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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

SENATE BILL NO. 702

ORIGINATING IN THE COMMITTEE
(By Senator ON FINANCE)

PASSED MARCH 13, 1999
In Effect From Passage

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OFFICE OF THE CLERK
SENATE

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Senate Bill No. 702

(Originating in the Committee on Finance)

[Passed March 13, 1999; in effect from passage.]

AN ACT to amend and reenact sections two, four, five, nine, twelve and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections twelve-a and twelve-b, all relating to the West Virginia public employees insurance act; defining terms; increasing the membership of the finance board; providing for appointment of the new members; revising requirements regarding preparation of annual financial plans and long-range plans; realigning duties of the finance board and the actuary; changing time of submission for revenue estimates; requiring submission of prospective financial plan; removing requirement that types and levels of costs to employers, employees and retired employees in effect remain in effect; providing criminal penalties for knowingly obtaining benefits, payments or anything of value to which the person is not entitled or greater than those to which the person is entitled; upon a finding of probable cause, authorizing the director to refer alleged violations fraud and abuse to the insurance commissioner for investigation and, where appropriate, prosecution;

providing penalties for violations not otherwise specifically provided; authorizing the director to negotiate and contract directly with health care providers; providing immunity for reporting fraudulent activities; and requiring that the retirees last employer be a participating employer to be eligible for public employees insurance agency programs upon retirement.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, nine, twelve and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections twelve-a and twelve-b, 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) "Agency" means the public employees insurance
5 agency created by this article.

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

8 (3) "Employee" means any person, including elected
9 officers, who works regularly full time in the service of the
10 state of West Virginia and, for the purpose of this article
11 only, the term "employee" also means any person, includ-
12 ing elected officers, who works regularly full time in the
13 service of a county board of education; a county, city or
14 town in the state; any separate corporation or instrumen-
15 tality established by one or more counties, cities or towns,
16 as permitted by law; any corporation or instrumentality
17 supported in most part by counties, cities or towns; any
18 public corporation charged by law with the performance
19 of a governmental function and whose jurisdiction is
20 coextensive with one or more counties, cities or towns; any
21 comprehensive community mental health center or com-
22 prehensive mental retardation facility established, oper-

23 ated or licensed by the secretary of health and human
24 resources pursuant to section one, article two-a, chapter
25 twenty-seven of this code, and which is supported in part
26 by state, county or municipal funds; any person who works
27 regularly full time in the service of the university of West
28 Virginia board of trustees or the board of directors of the
29 state college system; and any person who works regularly
30 full time in the service of a combined city-county health
31 department created pursuant to article two, chapter
32 sixteen of this code. On and after the first day of January,
33 one thousand nine hundred ninety-four, and upon election
34 by a county board of education to allow elected board
35 members to participate in the public employees insurance
36 program pursuant to this article, any person elected to a
37 county board of education shall be deemed to be an
38 "employee" during the term of office of the elected
39 member: *Provided*, That the elected member shall pay the
40 entire cost of the premium if he or she elects to be covered
41 under this article. Any matters of doubt as to who is an
42 employee within the meaning of this article shall be
43 decided by the director.

44 On or after the first day of July, one thousand nine
45 hundred ninety-seven, a person shall be considered an
46 "employee" if that person meets the following criteria:

47 (i) Participates in a job-sharing arrangement as defined
48 in section one, article one, chapter eighteen-a of this code;

49 (ii) Has been designated, in writing, by all other partici-
50 pants in that job-sharing arrangement as the "employee"
51 for purposes of this section; and

52 (iii) Works at least one third of the time required for a
53 full-time employee.

54 (4) "Employer" means the state of West Virginia, its
55 boards, agencies, commissions, departments, institutions
56 or spending units; a county board of education; a county,
57 city or town in the state; any separate corporation or
58 instrumentality established by one or more counties, cities
59 or towns, as permitted by law; any corporation or instru-
60 mentality supported in most part by counties, cities or
61 towns; any public corporation charged by law with the

62 performance of a governmental function and whose
63 jurisdiction is coextensive with one or more counties, cities
64 or towns; any comprehensive community mental health
65 center or comprehensive mental retardation facility
66 established, operated or licensed by the secretary of health
67 and human resources pursuant to section one, article
68 two-a, chapter twenty-seven of this code, and which is
69 supported in part by state, county or municipal funds; and
70 a combined city-county health department created pursu-
71 ant to article two, chapter sixteen of this code. Any
72 matters of doubt as to who is an "employer" within the
73 meaning of this article shall be decided by the director.
74 The term "employer" does not include within its meaning
75 the national guard.

76 (5) "Finance board" means the public employees insur-
77 ance agency finance board created by this article.

78 (6) "Person" means any individual, company, associa-
79 tion, organization, corporation or other legal entity,
80 including, but not limited to, hospital, medical, or dental
81 service corporations; health maintenance organizations or
82 similar organization providing pre-paid health benefits; or
83 individuals entitled to benefits under the provisions of this
84 article.

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

87 (8) "Retired employee" means an employee of the state
88 who retired after the twenty-ninth day of April, one
89 thousand nine hundred seventy-one, and an employee of
90 the university of West Virginia board of trustees or the
91 board of directors of the state college system or a county
92 board of education who retires on or after the twenty-first
93 day of April, one thousand nine hundred seventy-two, and
94 all additional eligible employees who retire on or after the
95 effective date of this article, meet the minimum eligibility
96 requirements for their respective state retirement system
97 and whose last employer immediately prior to retirement
98 under the state retirement system is a participating
99 employer: *Provided*, That for the purposes of this article,
100 the employees who are not covered by a state retirement
101 system shall, in the case of education employees, meet the

102 minimum eligibility requirements of the state teachers
103 retirement system, and in all other cases, meet the mini-
104 mum eligibility requirements of the public employees
105 retirement system.

**§5-16-4. Public employees insurance agency finance board
created; qualifications, terms and removal of
members; quorum; compensation and expenses;
termination date.**

1 (a) There is hereby continued the public employees
2 insurance agency finance board, which consists of the
3 director and six members appointed by the governor with
4 the advice and consent of the Senate for terms of four
5 years and until the appointment of their successors:
6 *Provided*, That of the two members added to the board by
7 the amendment of this section, enacted during the regular
8 legislative session, one thousand nine hundred ninety-nine,
9 the at-large member shall be appointed for an initial term
10 of two years and the member representing organized labor
11 shall be appointed for a term of four years. Members may
12 be reappointed for successive terms. No more than four
13 members (including the director) may be of the same
14 political party.

15 (b) Of the six members appointed by the governor, one
16 member shall represent the interests of education employ-
17 ees, one shall represent the interests of public employees,
18 one shall represent the interests of organized labor and
19 three shall be selected from the public at large. The
20 governor shall appoint the member representing the
21 interests of education employees from a list of three names
22 submitted by the largest organization of education em-
23 ployees in this state. The governor shall appoint the
24 member representing the interests of organized labor from
25 a list of three names submitted by the state's largest
26 organization representing labor affiliates. The three
27 members appointed from the public shall each have
28 experience in the financing, development or management
29 of employee benefit programs. All new appointments
30 made after the first day of July, one thousand nine hun-
31 dred ninety-four, shall be selected to represent the differ-
32 ent geographical areas within the state and all members

33 shall be residents of West Virginia. No member may be
34 removed from office by the governor except for official
35 misconduct, incompetence, neglect of duty, neglect of
36 fiduciary duty or other specific responsibility imposed by
37 this article, or gross immorality.

38 (c) The director shall serve as chairperson of the finance
39 board, which shall meet at times and places specified by
40 the call of the director or upon the written request to the
41 director of at least two members. Notice of each meeting
42 shall be given in writing to each member by the director at
43 least three days in advance of the meeting. Four members
44 constitutes a quorum. The board shall pay each member
45 the same compensation and expense reimbursement as is
46 paid to members of the Legislature for their interim duties,
47 as recommended by the citizens legislative compensation
48 commission and authorized by law for each day or portion
49 of a day engaged in the discharge of official duties.

50 (d) Pursuant to the provisions of article ten, chapter four
51 of this code, the finance board shall terminate on the first
52 day of July, two thousand one, unless extended by legisla-
53 tion enacted before the termination date.

54 (e) Upon termination of the board and notwithstanding
55 any provisions in this article to the contrary, the director
56 is authorized to assess monthly employee premium contri-
57 butions and to change the types and levels of costs to
58 employees only in accordance with this subsection. Any
59 assessments or changes in costs imposed pursuant to this
60 subsection shall be implemented by legislative rule
61 proposed by the director for promulgation pursuant to the
62 provisions of article three, chapter twenty-nine-a of this
63 code; any employee assessments or costs previously
64 authorized by the finance board shall then remain in effect
65 until amended by rule of the director promulgated pursu-
66 ant to this subsection.

**§5-16-5. Purpose, powers and duties of the finance board; initial
financial plan; financial plan for following year; and
annual financial plans.**

1 (a) The purpose of the finance board created by this
2 article is to bring fiscal stability to the public employees

3 insurance agency through development of annual financial
4 plans and long-range plans designed to meet the agency's
5 estimated total financial requirements, taking into account
6 all revenues projected to be made available to the agency,
7 and apportioning necessary costs equitably among partici-
8 pating employers, employees and retired employees and
9 providers of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated
12 experience in analysis of large group health insurance
13 plans, to estimate the total financial requirements of the
14 public employees insurance agency for each fiscal year and
15 to review and render written professional opinions as to
16 financial plans proposed by the finance board. The
17 actuary shall also assist in the development of alternative
18 financing options and perform any other services re-
19 quested by the finance board or the director. All reason-
20 able fees and expenses for actuarial services shall be paid
21 by the public employees insurance agency. Any financial
22 plan or modifications to a financial plan approved or
23 proposed by the finance board pursuant to this section
24 shall be submitted to and reviewed by the actuary, and
25 may not be finally approved and submitted to the governor
26 and to the Legislature without the actuary's written
27 professional opinion that the plan may be reasonably
28 expected to generate sufficient revenues to meet all
29 estimated program and administrative costs of the agency,
30 including incurred but unreported claims, for the fiscal
31 year for which the plan is proposed. The actuary's
32 opinion on the financial plan for each fiscal year shall
33 allow for no more than thirty days of accounts payable to
34 be carried over into the next fiscal year. The actuary's
35 opinion for any fiscal year shall not include a requirement
36 for establishment of a reserve fund.

37 (c) All financial plans required by this section shall
38 establish:

39 (1) Maximum levels of reimbursement which the public
40 employees insurance agency makes to categories of health
41 care providers;

42 (2) Any necessary cost containment measures for imple-
43 mentation by the director;

44 (3) The levels of premium costs to participating employ-
45 ers; and

46 (4) The types and levels of cost to participating employ-
47 ees and retired employees.

48 The financial plans may provide for different levels of
49 costs based on the insureds' ability to pay. The finance
50 board may establish different levels of costs to retired
51 employees based upon length of employment with a
52 participating employer, ability to pay, or other relevant
53 factors. The financial plans may also include optional
54 alternative benefit plans with alternative types and levels
55 of cost. The finance board may develop policies which
56 encourage the use of West Virginia health care providers.

57 In addition, the finance board may allocate a portion of
58 the premium costs charged to participating employers to
59 subsidize the cost of coverage for participating retired
60 employees, on such terms as the finance board determines
61 are equitable and financially responsible.

62 (d) (1) The finance board shall prepare an annual finan-
63 cial plan for each fiscal year during which the finance
64 board remains in existence. The finance board chairman
65 shall request the actuary to estimate the total financial
66 requirements of the public employees insurance agency for
67 the fiscal year.

68 (2) The finance board shall prepare a proposed financial
69 plan designed to generate revenues sufficient to meet all
70 estimated program and administrative costs of the public
71 employees insurance agency for the fiscal year. The
72 proposed financial plan shall allow for no more than thirty
73 days of accounts payable to be carried over into the next
74 fiscal year. Before final adoption of the proposed financial
75 plan, the finance board shall request the actuary to review
76 the plan and to render a written professional opinion
77 stating whether the plan will generate sufficient revenues
78 to meet all estimated program and administrative costs of
79 the public employees insurance agency for the fiscal year.

80 The actuary's report shall explain the basis of its opinion.
81 If the actuary concludes that the proposed financial plan
82 will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary
83 modifications to the proposed plan to ensure that all
84 actuarially-determined financial requirements of the
85 agency will be met.
86

87 (3) Upon obtaining the actuary's opinion, the finance
88 board shall conduct one or more public hearings in each
89 congressional district to receive public comment on the
90 proposed financial plan, shall review such comments, and
91 shall finalize and approve the financial plan.

92 (4) Any financial plan shall be designed to allow thirty
93 days or less of accounts payable to be carried over into the
94 next fiscal year. For each fiscal year, the governor shall
95 provide his or her estimate of total revenues to the finance
96 board no later than the fifteenth day of October of the
97 preceding fiscal year: *Provided*, That for the prospective
98 financial plans required by this section, the governor shall
99 estimate the revenues available for each fiscal year of the
100 plans, based on the estimated percentage of growth in
101 general fund revenues. The finance board shall submit its
102 final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public
103 hearings in each congressional district, to the governor and
104 to the Legislature no later than the first day of January
105 preceding the fiscal year. The financial plan for a fiscal
106 year becomes effective and shall be implemented by the
107 director on the first day of July of the fiscal year. In
108 addition to each final, approved financial plan required
109 under this section, the finance board shall also simultaneously submit financial statements based on generally
110 accepted accounting practices (GAAP) and the final,
111 approved plan restated on an accrual basis of accounting,
112 which shall include allowances for incurred but not
113 reported claims: *Provided*, That the financial statements
114 and the accrual-based financial plan restatement shall not
115 affect the approved financial plan.
116
117

118 (e) The provisions of chapter twenty-nine-a of this code
119 shall not apply to the preparation, approval and imple-
120 mentation of the financial plans required by this section.

121 (f) Beginning on the first day of January, two thousand,
122 and every year thereafter, the finance board shall submit
123 to the governor and the Legislature, a prospective finan-
124 cial plan, for a period not to exceed five years, for the
125 programs provided for in this article. Factors that the
126 board shall consider include, but shall not be limited to,
127 the trends for the program and the industry; the medical
128 rate of inflation; utilization patterns; cost of services; and,
129 state specific information such as average age of employee
130 population, active to retiree ratios, the service delivery
131 system and health status of the population.

132 (g) The prospective financial plans shall be based on the
133 estimated revenues submitted in accordance with subdivi-
134 sion (4) of subsection (d) of this section, and shall include
135 an average of the projected cost-sharing percentages of
136 premiums and an average of the projected deductibles and
137 co-pays for the various programs. After the submission of
138 the initial prospective plan, the board may not increase
139 costs to the participating employers or change the average
140 of the premiums, deductibles and co-pays for employees,
141 except in the event of a true emergency as provided for in
142 this section: *Provided*, That if the board invokes the
143 emergency provisions, the cost shall be borne between the
144 employers and employees in proportion to the cost-sharing
145 ratio for that plan year: *Provided, however*, That for
146 purposes of this section, "emergency" means that the most
147 recent projections demonstrate that plan expenses will
148 exceed plan revenues by more than one percent in any plan
149 year.

150 (h) The finance board shall meet on at least a quarterly
151 basis to review implementation of its current financial
152 plan in light of the actual experience of the public employ-
153 ees insurance agency. The board shall review actual costs
154 incurred, any revised cost estimates provided by the
155 actuary, expenditures, and any other factors affecting the
156 fiscal stability of the plan, and may make any additional
157 modifications to the plan necessary to ensure that the total

158 financial requirements of the agency for the current fiscal
159 year are met. The financial board may not increase the
160 types and levels of cost to employees during its quarterly
161 review except in the event of a true emergency.

162 (i) For any fiscal year in which legislative appropriations
163 differ from the governor's estimate of general and special
164 revenues available to the agency, the finance board shall,
165 within thirty days after passage of the budget bill, make
166 any modifications to the plan necessary to ensure that the
167 total financial requirements of the agency for the current
168 fiscal year are met.

**§5-16-9. Authorization to execute contracts for group hospital
and surgical insurance, group major medical insurance,
group prescription drug insurance, group life
and accidental death insurance and other accidental
death insurance; mandated benefits; limitations;
awarding of contracts; reinsurance; certificates for
covered employees; discontinuance of contracts.**

1 (a) The director is hereby given exclusive authorization
2 to execute such contract or contracts as are necessary to
3 carry out the provisions of this article and to provide the
4 plan or plans of group hospital and surgical insurance
5 coverage, group major medical insurance coverage, group
6 prescription drug insurance coverage and group life and
7 accidental death insurance coverage selected in accordance
8 with the provisions of this article, such contract or
9 contracts to be executed with one or more agencies,
10 corporations, insurance companies or service organizations
11 licensed to sell group hospital and surgical insurance,
12 group major medical insurance, group prescription drug
13 insurance and group life and accidental death insurance in
14 this state.

15 (b) The group hospital or surgical insurance coverage
16 and group major medical insurance coverage herein
17 provided for shall include coverages and benefits for X-ray
18 and laboratory services in connection with mammogram
19 and pap smears when performed for cancer screening or
20 diagnostic services and annual checkups for prostate
21 cancer in men age fifty and over. Such benefits shall
22 include, but not be limited to, the following:

23 (1) Baseline or other recommended mammograms for
24 women age thirty-five to thirty-nine, inclusive;

25 (2) Mammograms recommended or required for women
26 age forty to forty-nine, inclusive, every two years or as
27 needed;

28 (3) A mammogram every year for women age fifty and
29 over;

30 (4) A pap smear annually or more frequently based on
31 the woman's physician's recommendation for women age
32 eighteen and over; and

33 (5) A checkup for prostate cancer annually for men age
34 fifty or over.

35 (c) The group life and accidental death insurance herein
36 provided for shall be in the amount of ten thousand dollars
37 for every employee. The amount of the group life and
38 accidental death insurance to which an employee would
39 otherwise be entitled shall be reduced to five thousand
40 dollars upon such employee attaining age sixty-five.

41 (d) All of the insurance coverage to be provided for
42 under this article may be included in one or more similar
43 contracts issued by the same or different carriers.

44 (e) The provisions of article three, chapter five-a of this
45 code, relating to the division of purchases of the depart-
46 ment of finance and administration, shall not apply to any
47 contracts for any insurance coverage or professional
48 services authorized to be executed under the provisions of
49 this article. Before entering into any contract for any
50 insurance coverage, as authorized in this article, the
51 director shall invite competent bids from all qualified and
52 licensed insurance companies or carriers, who may wish to
53 offer plans for the insurance coverage desired: *Provided,*
54 That the director shall negotiate and contract directly with
55 health care providers and other entities, organizations and
56 vendors in order to secure competitive premiums, prices
57 and other financial advantages. The director shall deal
58 directly with insurers or health care providers and other
59 entities, organizations and vendors in presenting specifica-
60 tions and receiving quotations for bid purposes. No

61 commission or finder's fee, or any combination thereof,
62 shall be paid to any individual or agent; but this shall not
63 preclude an underwriting insurance company or compa-
64 nies, at their own expense, from appointing a licensed
65 resident agent, within this state, to service the companies'
66 contracts awarded under the provisions of this article.
67 Commissions reasonably related to actual service rendered
68 for the agent or agents may be paid by the underwriting
69 company or companies: *Provided, however,* That in no
70 event shall payment be made to any agent or agents when
71 no actual services are rendered or performed. The director
72 shall award the contract or contracts on a competitive
73 basis. In awarding the contract or contracts the director
74 shall take into account the experience of the offering
75 agency, corporation, insurance company or service organi-
76 zation in the group hospital and surgical insurance field,
77 group major medical insurance field, group prescription
78 drug field and group life and accidental death insurance
79 field, and its facilities for the handling of claims. In
80 evaluating these factors, the director may employ the
81 services of impartial, professional insurance analysts or
82 actuaries or both. Any contract executed by the director
83 with a selected carrier shall be a contract to govern all
84 eligible employees subject to the provisions of this article.
85 Nothing contained in this article shall prohibit any
86 insurance carrier from soliciting employees covered
87 hereunder to purchase additional hospital and surgical,
88 major medical or life and accidental death insurance
89 coverage.

90 (f) The director may authorize the carrier with whom a
91 primary contract is executed to reinsure portions of the
92 contract with other carriers which elect to be a reinsurer
93 and who are legally qualified to enter into a reinsurance
94 agreement under the laws of this state.

95 (g) Each employee who is covered under any contract or
96 contracts shall receive a statement of benefits to which the
97 employee, his or her spouse and his or her dependents are
98 entitled under the contract, setting forth the information
99 as to whom the benefits are payable, to whom claims shall
100 be submitted, and a summary of the provisions of the

101 contract or contracts as they affect the employee, his or
102 her spouse and his or her dependents.

103 (h) The director may at the end of any contract period
104 discontinue any contract or contracts it has executed with
105 any carrier and replace the same with a contract or
106 contracts with any other carrier or carriers meeting the
107 requirements of this article.

108 (i) The director shall provide by contract or contracts
109 entered into under the provisions of this article the cost for
110 coverage of children's immunization services from birth
111 through ages sixteen years to provide immunization against
112 the following illnesses: Diphtheria, polio, mumps, measles,
113 rubella, tetanus, hepatitis-b, haemophilus influenzae-b
114 and whooping cough. Additional immunizations may be
115 required by the commissioner of the bureau of public
116 health for public health purposes. Any contract entered
117 into to cover these services shall require that all costs
118 associated with immunization, including the cost of the
119 vaccine, if incurred by the health care provider, and all
120 costs of vaccine administration, be exempt from any
121 deductible, per visit charge and/or copayment provisions
122 which may be in force in these policies or contracts. This
123 section does not require that other health care services
124 provided at the time of immunization be exempt from any
125 deductible and/or copayment provisions.

**§5-16-12. Misrepresentation by employer, employee or provider;
penalty.**

1 (a) Any person who knowingly secures or attempts to
2 secure benefits payable under this article or anything of
3 value to which the person is not entitled, or who know-
4 ingly secures or attempts to secure greater benefits than
5 those to which the person is entitled, by willfully misrep-
6 resenting the presence or extent of benefits to which the
7 person is entitled under a collateral insurance source, or by
8 willfully misrepresenting any material fact relating to any
9 other information requested by the director or by willfully
10 overcharging for services provided, or by willfully misrep-
11 resenting the diagnosis or nature of the service provided,
12 may be found to be overpaid and shall be civilly liable for
13 any overpayment. In addition to the civil remedy provided

14 herein, the director shall withhold payment of any benefits
15 or other payment due to that person until any overpay-
16 ment has been recovered or may directly set off, after
17 holding internal administrative proceedings to assure due
18 process, any such overcharges or improperly derived
19 payment against benefits or other payment due such
20 person hereunder. Nothing in this section shall be con-
21 strued to limit any other remedy or civil or criminal
22 penalty provided by law.

23 (b) Any person who knowingly secures or attempts to
24 secure benefits payable under this article or any other
25 thing of value to which the person is not entitled, or
26 knowingly attempts to secure greater benefits than those
27 to which the person is entitled, by willfully misrepresent-
28 ing, or aiding in the misrepresentation of, any material
29 fact relating to employment, diagnosis or services rendered
30 is guilty of a felony and, upon conviction thereof, shall be
31 fined not more than five thousand dollars, imprisoned for
32 not longer than two years, or both. Errors in coding for
33 purposes of billing shall not be presumed to be evidence of
34 criminal conduct in the absence of other competent
35 evidence to the contrary.

§5-16-12a. Inspections; violations and penalties.

1 (a) Upon a determination of the director or his or her
2 designated representative that there is probable cause to
3 believe that fraud, abuse or other illegal activities involv-
4 ing transactions with the agency has occurred, the director
5 or his or her designated representative is authorized to
6 refer the alleged violations to the insurance commissioner
7 for investigation and, if appropriate, prosecution, pursuant
8 to article forty-one, chapter thirty-three of this code. For
9 purposes of this section, "transactions with the agency"
10 includes, but is not limited to, application by any insured
11 or dependent, any employer, or any type of health care
12 provider for payment to be made to that person or any
13 third party by the agency.

14 (b) Any person who violates any provision of this article
15 for which no other penalty is specifically provided is guilty
16 of a misdemeanor and, upon conviction thereof, is subject
17 to a fine of not less than one hundred dollars but not more

18 than five hundred dollars, or imprisonment for a period of
19 not less than twenty-four hours but not more than fifteen
20 days, or both.

§5-16-12b. Privileges and immunity.

1 (a) Any person who makes a report or furnishes informa-
2 tion, written or oral, concerning suspected, anticipated or
3 fraudulent activity to secure benefits payable under this
4 article, or to secure greater benefits than those to which
5 the person or provider is entitled, is entitled to those
6 privileges and immunities existing under common or
7 statutory law, as well as the immunity established in this
8 section.

9 (b) In the absence of fraud, malice or bad faith, no
10 person or agent, employee or designee of that person shall
11 be subject to civil liability of any nature arising out of that
12 person's provision of information related to suspected,
13 anticipated or fraudulent activity in the securing of
14 benefits payable or securing greater benefits than those to
15 which the person or provider is entitled.

16 (c) Nothing in this section shall be construed to limit,
17 abrogate or modify existing statutes or case law applicable
18 to the duties or liabilities of persons acting in a manner
19 that is itself fraudulent, with malice or in bad faith.

**§5-16-24. Rules for administration of article; eligibility of
certain retired employees and dependents of
deceased members for coverage; employees on
medical leave of absence entitled to coverage; life
insurance.**

1 The director shall promulgate any necessary rules for the
2 effective administration of the provisions of this article.
3 Except as specifically provided in subsection (e), section
4 four of this article, all rules of the public employees
5 insurance agency and all hearings held by the public
6 employees insurance agency are exempt from the provi-
7 sions of chapter twenty-nine-a of this code. Any rules
8 promulgated by the public employees insurance board or
9 director shall remain in full force and effect until they are
10 amended or replaced by the director.

11 The rules shall provide that any employee of the state
12 who has been compelled or required by law to retire before
13 reaching the age of sixty-five years is eligible to partici-
14 pate in the public employees' health insurance program at
15 the premium contribution established by the finance board
16 after any extended coverage to which he or she, his or her
17 spouse and dependents may be entitled by virtue of his or
18 her accrued annual leave or sick leave, pursuant to the
19 provisions of section thirteen of this article, has expired.
20 Any employee who voluntarily retires, as provided by law,
21 is eligible to participate in the public employees' health
22 insurance program at the premium contribution estab-
23 lished by the finance board after any extended coverage to
24 which he or she, his or her spouse and dependents may be
25 entitled by virtue of his or her accrued annual leave or sick
26 leave, pursuant to the provisions of section thirteen of this
27 article, has expired: *Provided*, That the employee's last
28 employer is a participating employer. The dependents of
29 any deceased retired employee are entitled to continue
30 their participation and coverage upon payment of the
31 premium contribution established by the finance board.
32 In establishing the cost of health insurance coverage for
33 retired employees and their spouses and dependents, the
34 finance board, in its discretion, may cause the claims
35 experience of the retired employees and their spouses and
36 dependents to be rated separately from that of active
37 employees and their spouses and dependents, or may cause
38 the claims experience of retired and active employees, and
39 their spouses and dependents, to be rated together.

40 Any employee who is on a medical leave of absence,
41 approved by his or her employer, is subject to the follow-
42 ing provisions of this paragraph, is entitled to continue his
43 or her coverage until he or she returns to his or her em-
44 ployment, and the employee and employer shall continue
45 to pay their proportionate share of premium costs as
46 provided by this article: *Provided*, That the employer is
47 obligated to pay its proportionate share of the premium
48 cost only for a period of one year: *Provided, however*,
49 That during the period of the leave of absence, the em-
50 ployee shall, at least once each month, submit to the

51 employer the statement of a qualified physician certifying
52 that the employee is unable to return to work.

53 Any retiree is eligible to participate in the public employ-
54 ees' life insurance program, including the optional life
55 insurance coverage as already available to active employ-
56 ees under this article, at his or her own expense for the
57 cost of coverage, based upon actuarial experience; and the
58 director shall prepare, by rule, for that participation and
59 coverages under declining term insurance and optional
60 additional coverage for the retirees.

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

Paul Schooner

Chairman Senate Committee

Jeff Smith

Chairman House Committee

Originating in the Senate.

In effect from passage.

Barrett E. Clark

Clerk of the Senate

Bugby D. Bur

Clerk of the House of Delegates

Carl By Tomblin

President of the Senate

John H. ...

Speaker House of Delegates

The within *approval* this the *15*

Day of *April*, 1999

John D. Anderson

Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 10:55am