

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

### Introduced

## Senate Bill 259

FISCAL  
NOTE

BY SENATORS BALDWIN, BEACH, CAPUTO, IHLENFELD,  
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UNGER, AND WOELFEL

[Introduced February 12, 2021; 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 public charter school established pursuant to §18-  
 10 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant  
 11 to §18-5G-7 of this code a determination to participate in the Public Employees Insurance  
 12 program; a county, city, or town in the state; any separate corporation or instrumentality  
 13 established by one or more counties, cities, or towns, as permitted by law; any corporation or  
 14 instrumentality supported in most part by counties, cities, or towns; any public corporation charged

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

41 within the meaning of this article shall be decided by the director.

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

44 (A) Participates in a job-sharing arrangement as defined in §18A-1-1 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 On or after July 1, 2020, a person shall also be considered an “employee” if the person  
49 works regularly no less than 20 hours a week for a private employer that has 25 or fewer  
50 employees.

51 (4) “Employee organization” means an employee advocacy organization with employee  
52 members.

53 ~~(4)~~ (5) “Employer” means the State of West Virginia, its boards, agencies, commissions,  
54 departments, institutions, or spending units; a county board of education; a public charter school  
55 established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter  
56 contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public  
57 Employees Insurance program; a county, city, or town in the state; any separate corporation or  
58 instrumentality established by one or more counties, cities, or towns, as permitted by law; any  
59 corporation or instrumentality supported in most part by counties, cities, or towns; any public  
60 corporation charged by law with the performance of a governmental function and whose  
61 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive  
62 community mental health center or intellectually and developmentally disabled facility established,  
63 operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of  
64 this code and which is supported in part by state, county or municipal funds; a combined city-  
65 county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation  
66 meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century

67 Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an  
68 employer with respect to any employee other than a 21st Century Learner Fellow, and a private  
69 employer that employs 25 or fewer persons who work regularly, no less than 20 hours a week  
70 within the state for 20 or more calendar weeks in the calendar year, not including retired  
71 employees of the private employer. Any matters of doubt as to who is an “employer” within the  
72 meaning of this article shall be decided by the director. The term “employer” does not include  
73 within its meaning the National Guard.

74 ~~(5)~~ (6) “Finance board” means the Public Employees Insurance Agency finance board  
75 created by this article.

76 ~~(6)~~ (7) “Person” means any individual, company, association, organization, corporation or  
77 other legal entity, including, but not limited to, hospital, medical or dental service corporations;  
78 health maintenance organizations or similar organization providing prepaid health benefits; or  
79 individuals entitled to benefits under the provisions of this article.

80 ~~(7)~~ (8) “Plan”, unless the context indicates otherwise, means the medical indemnity plan,  
81 the managed care plan option, or the group life insurance plan offered by the agency.

82 ~~(8)~~ (9) “Retired employee” means an employee of the State who retired after April 29,  
83 1971, and an employee of the Higher Education Policy Commission, the Council for Community  
84 and Technical College Education, a state institution of higher education or a county board of  
85 education who retires on or after April 21, 1972, and all additional eligible employees who retire  
86 on or after the effective date of this article, meet the minimum eligibility requirements for their  
87 respective state retirement system, and whose last employer immediately prior to retirement  
88 under the state retirement system is a participating employer in the state retirement system and  
89 in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the  
90 employees who are not covered by a state retirement system, but who are covered by a state-  
91 approved or state-contracted retirement program or a system approved by the director, shall, in  
92 the case of education employees, meet the minimum eligibility requirements of the State Teachers

93 Retirement System and in all other cases, meet the minimum eligibility requirements of the Public  
94 Employees Retirement System and may participate in the Public Employees Insurance Agency  
95 as retired employees upon terms as the director sets by rule as authorized in this article.  
96 Employers with employees who are, or who are eligible to become, retired employees under this  
97 article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant  
98 to §5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-  
99 employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide  
100 benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but  
101 may do so only upon the written certification, under oath, of an authorized officer of the employer  
102 that the employer has no employees who are, or who are eligible to become, retired employees  
103 and that the employer will defend and hold harmless the Public Employees Insurance Agency  
104 from any claim by one of the employer's past, present, or future employees for eligibility to  
105 participate in the Public Employees Insurance Agency as a retired employee. As a matter of law,  
106 the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits  
107 to a retired employee of a nonstate employer which has opted out of the West Virginia other post-  
108 employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

109 (10) "Small employer" means a private business or corporation, based and duly licensed  
110 in the state of West Virginia, that is fully compliant with any statutory requirements to conduct  
111 business in the state, and is current with any applicable filings with the state and its political  
112 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.