WEST VIRGINIA CODE: §5-16-22

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

The provisions of this article are not mandatory upon any employee or employer who is not an employee of, or is not, the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education, and nothing contained in this article compels any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article: *Provided,* That nothing in this section requires a public charter school to participate in the Public Employees Insurance Agency program.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 *et seq.* of this code are not required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs.

Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter 33 of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter 33 of this code.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education, are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than 10 days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their dependents and surviving

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dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

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