and any person who works regularly full

33 time in the service of a combined city-county health  
34 department created pursuant to article two, chapter  
35 sixteen of this code. On and after the first day of Janu-  
36 ary, one thousand nine hundred ninety-four, and upon  
37 election by a county board of education to allow elected  
38 board members to participate in the public employees  
39 insurance program pursuant to this article, any person  
40 elected to a county board of education shall be deemed  
41 to be an "employee" during the term of office of the  
42 elected member: *Provided*, That the elected member  
43 shall pay the entire cost of the premium if he or she  
44 elects to be covered under this act. Any matters of doubt  
45 as to who is an employee within the meaning of this  
46 article shall be decided by the director.

47 (5) "Employer" means the state of West Virginia, its  
48 boards, agencies, commissions, departments, institutions  
49 or spending units; a county board of education; a county,  
50 city or town in the state; any separate corporation or  
51 instrumentality established by one or more counties,  
52 cities or towns, as permitted by law; any corporation or  
53 instrumentality supported in most part by counties,  
54 cities or towns; any public corporation charged by law  
55 with the performance of a governmental function and  
56 whose jurisdiction is coextensive with one or more  
57 counties, cities or towns; any comprehensive community  
58 mental health center or comprehensive mental retarda-  
59 tion facility established, operated or licensed by the  
60 secretary of health and human resources pursuant to  
61 section one, article two-a, chapter twenty-seven of this  
62 code, and which is supported in part by state, county or  
63 municipal funds; and a combined city-county health  
64 department created pursuant to article two, chapter  
65 sixteen of this code. Any matters of doubt as to who is an  
66 "employer" within the meaning of this article shall be  
67 decided by the director. The term "employer" does not  
68 include within its meaning the national guard.

69 (6) "Finance board" means the public employees  
70 insurance agency finance board created by this article.

71 (7) "Plan" means the medical indemnity plan or a  
72 managed care plan option offered by the agency.

73 (8) "Retired employee" means an employee of the state  
74 who retired after the twenty-ninth day of April, one  
75 thousand nine hundred seventy-one, and an employee of  
76 the university of West Virginia board of trustees or the  
77 board of directors of the state college system or a county  
78 board of education who retires on or after the twenty-  
79 first day of April, one thousand nine hundred seventy-  
80 two, and all additional eligible employees who retire on  
81 or after the effective date of this article and meet the  
82 minimum eligibility requirements for their respective  
83 state retirement system: *Provided*, That for the purposes  
84 of this article the employees who are not covered by a  
85 state retirement system shall, in the case of education  
86 employees, meet the minimum eligibility requirements of  
87 the state teachers retirement system, and in all other  
88 cases, meet the minimum eligibility requirements of the  
89 public employees retirement system.

**§5-16-3. Public employees insurance agency continued; ap-  
pointment, qualification, compensation and  
duties of director of agency; employees; civil  
service coverage; director vested after speci-  
fied date with powers of public employees  
insurance board; expiration of agency.**

1 (a) The public employees insurance agency is contin-  
2 ued, and consists of the director, the finance board, the  
3 advisory board and any employees who may be autho-  
4 rized by law. The director shall be appointed by the  
5 governor, with the advice and consent of the Senate. He  
6 or she shall serve at the will and pleasure of the gover-  
7 nor, unless earlier removed from office for cause as  
8 provided by law. The director shall have at least three  
9 years experience in health insurance administration  
10 prior to appointment as director. The director shall  
11 receive an annual salary established by the governor not  
12 to exceed sixty-five thousand dollars and actual ex-  
13 penses incurred in the performance of official business.

14 The director shall employ such administrative, technical  
15 and clerical employees as are required for the proper  
16 administration of the insurance programs provided for  
17 in this article. The director shall perform such duties as  
18 are required of him or her under the provisions of this  
19 article and is the chief administrative officer of the  
20 public employees insurance agency.

21 (b) All positions in the agency, except for the director,  
22 his or her personal secretary and the chief financial  
23 officer shall be included in the classified service of the  
24 civil service system pursuant to article six, chapter  
25 twenty-nine of this code. Any person required to be  
26 included in the classified service by the provisions of this  
27 subsection who was employed in any of the positions  
28 included in this subsection on or after the effective date  
29 of this article shall not be required to take and pass  
30 qualifying or competitive examinations upon or as a  
31 condition to being added to the classified service:  
32 *Provided*, That no person required to be included in the  
33 classified service by the provisions of this subsection  
34 who was employed in any of the positions included in  
35 this subsection as of the effective date of this section  
36 shall be thereafter severed, removed or terminated in his  
37 or her employment prior to his or her entry into the  
38 classified service except for cause as if the person had  
39 been in the classified service when severed, removed or  
40 terminated.

41 (c) The director is responsible for the administration  
42 and management of the public employees insurance  
43 agency as provided for in this article and in connection  
44 with his or her responsibility shall have the power and  
45 authority to make all rules necessary to effectuate the  
46 provisions of this article. Nothing in section four or five  
47 of this article shall limit the director's ability to manage  
48 on a day-to-day basis the group insurance plans required  
49 or authorized by this article, including, but not limited  
50 to, administrative contracting, studies, analyses and  
51 audits, eligibility determinations, utilization manage-  
52 ment provisions and incentives, provider negotiations,

53 provider contracting and payment, designation of  
54 covered and noncovered services, offering of additional  
55 coverage options or cost containment incentives, pursuit  
56 of coordination of benefits and subrogation, or any other  
57 actions which would serve to implement the plan or  
58 plans designed by the finance board.

59 (d) The public employees insurance agency shall  
60 terminate in the manner provided in article ten, chapter  
61 four of this code, on the first day of July, two thousand  
62 one, unless extended by legislation enacted before the  
63 termination date: *Provided*, That the public employees  
64 insurance agency advisory board, created in section six  
65 of this article, shall terminate in the manner provided in  
66 article ten, chapter four of this code on the first day of  
67 July, one thousand nine hundred ninety-six.

**§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

1 (a) The agency shall establish a group hospital and  
2 surgical insurance plan or plans, a group prescription  
3 drug insurance plan or plans, a group major medical  
4 insurance plan or plans and a group life and accidental  
5 death insurance plan or plans for those employees herein  
6 made eligible, and to establish and promulgate rules for  
7 the administration of such plans, subject to the limita-  
8 tions contained in this article. Those plans shall include:

9 (1) Coverages and benefits for X-ray and laboratory  
10 services in connection with mammograms and pap  
11 smears when performed for cancer screening or diagnos-  
12 tic services;

13 (2) Annual checkups for prostate cancer in men age  
14 fifty and over;

15 (3) For plans that include maternity benefits, coverage

16 for inpatient care in a duly licensed health care facility  
17 for a mother and her newly born infant for the length of  
18 time which the attending physician deems medically  
19 necessary for the mother or her newly born child:  
20 *Provided*, That no such plan may deny payment for a  
21 mother or her new born child prior to forty-eight hours  
22 following a vaginal delivery, or prior to ninety-six hours  
23 following a caesarean section delivery, if the attending  
24 physician deems discharge medically inappropriate; and

25 (4) For plans which provide coverages for post-delivery  
26 care to a mother and her newly born child in the home,  
27 coverage for inpatient care following childbirth as  
28 provided in subdivision three of this subsection if such  
29 inpatient care is determined to be medically necessary by  
30 the attending physician. Those plans may also include,  
31 among other things, medicines, medical equipment,  
32 prosthetic appliances, and such other inpatient and  
33 outpatient services and expenses deemed appropriate  
34 and desirable by the agency.

35 (b) The agency shall make available to each eligible  
36 employee, at full cost to the employee, the opportunity to  
37 purchase optional group life and accidental death  
38 insurance as established under the rules of the agency. In  
39 addition, each employee is entitled to have his or her  
40 spouse and dependents, as defined by the rules of the  
41 agency, included in the optional coverage, at full cost to  
42 the employee, for each eligible dependent; and with full  
43 authorization to the agency to make the optional cover-  
44 age available and provide an opportunity of purchase to  
45 each employee.

46 (c) The finance board may cause to be separately rated  
47 for claims experience purposes: (1) All employees of the  
48 state of West Virginia; (2) all teaching and professional  
49 employees of the university of West Virginia board of  
50 trustees or the board of directors of the state college  
51 system and county boards of education; (3) all non-  
52 teaching employees of the university of West Virginia  
53 board of trustees or the board of directors of the state



53 college system and county boards of education; or (4) any  
54 other categorization which would ensure the stability of  
55 the overall program.

**§5-16-22. Permissive participation; exemptions.**

1 The provisions of this article are not mandatory upon  
2 any employee or employer who is not an employee of or  
3 is not the state of West Virginia, its boards, agencies,  
4 commissions, departments, institutions or spending units  
5 or a county board of education, and nothing contained in  
6 this article shall be construed so as to compel any  
7 employee or employer to enroll in or subscribe to any  
8 insurance plan authorized by the provisions of this  
9 article.

10 Those employees enrolled in the insurance program  
11 authorized under the provisions of article two-b, chapter  
12 twenty-one-a of this code shall not be required to enroll  
13 in or subscribe to an insurance plan or plans authorized  
14 by the provisions of this article, and the employees of  
15 any department which has an existing insurance pro-  
16 gram for its employees to which the government of the  
17 United States contributes any part or all of the premium  
18 or cost of the premium may be exempted from the  
19 provisions of this article. Any employee or employer  
20 exempted under the provisions of this paragraph may  
21 enroll in any insurance program authorized by the  
22 provisions of this article at any time, to the same extent  
23 as any other qualified employee or employer, but em-  
24 ployee or employer shall not remain enrolled in both  
25 programs. The provisions of articles fourteen, fifteen and  
26 sixteen, chapter thirty-three of this code, relating to  
27 group life insurance, accident and sickness insurance,  
28 and group accident and sickness insurance, are not  
29 applicable to the provisions of this article whenever the  
30 provisions of articles fourteen, fifteen and sixteen,  
31 chapter thirty-three of this code are in conflict with or  
32 contrary to any provision set forth in this article or to  
33 any plan or plans established by the public employees  
34 insurance agency.

35 Employers, other than the state of West Virginia, its  
36 boards, agencies, commissions, departments, institutions,  
37 spending units or a county board of education are  
38 exempt from participating in the insurance program  
39 provided for by the provisions of this article unless  
40 participation by the employer has been approved by a  
41 majority vote of the employer's governing body. It is the  
42 duty of the clerk or secretary of the governing body of an  
43 employer who by majority vote becomes a participant in  
44 the insurance program to notify the director not later  
45 than ten days after the vote.

46 Any employer, whether the employer participates in  
47 the public employees insurance agency insurance pro-  
48 gram as a group or not, which has retired employees,  
49 their dependents or surviving dependents of deceased  
50 retired employees who participate in the public employ-  
51 ees insurance agency insurance program as authorized  
52 by this article, shall pay to the agency the same contri-  
53 bution toward the cost of coverage for its retired em-  
54 ployees, their dependents or surviving dependents of  
55 deceased retired employees as the state of West Virginia,  
56 its boards, agencies, commissions, departments, institu-  
57 tions, spending units or a county board of education pay  
58 for their retired employees, their dependents and surviv-  
59 ing dependents of deceased retired employees, as deter-  
60 mined by the finance board: *Provided*, That after the  
61 thirtieth day of June, one thousand nine hundred ninety-  
62 six, an employer is only required to pay a contribution  
63 toward the cost of coverage for its retired employees,  
64 their dependents or the surviving dependents of deceased  
65 retired employees who elect coverage when the retired  
66 employee participated in the plan as an active employee  
67 of the employer for at least five years. Each employer is  
68 hereby authorized and required to budget for and make  
69 such payments as are required by this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Walter Schorover*  
.....  
Chairman Senate Committee

*Randy Deacon*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Merrill B. Allen*  
.....  
Clerk of the Senate

*Gregory M. Brey*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Carl Albert*  
.....  
Speaker House of Delegates

The within *is approved*..... this the *1st*.....  
day of *April*....., 1996.

*Gaston Caputo*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/66

Time 9:50 am