

H. B. 4419

(By Delegates White, Hall, Ferns, R. Phillips,
D. Poling, Morgan, Stowers and Marcum)

[By Request of Public Employees Insurance Agency]

[Introduced February 3, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5-16-27, relating to
the subrogation rights of the Public Employees Insurance
Agency to recover claims paid on behalf of covered employees
and dependents.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §5-16-27, to read as
follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

**§5-16-27. Assignment of rights; right of subrogation by Public
Employees Insurance Agency to the rights of covered
employee or covered dependents; rules as to effect of
subrogation.**

1 (a) Submission of enrollment forms for health benefits
2 coverage to the Public Employees Insurance Agency is, as a matter
3 of law, an assignment of the right of the covered employee or
4 covered dependent or legal representative thereof to recovery from
5 personal insurance or other sources, including, but not limited to,
6 liable third parties, to the extent of the cost of medical services
7 or drugs paid for by the Public Employees Insurance Agency medical
8 or drug plans. This assignment of rights does not extend to
9 Medicare benefits: *Provided*, That the first \$25,000 of the death
10 benefit of a life insurance policy is exempt from assignment under
11 the provisions of this section. At the time the employee enrolls
12 and each plan year thereafter, the Public Employees Insurance
13 Agency shall include a statement in the plan coverage materials
14 provided to the employee that explains that the covered employee or
15 covered dependent has assigned all such rights, and the legal
16 implications of making such assignment of rights as provided in
17 this section. If medical or drug claims are paid or will be paid to
18 a provider of medical care on behalf of a covered employee or
19 covered dependent because of any sickness, injury, disease or
20 disability, and another person is legally liable for such expense,
21 either pursuant to contract, negligence or otherwise, the Public
22 Employees Insurance Agency shall have a right to recover full
23 reimbursement from any award or settlement for related damages from

1 such other person or from the covered employee or covered dependent
2 if he or she has been reimbursed by the other person. The Public
3 Employees Insurance Agency shall be legally assigned the rights of
4 the covered employee or covered dependent against the person so
5 liable, but only to the extent of the reasonable value of the
6 medical and drug claims paid and attributable to the sickness,
7 injury, disease or disability for which the covered employee or
8 covered dependent has received damages. When an action or claim is
9 brought by a covered employee or covered dependent or by someone on
10 his or her behalf against a third party who may be liable for the
11 injury, disease, disability or death of a covered employee or
12 covered dependent, any settlement, judgment or award obtained is
13 subject to the claim of the Public Employees Insurance Agency for
14 reimbursement of an amount sufficient to reimburse the Public
15 Employees Insurance Agency the full amount of medical and drugs
16 claims paid on behalf of the covered employee or covered dependent
17 under the Public Employees Insurance Agency plans for the injury,
18 disease, disability or death of the covered employee or covered
19 dependent. The claim of the Public Employees Insurance Agency
20 assigned by such covered employee or covered dependent shall not
21 exceed the amount of medical and drug expenses for the injury,
22 disease, disability or death of the covered employee or covered
23 dependent paid by the Public Employees Insurance Agency on behalf

1 of the covered employee or covered dependent. The right of
2 subrogation provided in this section includes all portions of the
3 cause of action, by either settlement, compromise, judgment or
4 award, notwithstanding any settlement allocation or apportionment
5 that purports to dispose of portions of the cause of action not
6 subject to the subrogation. Any settlement, compromise, judgment or
7 award that excludes or limits the cost of medical or drug services
8 or care shall not preclude the Public Employees Insurance Agency
9 from enforcing its rights under this section. The director may
10 compromise, settle and execute a release of any such claim, in
11 whole or in part.

12 (b) Nothing in this section may be construed so as to prevent
13 the covered employee or covered dependent from maintaining an
14 action for injuries received by him or her against any other person
15 and from including therein, as part of the compensatory damages
16 sought to be recovered, the amount or amounts of his or her medical
17 expenses, even though such person received Public Employees
18 Insurance Agency plan benefits in the payment of such medical
19 expenses, in whole or in part. If the action be tried by a jury,
20 the jury shall not be informed as to the interest of the Public
21 Employees Insurance Agency, if any, and such fact shall not be
22 disclosed to the jury at any time. The trial judge shall, upon the
23 entry of judgment on the verdict, direct that an amount equal to

1 the amount of Public Employees Insurance Agency benefits paid be
2 withheld and paid over to the Public Employees Insurance Agency.
3 Irrespective of whether the case be terminated by judgment or by
4 settlement without trial, from the amount required to be paid to
5 the Public Employees Insurance Agency there shall be deducted the
6 attorney fees attributable to such amount in accordance with and in
7 proportion to the fee arrangement made between the covered employee
8 or covered dependent and his or her attorney of record so that the
9 Public Employees Insurance Agency shall bear the pro rata portion
10 of such attorney fees. Nothing in this section shall preclude any
11 person who has received Public Employees Insurance Agency benefits
12 from settling any cause of action which he or she may have against
13 another person and delivering to the Public Employees Insurance
14 Agency, from the proceeds of such settlement, the sums received by
15 him or her from the Public Employees Insurance Agency or paid by
16 the Public Employees Insurance Agency for his or her Public
17 Employees Insurance Agency benefits. If such other person is aware
18 of or has been informed of the interest of the Public Employees
19 Insurance Agency in the matter, it shall be the duty of the person
20 to whose benefit the release inures to withhold so much of the
21 settlement as may be necessary to reimburse the Public Employees
22 Insurance Agency to the extent of its interest in the settlement.
23 No judgment, award of or settlement in any action or claim by a

1 Public Employees Insurance Agency covered employee or covered
2 dependent to recover damages for injuries, disease or disability,
3 in which the Public Employees Insurance Agency has interest, shall
4 be satisfied without first giving the Public Employees Insurance
5 Agency notice and reasonable opportunity to establish its interest.
6 The Public Employees Insurance Agency shall have sixty days from
7 receipt of such written notice to advise the covered employee or
8 covered dependent or his or her representative in writing of the
9 desire of the Public Employees Insurance Agency to establish its
10 interest through the assignment. If no such written intent is
11 received within the sixty-day period, then the covered employee or
12 covered dependent may proceed and in the event of full recovery of
13 medical and drug expense damages forward to the Public Employees
14 Insurance Agency the appropriate portion of the recovery proceeds
15 less the Public Employees Insurance Agency's share of attorney's
16 fees and costs expended in the matter. In the event of less than
17 full recovery the covered employee or covered dependent and the
18 Public Employees Insurance Agency shall agree as to the amount to
19 be paid to the Public Employees Insurance Agency for its claim. If
20 there is no recovery, the Public Employees Insurance Agency shall
21 under no circumstances be liable for any costs or attorney's fees
22 expended in the matter. If, after being notified in writing of a
23 subrogation claim and possible liability of the covered employee or

1 covered dependent, guardian, attorney or personal representative
2 for failure to subrogate the Public Employees Insurance Agency, a
3 covered employee or covered dependent, his or her guardian,
4 attorney or personal representative disposes of the funds
5 representing the judgment, settlement or award, without the written
6 approval of the Public Employees Insurance Agency, that person
7 shall be liable to the Public Employees Insurance Agency for any
8 amount that, as a result of the disposition of the funds, is not
9 recoverable by the Public Employees Insurance Agency. In the event
10 that a controversy arises concerning the subrogation claims by the
11 Public Employees Insurance Agency, an attorney shall interplead,
12 pursuant to rule twenty-two of the Rules of Civil Procedure, the
13 portion of the covered employee or covered dependent's settlement
14 that will satisfy the Public Employees Insurance Agency exclusive
15 of attorney's fees and costs regardless of any contractual
16 arrangement between the client and the attorney.

17 (c) Nothing contained herein shall by itself authorize the
18 Public Employees Insurance Agency to institute a class action or
19 multiple plaintiff action against any manufacturer, distributor or
20 vendor of any product to recover medical or drug expenditures paid
21 for by the Public Employees Insurance Agency plans.

NOTE: The purpose of this bill is to define subrogation rights and procedures for the West Virginia Public Employees Insurance Agency.

§5-16-27 is new, therefore, it has been completely underscored.