

WEST VIRGINIA LEGISLATURE

THIRD EXTRAORDINARY SESSION, 1990

ENROLLED

Committee Substitute for
SENATE BILL NO. 5

(By Senators *Burdette, M. President and*
Warman. By Request of the Executive)

PASSED August 26, 1990

In Effect from Passage

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COMMITTEE SUBSTITUTE
FOR
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(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN,
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AN ACT to amend and reenact article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the "West Virginia Public Employees Insurance Act"; setting forth a short title and legislative intent; providing definitions; continuing public employees insurance agency; composition of agency; creating the position of director; appointment, qualifications, duties, and responsibilities of director; employees of agency to be included in classified service; establishing expiration date of agency; creating public employees insurance agency finance board; providing for appointment, qualifications, terms and removal of members, compensation and expenses, and expiration date of finance board; director to establish premiums with legislative approval upon termination of the board; establishing powers and duties of finance board; development of initial and future annual financial plans; approval of plans required by actuary; board required to amend plan if in

actuary's opinion plan will generate insufficient revenues; exempting financial plans from rule-making requirements; employees to be notified of changes in types and levels of costs and benefits; quarterly review of plans and modifications to plan; creating public employees insurance agency advisory board; composition, qualifications, appointment and terms of members; powers and duties of advisory board; reimbursement of expenses of advisory board members; authorizing and requiring director to establish group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, and group life and accidental death insurance plans; requiring the director to make optional group life and accidental death insurance available; rating of employees for claims experience purposes; establishing conditions of insurance program, including reasonable and customary expenses, coordination of benefits, encouraging "wellness" programs and activities; authorizing contracting authority for various group insurance plans; authorizing contracting authority for various group insurance plans for retired employees, their spouses and dependents; statement of benefits to employees; prohibition with respect to fraud or misrepresentations; civil penalties; withholding of benefits; extended insurance coverage after termination or retirement; requiring director to establish program for favorable federal income tax treatment; optional dental, optical, disability and pre-paid retirement plan to be made available by director to employees, with employee to bear full premium cost thereof with separate funds established and required; preferred provider plan or system to be established for reduction of costs, with director authorized to renegotiate contracts in respect thereof; noncoverage of preexisting conditions of injury, sickness, pregnancy or other health condition within specified period prior to effective coverage with exceptions; payment of costs by employer; agency to deposit moneys in a special fund; authorization to accept gifts, grants and matching funds; payment by employers of proportionate share of administrative costs; prohibition against direct or indirect benefitting from contracts by specified officials,

members, or employees, with criminal penalties and exception for certain contracts; participation in insurance program not mandatory, with exceptions; members of Legislature eligible for coverage upon payment of full coverage costs; director to promulgate rules and regulations for administration of article; entitlement of certain retirees and employees to continue coverage; reserve fund for budget excess; required quarterly report by finance board and director to joint committee on government and finance; and severability section.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-1. Short title; legislative intent.

1 The short title by which this article may be referred
2 to is “West Virginia Public Employees Insurance Act”
3 and it is the express intent of the Legislature to
4 encourage and promote a uniform partnership relation
5 between all employers and employees participating in
6 the insurance plan or plans formulated under the
7 provisions of this article and constituting the insurance
8 program, and to hereby declare such insurance pro-
9 gram to be for a public purpose.

§5-16-2. Definitions.

1 The following words and phrases as used in this
2 article, unless a different meaning is clearly indicated
3 by the context, shall have the following meanings:

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

7 (2) “Agency” means the public employees insurance
8 agency created by this article.

9 (3) “Director” means the director of the public

10 employees insurance agency, created by this article.

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

40 (5) "Employer" means the state of West Virginia, its
41 boards, agencies, commissions, departments, institu-
42 tions or spending units; a county board of education; a
43 county, city or town in the state; any separate corpo-
44 ration or instrumentality established by one or more
45 counties, cities or towns, as permitted by law; any
46 corporation or instrumentality supported in most part
47 by counties, cities or towns; any public corporation
48 charged by law with the performance of a governmen-
49 tal function and whose jurisdiction is coextensive with
50 one or more counties, cities or towns; any comprehen-

51 sive community mental health center or comprehen-
52 sive mental retardation facility established, operated
53 or licensed by the secretary of health and human
54 resources pursuant to section one, article two-a,
55 chapter twenty-seven of this code, and which is
56 supported in part by state, county or municipal funds;
57 and a combined city-county health department created
58 pursuant to article two, chapter sixteen of this code.
59 Any matters of doubt as to who is an "employer"
60 within the meaning of this article shall be decided by
61 the director. The term "employer" shall not include
62 within its meaning the national guard.

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

65 (7) "Retired employee" shall mean an employee of
66 the state who retired after the twenty-ninth day of
67 April, one thousand nine hundred seventy-one, and an
68 employee of the university of West Virginia board of
69 trustees or the board of directors of the state college
70 system or a county board of education who retires on
71 or after the twenty-first day of April, one thousand
72 nine hundred seventy-two, and all additional eligible
73 employees who retire on or after the effective date of
74 this article and meet the minimum eligibility require-
75 ments for their respective state retirement system:
76 *Provided*, That for the purposes of this article such
77 employees who are not covered by a state retirement
78 system shall, in the case of education employees, meet
79 the minimum eligibility requirements of the state
80 teachers retirement system, and in all other cases,
81 meet the minimum eligibility requirements of the
82 public employees retirement system.

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

1 (a) The public employees insurance agency, hereto-

2 fore created, is continued, and shall consist of the
3 director, the finance board, the advisory board and
4 such employees as may be authorized by law. The
5 director shall be appointed by the governor, with the
6 advice and consent of the senate. He or she shall serve
7 at the will and pleasure of the governor, unless earlier
8 removed from office for cause as provided by law. The
9 director shall have at least three years experience in
10 health insurance administration prior to appointment
11 as director. The director shall receive an annual salary
12 established by the governor not to exceed fifty-five
13 thousand dollars and actual expenses incurred in the
14 performance of official business. The director shall
15 employ such administrative, technical and clerical
16 employees as shall be required for the proper admin-
17 istration of the insurance programs herein provided.
18 The director shall perform such duties as are required
19 of him or her under the provisions of this article and
20 shall be the chief administrative officer of the public
21 employees insurance agency.

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

42 (c) The director shall be responsible for the admin-

43 istration and management of the public employees
44 insurance agency as provided for in this article and in
45 connection therewith shall have the power and
46 authority to make all rules and regulations necessary
47 to effectuate the provisions of this article. Nothing in
48 sections four or five of this article shall limit the
49 director's ability to manage on a day-to-day basis the
50 group insurance plans required or authorized by this
51 article, including, but not limited to, administrative
52 contracting, studies, analyses and audits, eligibility
53 determinations, utilization management provisions
54 and incentives, provider negotiations, provider con-
55 tracting and payment, designation of covered and
56 noncovered services, offering of additional coverage
57 options or cost containment incentives, pursuit of
58 coordination of benefits and subrogation, or any other
59 actions which would serve to implement the plan or
60 plans designed by the finance board.

61 (d) The public employees insurance agency shall
62 terminate in the manner provided in section four,
63 article ten, chapter four of this code, on the first day
64 of July, one thousand nine hundred ninety-three,
65 unless extended by legislation enacted before the
66 termination date.

**§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 created the public employees
2 insurance agency finance board, which shall consist of
3 the director and four members appointed by the
4 governor with the advice and consent of the senate for
5 terms of four years and until the appointment of their
6 successors: *Provided*, That the members initially
7 appointed by the governor shall be appointed not later
8 than the tenth day of September, one thousand nine
9 hundred ninety, and may serve and may perform the
10 duties required by this article until such time as the
11 senate may convene to give its advice and consent. Of
12 the members first appointed, one shall be appointed
13 for a term of one year, one for two years, one for three

14 years, and one for four years. Members may be
15 reappointed for successive terms. No more than three
16 members (including the director) may be of the same
17 political party.

18 (b) Of the four members appointed by the governor,
19 one member shall represent the interests of education
20 employees, one shall represent the interests of public
21 employees and two shall be selected from the public at
22 large. The two members appointed from the public
23 shall each have experience in the financing, develop-
24 ment or management of employee benefit programs.
25 No member may be removed from office by the
26 governor except for official misconduct, incompetence,
27 neglect of duty, neglect of fiduciary duty or other
28 specific responsibility imposed by this article, or gross
29 immorality.

30 (c) The director shall serve as chairperson of the
31 finance board, which shall meet at such time and place
32 as shall be specified by the call of the director or upon
33 the written request to the director of at least two
34 members. Notice of each meeting shall be given in
35 writing to each member by the director at least three
36 days in advance of the meeting. Three members shall
37 constitute a quorum. Members may be compensated
38 fifty dollars for each day or portion of a day actually
39 spent in the performance of their duties and may be
40 reimbursed for reasonable and necessary expenses
41 actually incurred in the performance of their duties.

42 (d) The finance board shall terminate on the thir-
43 tieth day of June, one thousand nine hundred ninety-
44 three, unless extended by legislation enacted before
45 the termination date.

46 (e) Upon termination of the board and notwithstand-
47 ing any provisions in this article to the contrary, the
48 director is authorized to assess monthly employee
49 premium contributions and to change the types and
50 levels of costs to employees only in accordance with
51 this subsection. Any assessments or changes in costs
52 imposed pursuant to this subsection shall be imple-
53 mented by rules and regulations of the director

54 promulgated pursuant to the provisions of chapter
55 twenty-nine-a of this code. Any employee assessments
56 or costs authorized by the finance board shall remain
57 in effect until amended by rule or regulation of the
58 director promulgated pursuant to this subsection.

**§5-16-5. Purpose, powers and duties of the finance board;
initial financial plan; financial plan for fol-
lowing 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
3 employees insurance agency through development of
4 an annual financial plan designed to meet the agency's
5 estimated total financial requirements, taking into
6 account all revenues projected to be made available to
7 the agency, and apportioning necessary costs equitably
8 among participating employers, employees and retired
9 employees and 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
14 the public employees insurance agency for each fiscal
15 year and to review and render written professional
16 opinions as to financial plans proposed by the finance
17 board. The finance board shall also employ the actuary
18 to develop alternative financing options and to per-
19 form such other services as may be requested by the
20 finance board. All reasonable fees and expenses for
21 actuarial services shall be paid by the public
22 employees insurance agency. Any financial plan or
23 modifications to a financial plan approved or proposed
24 by the finance board pursuant to this section shall be
25 submitted to and reviewed by the actuary, and may
26 not be finally approved and submitted to the governor
27 and to the Legislature without the actuary's written
28 professional opinion that the plan may be reasonably
29 expected to generate sufficient revenues to meet all
30 estimated program and administrative costs of the
31 agency, excluding incurred but unreported claims, for
32 the fiscal year for which the plan is proposed. The
33 actuary's opinion on the initial plan required by

34 subsection (d) of this section shall allow for a target of
35 forty-five days of accounts payable to be carried over
36 into the next fiscal year. The actuary's opinion on the
37 financial plan for fiscal year one thousand nine
38 hundred ninety-two shall allow for between thirty and
39 forty-five days of accounts payable to be carried over
40 into the next fiscal year. The actuary's opinion on the
41 financial plan for any succeeding fiscal year shall
42 allow for no more than thirty days of accounts payable
43 to be carried over into the next fiscal year. The
44 actuary's opinion for any fiscal year shall not include
45 a requirement for establishment of a reserve fund.

46 (c) All financial plans required by this section shall
47 include the design of a benefit plan or plans. All
48 financial plans shall establish:

49 (1) Maximum levels of reimbursement which the
50 public employee insurance agency makes to categories
51 of health care providers;

52 (2) Any necessary cost containment measures for
53 implementation by the director;

54 (3) The levels of premium costs to participating
55 employers; and

56 (4) The types and levels of cost to participating
57 employees and retired employees.

58 The financial plans may provide for different levels
59 of costs based on the insureds' ability to pay. The
60 financial plans may also include optional alternative
61 benefit plans with alternative types and levels of cost.
62 The finance board may develop policies which encour-
63 age the use of West Virginia health care providers.

64 (d) *Initial plan.*—The director shall convene the first
65 meeting of the finance board no later than the fif-
66 teenth day of September, one thousand nine hundred
67 ninety. For presentation by the director at the first
68 meeting, the governor shall prepare an estimate of the
69 total amount of general and special revenues which
70 the state has or will have available to fund the public
71 employees insurance agency and its programs for the
72 fiscal year ending on the thirtieth day of June, one

73 thousand nine hundred ninety-one.

74 The finance board shall prepare, no later than the
75 tenth day of November, one thousand nine hundred
76 ninety, a proposed financial plan designed to generate
77 revenues sufficient to meet all program and adminis-
78 trative costs of the public employees insurance agency
79 which have already been incurred but are unpaid, or
80 which the actuary estimates will be incurred and paid
81 during the remainder of fiscal year one thousand nine
82 hundred ninety-one, excluding incurred but unre-
83 ported claims. The finance board shall establish in the
84 proposed financial plan a target of forty five days of
85 accounts payable which may be carried over into the
86 next fiscal year.

87 The finance board shall request its actuary to review
88 the proposed financial plan and to render a written
89 professional opinion stating whether the plan may be
90 reasonably expected to generate sufficient revenues to
91 meet all estimated program and administrative costs of
92 the public employees insurance agency for the fiscal
93 year. The actuary's report shall explain the basis of his
94 or her opinion. If the actuary concludes that the
95 proposed financial plan will not generate sufficient
96 revenues to meet all anticipated costs, then the finance
97 board shall make necessary modifications to the
98 proposed plan to insure that all actuarially-determined
99 financial requirements of the agency will be met.

100 Upon obtaining the actuary's opinion and making all
101 necessary modifications to the proposed plan, the
102 finance board shall conduct two or more public
103 hearings to receive public comment on the proposed
104 financial plan, shall review such comments, and shall
105 finalize and approve the financial plan no later than
106 the twentieth day of November, one thousand nine
107 hundred ninety. Employees shall be notified of any
108 changes in the types and levels of employee costs or
109 benefits contained in the financial plan at least thirty
110 days prior to the date of implementation of the
111 financial plan.

112 The finance board shall submit to the governor and

113 to the Legislature the final, approved financial plan no
114 later than the first day of December, one thousand
115 nine hundred ninety. The financial plan shall become
116 effective and shall be implemented by the director on
117 the first day of January, one thousand nine hundred
118 ninety-one.

119 (e) *Plan for fiscal year one thousand nine hundred*
120 *ninety- two.*—No later than the first day of December,
121 one thousand nine hundred ninety, the governor shall
122 prepare and provide to the finance board an estimate
123 of the total amount of general and special revenues
124 which the state will have available to fund the public
125 employees insurance agency and its programs for the
126 fiscal year beginning the first day of July, one thou-
127 sand nine hundred ninety-one. The finance board shall
128 request its actuary to estimate the total financial
129 requirements of the public employees insurance
130 agency for the fiscal year.

131 The finance board shall prepare a proposed financial
132 plan designed to generate revenues sufficient to meet
133 all estimated program and administrative costs of the
134 public employees insurance agency for the fiscal year.
135 The proposed financial plan shall allow for between
136 thirty and forty-five days of accounts payable to be
137 carried over into the next fiscal year. Before final
138 adoption of the proposed financial plan, the finance
139 board shall request its actuary to review the plan and
140 to render a written professional opinion stating
141 whether the plan will generate sufficient revenues to
142 meet all estimated program and administrative costs of
143 the public employees insurance agency for the fiscal
144 year. The actuary's report shall explain the basis of its
145 opinion. If the actuary concludes that the proposed
146 financial plan will not generate sufficient revenues to
147 meet all anticipated costs, then the finance board shall
148 make necessary modifications to the proposed plan to
149 insure that all actuarially-determined financial require-
150 ments of the agency will be met.

151 Upon obtaining the actuary's opinion, the finance
152 board shall conduct one or more public hearings in
153 each congressional district to receive public comment

154 on the proposed financial plan, shall review such
155 comments, and shall finalize and approve the financial
156 plan.

157 The finance board shall submit to the governor and
158 to the Legislature its final, approved financial plan for
159 fiscal year one thousand nine hundred ninety-two,
160 together with the actuary's final written opinion, no
161 later than the first day of May, one thousand nine
162 hundred ninety-one. The financial plan shall become
163 effective and shall be implemented by the director on
164 the first day of July, one thousand nine hundred
165 ninety-one.

166 (f) *Annual plans.*—The finance board shall prepare,
167 in the manner provided in subsection (e) of this
168 section, an annual financial plan for fiscal year one
169 thousand nine hundred ninety-three and each fiscal
170 year thereafter during which the finance board
171 remains in existence. Any such financial plan shall be
172 designed to allow thirty days or less of accounts
173 payable to be carried over into the next fiscal year.
174 For each such fiscal year, the governor shall provide
175 his estimate of total revenues to the finance board no
176 later than the first day of July of the preceding fiscal
177 year. The finance board shall submit its final,
178 approved financial plan, after obtaining the necessary
179 actuary's opinion and conducting one or more public
180 hearings in each congressional district, to the governor
181 and to the Legislature no later than the first day of
182 January preceding the fiscal year. The financial plan
183 for a fiscal year shall become effective and shall be
184 implemented by the director on the first day of July
185 of such fiscal year.

186 (g) The provisions of chapter twenty-nine-a of this
187 code shall not apply to the preparation, approval and
188 implementation of the financial plans required by this
189 section.

190 (h) The finance board shall meet on at least a
191 quarterly basis to review implementation of its cur-
192 rent financial plan in light of the actual experience of
193 the public employees insurance agency. The board

194 shall review actual costs incurred, any revised cost
195 estimates provided by the actuary, expenditures, and
196 any other factors affecting the fiscal stability of the
197 plan, and may make any additional modifications to
198 the plan necessary to insure that the total financial
199 requirements of the agency for the current fiscal year
200 are met. The financial board may not change the types
201 and levels of cost to employees during its quarterly
202 review except in the event of a true emergency.

203 (i) For any fiscal year in which legislative appropri-
204 ations differ from the governor's estimate of general
205 and special revenues available to the agency, the
206 finance board shall, within thirty days after passage of
207 the budget bill, make any modifications to the plan
208 necessary to insure that the total financial require-
209 ments of the agency for the current fiscal year are
210 met.

211 (j) The types and levels of costs to employers,
212 employees and retired employees participating in
213 public employees insurance agency group insurance
214 plans which are currently in effect on the effective
215 date of this article, are hereby authorized. The types
216 and levels of costs to employees participating in public
217 employees insurance agency group insurance plans
218 which are currently in effect on the effective date of
219 this article, shall remain in effect unless and until
220 changed or authorized to be changed by the finance
221 board in a financial plan prepared and approved in
222 accordance with this section.

**§5-16-6. Creation and composition of advisory board; powers
and duties of board generally; expenses.**

1 (a) The public employees insurance agency advisory
2 board is hereby created and established to provide
3 advice and make recommendations to the director
4 concerning group hospital and surgical insurance,
5 group major medical insurance, and group life and
6 accidental death insurance for all employees in the
7 manner as hereinafter provided. All business of the
8 advisory board shall be transacted in the name of West
9 Virginia public employees insurance agency advisory

10 board.

11 (b) The advisory board shall consist of fifteen
12 members who are citizens of the United States and
13 residents of this state as follows: Three members
14 representing licensed health care professionals, health
15 care facilities or other types of health care providers,
16 appointed by the governor, with the advice and
17 consent of the senate; five members either covered by
18 the public employees insurance plans or from organ-
19 izations representing such employees, one of whom
20 shall represent either retired public employees or
21 retired educators, appointed by the governor, with the
22 advice and consent of the senate, and selected so as to
23 represent as broadly as possible all elements of the
24 employees covered by the plan: *Provided*, That such
25 members shall not be (1) employees of or contractors
26 to any health care facility, (2) licensed health care
27 professionals, (3) members of the immediate family of
28 licensed health care professionals, or (4) an employee
29 of or contractor to any such licensed health care
30 professionals; the insurance commissioner or his or
31 her designee; one representative of the West Virginia
32 health care cost review authority, appointed by the
33 governor, with the advice and consent of the senate;
34 five members from the public at large appointed by
35 the governor, with the advice and consent of the
36 senate. Members of the board shall be selected to
37 represent, as broadly as possible, the different geo-
38 graphical areas within the state. No more than ten of
39 the fifteen members of the board shall be of the same
40 political party.

41 Of the members first appointed by the governor to
42 the advisory board, one health care provider member
43 shall be appointed for a term of two years; one health
44 care provider member shall be appointed for a term of
45 four years and one health care provider member shall
46 be appointed for a term of five years; the member who
47 is the representative of the West Virginia health care
48 cost review authority shall be appointed for a term of
49 three years; the five members who are participants in
50 the public employees insurance plan shall be

51 appointed to terms of one, two, three, four and five
52 years respectively; and the five members who are the
53 public at large shall be appointed to terms of one, two,
54 three, four and five years respectively. Subsequent
55 appointed members shall be appointed to five-year
56 terms except for members appointed to fill vacancies
57 who shall serve for the remainder of the vacant term.
58 Members of the advisory board are eligible for reap-
59 pointment upon the expiration of their terms but may
60 not serve more than two full five-year terms consec-
61 utively. Members' terms shall commence on the first
62 day of September of the year of appointment and end
63 on the thirty-first day of August in the year in which
64 the term expires.

65 The advisory board shall hold a meeting at least
66 twice each year and shall designate the time and place
67 of such meeting. Nine advisory board members shall
68 constitute a quorum at any meeting of the advisory
69 board. Each advisory board member shall be entitled
70 to one vote on each question before the advisory
71 board. A majority of the quorum present shall be
72 required for a decision by the advisory board at its
73 meetings. The advisory board shall keep a record of its
74 proceedings.

75 The board shall elect one of its members as chair-
76 person and shall meet at such time and place as shall
77 be specified by the call of the chairman. All meetings
78 shall be open to the public. Notice of each meeting
79 shall be given in writing to each member by the
80 director at least three days in advance of the meeting
81 period.

82 The advisory board shall be responsible for advising
83 and making recommendations to the director regard-
84 ing the administration and management of the public
85 employees insurance agency as provided for in this
86 article. Under no circumstances, however, will the
87 decisions, advice or recommendations of the advisory
88 board be controlling or binding on the director.

89 No member of the advisory board shall receive any
90 compensation for serving as such; however, each

91 member of the advisory board shall be reimbursed for
92 all reasonable and necessary expenses actually
93 incurred by him or her in carrying out his or her
94 duties as a member of the advisory board.

§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 and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.

1 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 acciden-
5 tal death insurance plan or plans for those employees
6 herein made eligible, and to establish and promulgate
7 rules and regulations for the administration of such
8 plans, subject to the limitations contained in this
9 article. Such plans may also include, among other
10 things, medicines, medical equipment, prosthetic
11 appliances, and such other inpatient and outpatient
12 services and expenses deemed appropriate and desir-
13 able by the agency.

14 The agency shall make available to each employee
15 herein made eligible, at full cost to the employee, the
16 opportunity to purchase optional group life and acci-
17 dental death insurance in an amount not to exceed
18 fifty thousand dollars for life insurance and fifty
19 thousand dollars for accidental death insurance as
20 established under the rules and regulations of the
21 agency. In addition, each employee shall be entitled to
22 have his spouse and dependents, as defined by the
23 rules and regulations of the agency, included in such
24 optional coverage, at full cost to the employee, in an
25 amount not to exceed five thousand dollars for life
26 insurance and five thousand dollars for accidental
27 death insurance for the spouse and not to exceed two
28 thousand dollars in life insurance and two thousand
29 dollars in accidental death insurance for each eligible

30 dependent; and with full authorization hereby to the
31 agency to make the same available and provide such
32 opportunity of purchase to each employee.

33 The finance board may cause to be separately rated
34 for claims experience purposes (1) all employees of the
35 state of West Virginia, (2) all teaching and professional
36 employees of the university of West Virginia board of
37 trustees or the board of directors of the state college
38 system and county boards of education, (3) all non-
39 teaching employees of the university of West Virginia
40 board of trustees or the board of directors of the state
41 college system and county boards of education, or (4)
42 any other categorization which would ensure the
43 stability of the overall program.

§5-16-8. Conditions of insurance program.

1 The insurance plans herein provided for shall be
2 designed by the public employees insurance agency:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical, medical, and prescription drug
5 benefits to be included and the expected reasonable
6 and customary hospital, surgical, medical and prescrip-
7 tion drug expenses as established by the director to be
8 incurred by the affected employee, his or her spouse
9 and his or her dependents. The establishment of
10 reasonable and customary expenses by the public
11 employees insurance agency pursuant to the preceding
12 sentence is not subject to the state administrative
13 procedures act in chapter twenty-nine-a of this code.

14 (2) To include reasonable controls which may
15 include deductible and coinsurance provisions applica-
16 ble to some or all of the benefits, and shall include
17 other provisions, including, but not limited to, copay-
18 ments, preadmission certification, case management
19 programs, and preferred provider arrangements.

20 (3) To prevent unnecessary utilization of the various
21 hospital, surgical, medical and prescription drug
22 services available.

23 (4) To provide reasonable assurance of stability in
24 future years for the plans.

25 (5) To provide major medical insurance for said
26 employees.

27 (6) To provide certain group life and accidental
28 death insurance for the employees covered under this
29 article.

30 (7) To include provisions for the coordination of
31 benefits payable by the terms of such plans with the
32 benefits to which such employee, or his or her spouse
33 or his or her dependents may be entitled by the
34 provisions of any other group hospital, surgical,
35 medical, major medical, or prescription drug insur-
36 ance or any combination thereof.

37 (8) To provide a cash incentive plan for employees,
38 spouses, and dependents by the thirty-first day of
39 December, one thousand nine hundred eighty-eight, to
40 increase utilization of, and to encourage the use of,
41 lower cost alternative health care facilities, health care
42 providers and generic drugs. Such plan shall be
43 reviewed annually by the director and the advisory
44 board.

45 (9) To provide "wellness" programs and activities
46 which will include, but not be limited to, benefit plan
47 incentives to discourage tobacco, alcohol and chemical
48 abuse and an educational program to encourage
49 proper diet and exercise. In establishing "wellness"
50 programs, the division of vocational rehabilitation
51 shall cooperate with the public employees insurance
52 agency in establishing statewide wellness programs
53 and with such division of vocational rehabilitation to
54 contact county boards of education for the use of
55 facilities, equipment or any service related to such
56 purpose, at the request of the director, under the
57 authority hereby granted to contract therefor. Boards
58 of education shall be limited to charging only the cost
59 of janitorial service and increased utilities for the use
60 of the gymnasium and related equipment. The cost of
61 the exercise program shall be paid by county boards of
62 education, the public employees insurance agency, or
63 participating employees, their spouses or dependents.
64 All exercise programs shall be made available to all

65 employees, their spouses or dependents and shall not
66 be limited to employees of county boards of education.

67 (10) To provide a program, to be administered by the
68 director, for a patient audit plan with reimbursement
69 up to a maximum of one thousand dollars annually, to
70 employees for discovery of health care provider or
71 hospital overcharges when the affected employee
72 brings such overcharge to the attention of the plan.
73 The hospital or health care provider shall certify to
74 the director that it has provided, prior to or simultane-
75 ously with the submission of the statement of charges
76 for payments, an itemized statement of the charges to
77 the employee participant for which payment is
78 requested of the plan.

79 (11) To require that all employers give written
80 notice to each covered employee prior to institution of
81 any changes in benefits to employees, and to include
82 appropriate penalty for any employer not providing
83 the required information to any employee.

**§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 insur-
ance; limitations; awarding of contracts;
reinsurance; certificates for covered
employees; discontinuance of contracts.**

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

14 and group life and accidental death insurance in this
15 state.

16 The group life and accidental death insurance herein
17 provided for shall be in the amount of ten thousand
18 dollars for every employee. The amount of the group
19 life and accidental death insurance to which an
20 employee would otherwise be entitled shall be reduced
21 to five thousand dollars upon such employee attaining
22 age sixty-five.

23 All of the insurance coverage to be provided for
24 under this article may be included in one or more
25 similar contracts issued by the same or different
26 carriers.

27 The provisions of article three, chapter five-a of this
28 code, relating to the division of purchases of the
29 department of finance and administration, shall not
30 apply to any contracts for any insurance coverage or
31 professional services authorized to be executed under
32 the provisions of this article. Before entering into any
33 contract for any insurance coverage, as herein autho-
34 rized, said director shall invite competent bids from all
35 qualified and licensed insurance companies or carriers,
36 who may wish to offer plans for the insurance cover-
37 age desired. The director shall deal directly with
38 insurers in presenting specifications and receiving
39 quotations for bid purposes. No commission or finder's
40 fee, or any combination thereof, shall be paid to any
41 individual or agent; but this shall not preclude an
42 underwriting insurance company or companies, at
43 their own expense, from appointing a licensed resident
44 agent, within this state, to service the companies'
45 contracts awarded under the provisions of this article.
46 Commissions reasonably related to actual service
47 rendered for such agent or agents may be paid by the
48 underwriting company or companies: *Provided*, That
49 in no event shall payment be made to any agent or
50 agents when no actual services are rendered or
51 performed. The director shall award such contract or
52 contracts on a competitive basis. In awarding the
53 contract or contracts the director shall take into
54 account the experience of the offering agency, corpo-

55 ration, insurance company or service organization in
56 the group hospital and surgical insurance field, group
57 major medical insurance field, group prescription drug
58 field and group life and accidental death insurance
59 field, and its facilities for the handling of claims. In
60 evaluating these factors, the director may employ the
61 services of impartial, professional insurance analysts
62 or actuaries or both. Any contract executed by the
63 director with a selected carrier shall be a contract to
64 govern all eligible employees subject to the provisions
65 of this article. Nothing contained in this article shall
66 prohibit any insurance carrier from soliciting
67 employees covered hereunder to purchase additional
68 hospital and surgical, major medical or life and
69 accidental death insurance coverage.

70 The director may authorize the carrier with whom
71 a primary contract is executed to reinsure portions of
72 such contract with other carriers which elect to be a
73 reinsurer and who are legally qualified to enter into a
74 reinsurance agreement under the laws of this state.

75 Each employee who is covered under any such
76 contract or contracts shall receive a statement of
77 benefits to which such employee, his or her spouse
78 and his or her dependents are entitled thereunder,
79 setting forth such information as to whom such
80 benefits shall be payable, to whom claims shall be
81 submitted, and a summary of the provisions of any
82 such contract or contracts as they affect the employee,
83 his or her spouse and his or her dependents.

84 The director may at the end of any contract period
85 discontinue any contract or contracts it has executed
86 with any carrier and replace the same with a contract
87 or contracts with any other carrier or carriers meeting
88 the requirements of this article.

**§5-16-10. Contract provisions for group hospital and surgical,
group major medical, group prescription
drug and group life and accidental death
insurance for retired employees, their
spouses and dependents.**

1 Any contract or contracts entered into hereunder

2 may provide for group hospital and surgical, group
3 major medical, group prescription drug and group life
4 and accidental death insurance for retired employees
5 and their spouses and dependents as defined by rules
6 and regulations of the public employees insurance
7 agency, and on such terms as the director may deem
8 appropriate.

9 In the event the public employees insurance agency
10 provides the above benefits for retired employees,
11 their spouses and dependents, the public employees
12 insurance agency shall adopt rules and regulations
13 prescribing the conditions under which retired
14 employees may elect to participate in or withdraw
15 from the plan or plans. Any contract or contracts
16 herein provided for shall be secondary to any hospital,
17 surgical, major medical, prescription drug or other
18 health insurance plan administered by the United
19 States department of health and human services to
20 which the retired employee, spouse or dependent may
21 be eligible under any law or regulation of the United
22 States.

§5-16-11. To whom benefits paid.

1 Any benefits payable under any group hospital and
2 surgical, group major medical and group prescription
3 drug plan or plans may be paid either directly to the
4 attending physician, hospital, medical group, or other
5 person, firm, association or corporation furnishing the
6 service upon which the claim is based, or to the
7 insured upon presentation of valid bills for such
8 service, subject to such provisions designed to facilitate
9 payments as may be made by the director.

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

1 Any person who knowingly secures or attempts to
2 secure benefits payable under this article to which the
3 person is not entitled, or who knowingly secures or
4 attempts to secure greater benefits than those to
5 which the person is entitled, by willfully misrepres-
6 enting the presence or extent of benefits to which the
7 person is entitled under a collateral insurance source,

8 or by willfully misrepresenting any material fact
9 relating to any other information requested by the
10 director or by willfully overcharging for services
11 provided, or by willfully misrepresenting the diagnosis
12 or nature of the service provided, may be found to be
13 overpaid and shall be civilly liable for any overpay-
14 ment. In addition to the civil remedy provided herein,
15 the director shall withhold payment of any benefits
16 due to that person until any overpayment has been
17 recovered or may directly set off, after holding
18 internal administrative proceedings to assure due
19 process, any such overcharges or improperly derived
20 payment against benefits due such person hereunder.
21 Nothing in this section shall be construed to limit any
22 other remedy or civil or criminal penalty provided by
23 law.

**§5-16-13. Payment of costs by employer and employee;
coverage for employee's spouse and depend-
ents generally; short term continuance of
coverage for involuntary employee termina-
tion; extended insurance coverage for retired
employees with accrued annual leave and
sick leave; increased retirement benefits for
retired employees with accrued annual and
sick leave; additional eligible retired
employees; option for health insurance cov-
erage without life insurance coverage made
available to retirees; health insurance for
surviving dependents of deceased employees.**

1 (a) The director is hereby authorized to provide
2 under any contract or contracts entered into under the
3 provisions of this article that the costs of any such
4 group hospital and surgical insurance, group major
5 medical insurance, group prescription drug insurance,
6 group life and accidental death insurance benefit plan
7 or plans may be paid by the employer and employee.
8 In addition, each employee shall be entitled to have
9 his or her spouse and dependents, as defined by the
10 rules and regulations of the public employees insur-
11 ance agency, included in any group hospital and
12 surgical insurance, group major medical insurance or

13 group prescription drug insurance coverage: *Provided*,
14 That such spouse and dependent coverage shall be
15 limited to excess or secondary coverage for each
16 spouse and dependent who has primary coverage from
17 any other source. For purposes of this section, the
18 term “primary coverage” means individual or group
19 hospital and surgical insurance coverage or individual
20 or group major medical insurance coverage or group
21 prescription drug coverage in which the spouse or
22 dependent is the named insured or certificate holder.
23 The director may require proof regarding spouse and
24 dependent primary coverage and shall adopt rules and
25 regulations governing the nature, discontinuance and
26 resumption of any employee’s coverage for his or her
27 spouse and dependents.

28 (b) Should a participating employee be terminated
29 from employment involuntarily or in reduction of
30 work force, the employee’s insurance coverage pro-
31 vided under this article shall continue for a period of
32 three months at no additional cost to the employee:
33 *Provided*, That an employee discharged for misconduct
34 shall not be eligible for extended benefits under this
35 section: *Provided, however*, That coverage may be
36 extended up to the maximum period of three months,
37 while administrative remedies contesting the charge of
38 misconduct are pursued: *Provided further*, That
39 should the discharge for misconduct be upheld, the
40 full cost of the extended coverage shall be reimbursed
41 by the employee. If the employee is again employed or
42 recalled to active employment within twelve months
43 of his prior termination, he or she shall not be
44 considered a new enrollee and shall not be required to
45 again contribute his or her share of the premium cost,
46 if he or she had already fully contributed such share
47 during the prior period of employment.

48 (c) Except as otherwise provided in subsection (f) for
49 higher education full-time faculty employed on an
50 annual contract basis other than for twelve months,
51 when a participating employee, who has elected to
52 participate in the plan before the first day of July, one
53 thousand nine hundred eighty-eight, is compelled or

54 required by law to retire before reaching the age of
55 sixty-five, or when a participating employee volun-
56 tarily retires as provided by law, that employee's
57 accrued annual leave and sick leave, if any, shall be
58 credited toward an extension of the insurance cover-
59 age provided by this article, according to the following
60 formulae: Such insurance coverage for a retired
61 employee shall continue one additional month for
62 every two days of annual leave or sick leave, or both,
63 which the employee had accrued as of the effective
64 date of his or her retirement. For a retired employee,
65 his or her spouse and dependents, such insurance
66 coverage shall continue one additional month for
67 every three days of annual leave or sick leave, or both,
68 which the employee had accrued as of the effective
69 date of his retirement.

70 (d) Notwithstanding the preceding subsection, except
71 as otherwise provided in subsection (f) for higher
72 education full-time faculty employed on an annual
73 contract basis other than for twelve months, when a
74 participating employee who elects to participate in the
75 plan on and after the first day of July, one thousand
76 nine hundred eighty-eight, is compelled or required by
77 law to retire before reaching the age of sixty-five, or
78 when such a participating employee voluntarily retires
79 as provided by law, that employee's annual leave or
80 sick leave, if any, shall be credited toward one-half of
81 the premium cost of the insurance provided by this
82 article, for periods and scope of coverage determined
83 according to the following formulae: (1) One additional
84 month of single retiree coverage for every two days of
85 annual leave or sick leave, or both, which the
86 employee had accrued as of the effective date of his or
87 her retirement; (2) One additional month of coverage
88 for a retiree, his or her spouse and dependents for
89 every three days of annual leave or sick leave, or both,
90 which the employee had accrued as of the effective
91 date of his or her retirement. The remaining premium
92 cost shall be borne by such retired employee if he or
93 she elects such coverage. For purposes of this subsec-
94 tion, an employee who has been a participant under
95 spouse or dependent coverage and who reenters the

96 plan within twelve months after termination of his or
97 her prior coverage, shall be considered to have elected
98 to participate in the plan as of the date of commence-
99 ment of the prior coverage. For purposes of this
100 subsection, an employee shall not be considered a new
101 employee after returning from extended authorized
102 leave on or after the first day of July, one thousand
103 nine hundred eighty-eight.

104 (e) In the alternative to the extension of insurance
105 coverage through premium payment provided in the
106 two preceding subsections, on and after the first day of
107 July, one thousand nine hundred eighty-eight, the
108 participating employee's accrued annual leave and sick
109 leave may be applied, on the basis of two days retire-
110 ment service credit for each one day of accrued annual
111 and sick leave, toward an increase in the employee's
112 retirement benefits with such days constituting addi-
113 tional credited service in computation of such benefits
114 under any state retirement system. However, such
115 credited service shall not be used in meeting initial
116 eligibility for retirement criteria, but only as addi-
117 tional service credited in excess thereof.

118 (f) When a participating employee, who is a higher
119 education full-time faculty member employed on an
120 annual contract basis other than for twelve months, is
121 compelled or required by law to retire, on or after the
122 first day of August, one thousand nine hundred
123 eighty-eight, before reaching the age of sixty-five, or
124 when such a participating employee voluntarily retires
125 as provided by law, on or after the first day of August,
126 one thousand nine hundred eighty-eight, that
127 employee's insurance coverage, as provided by this
128 article, shall be extended according to the following
129 formulae: Such insurance coverage for a retired
130 higher education full-time faculty member, formerly
131 employed on an annual contract basis other than for
132 twelve months, shall continue beyond the effective
133 date of his or her retirement one additional year for
134 each three and one-third years of teaching service, as
135 determined by uniform guidelines established by the
136 university of West Virginia board of trustees and the

137 board of directors of the state college system, for
138 individual coverage, or one additional year for each
139 five years of teaching service for "family" coverage.

140 (g) Any employee who retired prior to the twenty-
141 first day of April, one thousand nine hundred seventy-
142 two, and who also otherwise meets the conditions of
143 the "retired employee" definition in section two of
144 this article, shall be eligible for insurance coverage
145 under the same terms and provisions of this article.
146 The premium cost for any such coverage as estab-
147 lished by the finance board shall be borne by such
148 retired employee.

149 (h) All retirees under the provisions of this article,
150 including those defined in section two of this article;
151 those retiring prior to the twenty-first day of April,
152 one thousand nine hundred seventy-two; and those
153 hereafter retiring, shall be eligible for and permitted
154 to obtain health insurance coverage. The premium
155 cost for any such coverage as established by the
156 finance board, shall be borne by such retired employee.

157 (i) A surviving spouse and dependents of a deceased
158 employee, who was either an active or retired
159 employee just prior to such decease, shall be entitled
160 to be included in any group insurance coverage
161 provided under this article, and such spouse and
162 dependents shall bear the premium cost of such
163 insurance coverage. The finance board shall establish
164 the premium cost of any such coverage.

165 (j) In construing the provisions of this section or any
166 other provisions of this code, the Legislature declares
167 that it is not now nor has it ever been the Legisla-
168 ture's intent that elected public officials be provided
169 any sick leave, annual leave or personal leave, and the
170 enactment of this section is based upon the fact and
171 assumption that no statutory or inherent authority
172 exists extending sick leave, annual leave or personal
173 leave to elected public officials and the very nature of
174 such positions preclude the arising or accumulation of
175 such, so as to be thereafter usable as premium paying
176 credits for which such officials may claim extended

177 insurance benefits.

§5-16-14. Program qualifying for favorable federal income tax treatment.

1 The director shall develop, implement and have in
2 place by the thirty-first day of December, one thou-
3 sand nine hundred ninety, deductible and employee
4 premium programs which qualify for favorable federal
5 income tax treatment under section 125 of the Internal
6 Revenue Code.

§5-16-15. Optional dental, optical, disability and prepaid retirement plan.

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the director shall make available
3 to participants in the public employees insurance
4 system (1) a dental insurance plan; (2) an optical
5 insurance plan; (3) a disability insurance plan; and (4)
6 a prepaid retirement insurance plan. Public employees
7 insurance participants may elect to participate in any
8 one of these plans separately or in combination.
9 Notwithstanding anything in this article to the con-
10 trary, all actuarial and administrative costs of each
11 plan shall be totally borne by the premium payments
12 of the participants or local governing bodies electing to
13 participate in that plan. The director is authorized to
14 employ such administrative practices and procedures
15 with respect to these optional plans as are authorized
16 for the administration of other plans under this article.
17 The director shall establish separate funds (1) for
18 deposit of dental insurance premiums and payment of
19 dental insurance claims, (2) for deposit of optical
20 insurance premium payments and payment of optical
21 insurance claims, (3) for deposit of disability insurance
22 premium payments and payment of disability insur-
23 ance claims. Such funds shall not be supplemented by
24 nor be used to supplement any other funds.

§5-16-16. Preferred provider plan.

1 The director shall, on or before the first day of April,
2 one thousand nine hundred eighty-eight, or as soon as
3 practicable, establish a preferred provider system for

4 the delivery of health care to plan participants by all
5 health care providers, which may include, but not be
6 limited to, medical doctors, chiropractors, physicians,
7 osteopathic physicians, surgeons, hospitals, clinics,
8 nursing homes, pharmacies and pharmaceutical
9 companies.

10 The director shall establish the terms of the pre-
11 ferred provider system and the incentives therefor.
12 The terms and incentives may include multi-year
13 renewal options as are not prohibited by the constitu-
14 tion of this state.

§5-16-17. Preexisting conditions not covered; defined.

1 A preexisting condition is an injury, sickness or
2 pregnancy, or any condition relating to that injury,
3 sickness or pregnancy, for which a participant is
4 diagnosed, receives treatment, or incurs expenses
5 within three months prior to the effective date of
6 coverage: *Provided*, That a preexisting condition shall
7 not include a condition which meets the definition of
8 handicap as provided in section three, article eleven,
9 chapter five of this code.

10 For all participants enrolling in the plan after the
11 effective date of this section, no payment shall be
12 made for expenses incurred for or in connection with
13 a preexisting condition unless the expenses are
14 incurred after the expiration of a one-year period
15 during which the participant is continuously partici-
16 pating in the plan: *Provided*, That these provisions
17 shall not apply to employees who return from
18 extended authorized leave on or after the effective
19 date of this section.

**§5-16-18. Payment of costs by employer; schedule of insur-
ance; special funds created; duties of trea-
surer with respect thereto.**

1 All employers operating from state general revenue
2 or special revenue funds or federal funds or any
3 combination thereof shall budget the cost of insurance
4 coverage provided by the public employees insurance
5 agency to current and retired employees of the

6 employer as a separate line item, titled PEI, in its
7 respective annual budget and shall be responsible for
8 the transfer of funds to the director for the cost of
9 insurance for employees covered by the plan. Each
10 spending unit shall pay to the director its proportion-
11 ate share from each source of funds. Any agency
12 wishing to charge general revenue funds for insurance
13 benefits for retirees under section thirteen of this
14 article must provide documentation to the director
15 that such benefits cannot be paid for by any special
16 revenue account or that the retiring employee has
17 been paid solely with general revenue funds for
18 twelve months prior to retirement.

19 All other employers not operating from the state
20 general revenue fund shall pay to the director their
21 share of premium costs from their respective budgets.
22 The finance board shall establish such employers'
23 share of premium costs to reflect and pay the actual
24 costs of such coverage including incurred but not
25 reported claims.

26 The contribution of such other employers (namely: a
27 county, city or town in the state; any separate corpo-
28 ration or instrumentality established by one or more
29 counties, cities or towns, as permitted by law; any
30 corporation or instrumentality supported in most part
31 by counties, cities or towns; any public corporation
32 charged by law with the performance of a governmen-
33 tal function and whose jurisdiction is coextensive with
34 one or more counties, cities or towns; any comprehen-
35 sive community mental health center or comprehen-
36 sive mental retardation facility established, operated
37 or licensed by the secretary of health and human
38 resources pursuant to section one, article two-a,
39 chapter twenty-seven of this code, and which is
40 supported in part by state, county or municipal funds;
41 and a combined city-county health department created
42 pursuant to article two, chapter sixteen of the code)
43 for their employees shall be such percentage of the
44 cost of the employees' insurance package as the
45 employers deem reasonable and proper under their
46 own particular circumstances.

47 The employee's proportionate share of the premium
48 or cost shall be withheld or deducted by the employer
49 from such employee's salary or wages as and when
50 paid and such sums shall be forwarded to the director
51 with such supporting data as the director may require.

52 All moneys received by the public employees insur-
53 ance agency shall be deposited in a special fund or
54 funds as are necessary in the state treasury and the
55 treasurer of the state shall be custodian of such fund
56 or funds and shall administer such fund or funds in
57 accordance with the provisions of this article or as the
58 director may from time to time direct. The treasurer
59 shall pay all warrants issued by the state auditor
60 against such fund or funds as the director may direct
61 in accordance with the provisions of this article. On
62 and after the first day of July, one thousand nine
63 hundred eighty-eight, all payments previously
64 required to be made to the public employees insurance
65 board shall be made to the public employees insurance
66 agency.

**§5-16-19. Authorization to take advantage of acts of con-
gress, accept gifts, grants and matching
funds.**

1 The public employees insurance agency is autho-
2 rized to take full advantage of the benefits and
3 provisions of any acts of congress and to accept any
4 and all gifts, grants and matching funds, whether in
5 the form of money or services.

§5-16-20. Expense fund.

1 The Legislature shall annually appropriate such
2 sums as may be necessary to pay the proportionate
3 share of the administrative costs for the state as an
4 employer, and each division, agency, board, commis-
5 sion or department of the state which operates out of
6 special revenue funds or federal funds or both shall
7 pay its proportionate share of the administrative costs
8 of the insurance plan or plans authorized under the
9 provisions of this article. All other employers not
10 operating from the state general revenue fund shall
11 pay their proportionate share of the administrative

12 costs of the insurance plan or plans authorized under
13 the provisions of this article.

§5-16-21. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.

1 No elected or appointed official of the state of West
2 Virginia; nor any member, officer, or employees of the
3 Legislature; nor any officer, agent, servant or
4 employee in the executive branch of state government
5 shall have any interest, direct or indirect, in the gain
6 or profits arising from any contract or contracts
7 provided for in this article. Any such person who shall
8 gain, directly or indirectly, from any contract or
9 contracts herein provided for, except as an insured
10 beneficiary thereof, shall be guilty of a misdemeanor,
11 and, upon conviction thereof, shall be punished by a
12 fine not exceeding one thousand dollars, or by impris-
13 onment in the county jail for a period not exceeding
14 one year, or by both, in the discretion of the court:
15 *Provided*, That nothing in this section shall be con-
16 strued to prohibit an elected or appointed official of
17 this state, nor an employee of the legislative, judicial
18 or executive branches from providing health care or
19 entering into contracts provided for in section seven-
20 teen of this article.

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

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

10 Those employees enrolled in the insurance program
11 authorized under the provisions of article two-b,
12 chapter twenty-one-a of this code shall not be required
13 to enroll in or subscribe to an insurance plan or plans

14 authorized by the provisions of this article, and the
15 employees of any department which has an existing
16 insurance program for its employees to which the
17 government of the United States contributes any part
18 or all of the premium or cost thereof may be exemp-
19 ted from the provisions of this article. Any employee
20 or employer exempted under the provisions of this
21 paragraph may enroll in any insurance program
22 authorized by the provisions of this article at any time,
23 to the same extent as any other qualified employee or
24 employer, but any such employee or employer shall
25 not remain enrolled in both such programs. The
26 provisions of articles fourteen, fifteen and sixteen,
27 chapter thirty-three of this code, relating to group life
28 insurance, accident and sickness insurance, and group
29 accident and sickness insurance, shall not be applicable
30 to the provisions of this article whenever the provi-
31 sions of said articles and chapter are in conflict with
32 or contrary to any provision set forth herein or to any
33 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, institu-
37 tions, spending units, or a county board of education
38 shall be exempt from participating in the insurance
39 program provided for by the provisions of this article
40 unless participation by the employer has been
41 approved by a majority vote of the employer's govern-
42 ing body. It shall be the duty of the clerk or secretary
43 of the governing body of an employer who by such
44 majority vote becomes a participant in the insurance
45 program to notify the director not later than ten days
46 after such vote.

**§5-16-23. Members of Legislature may be covered, if cost of
the entire coverage is paid by such members.**

1 Notwithstanding the definition of the term
2 "employee" contained in section two of this article and
3 notwithstanding any other provision of this article to
4 the contrary, members of the Legislature may partic-
5 ipate in and be covered by any insurance plan or plans
6 authorized hereunder for state officers and employees,

7 except that all members of the Legislature who elect
8 to participate in or to be covered by any such plan or
9 plans shall pay their proportionate individual share of
10 the full cost for all group coverage on themselves and
11 their spouses and dependents, so that there will be no
12 cost to the state for the coverage of any such members,
13 spouses and dependents.

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

1 The director shall promulgate such rules and regu-
2 lations as may be required for the effective adminis-
3 tration of the provisions of this article. Except as
4 specifically provided in subsection (e), section four of
5 this article, all rules and regulations of the public
6 employees insurance agency and all hearings held by
7 the public employees insurance agency shall be
8 exempt from the provisions of chapter twenty-nine-a
9 of this code. Any rules and regulations now in exis-
10 tence promulgated by the public employees insurance
11 board or director shall remain in full force and effect
12 until they are amended or replaced by the director.

13 Such regulations shall provide that any employee of
14 the state who has been compelled or required by law
15 to retire before reaching the age of sixty-five years
16 shall be eligible to participate in the public employees'
17 health insurance program at his own expense for the
18 cost of coverage after any extended coverage to which
19 he, his spouse and dependents may be entitled by
20 virtue of his accrued annual leave or sick leave,
21 pursuant to the provisions of section thirteen of this
22 article, has expired. Any employee who voluntarily
23 retires, as provided by law, shall be eligible to partic-
24 ipate in the public employees' health insurance
25 program at his own expense for the cost of coverage
26 after any extended coverage to which he, his spouse
27 and dependents may be entitled by virtue of his
28 accrued annual leave or sick leave, pursuant to the
29 provisions of section thirteen of this article, has

30 expired. The dependents of any deceased retired
31 employee shall be entitled to continue their participa-
32 tion and coverage upon payment of the total cost for
33 such coverage.

34 Any employee who is on a medical leave of absence,
35 approved by his employer, shall, subject to the follow-
36 ing provisions of this paragraph, be entitled to con-
37 tinue his coverage until he returns to his employment,
38 and such employee and employer shall continue to pay
39 their proportionate share of premium costs as pro-
40 vided by this article: *Provided*, That the employer
41 shall be obligated to pay its proportionate share of the
42 premium cost only for a period of one year: *Provided*,
43 *however*, That during the period of such leave of
44 absence, the employee shall, at least once each month,
45 submit to the employer the statement of a qualified
46 physician certifying that the employee is unable to
47 return to work.

48 Any retiree, retiring heretofore or hereafter, shall
49 be eligible to participate in the public employees' life
50 insurance program, including the optional life insur-
51 ance coverage as already available to active employees
52 under this article, at his own expense for the cost of
53 coverage, based upon actuarial experience; and the
54 director shall prepare, by rule and regulation, for such
55 participation and coverages under declining term
56 insurance and optional additional coverage for such
57 retirees.

§5-16-25. Reserve fund.

1 In the event that the budgeted allocation to the
2 public employees insurance agency exceeds actual
3 costs in any given month, the director shall deposit
4 those moneys in a reserve fund maintained by the
5 public employees insurance board or director, for the
6 exclusive purpose of offsetting any future increases in
7 group insurance plan costs.

§5-16-26. Quarterly report.

1 By the thirtieth day of October, one thousand nine
2 hundred ninety-one, and on or before the thirtieth day

3 of January, April, July and October of each year
4 thereafter, the director shall prepare for the approval
5 of the finance board, and thereafter present to the
6 joint committee on government and finance a quar-
7 terly report setting forth:

8 (a) A summary of the cost to the plan of health care
9 claims incurred in the preceding calendar quarter;

10 (b) A summary of the funds accrued to the plan by
11 legislative appropriation, employer and employee
12 premiums or otherwise in the preceding calendar
13 quarter for payment of health care claims;

14 (c) An explanation of all cost containment measures,
15 increased premium rates and any other plan changes
16 adopted by the director in the preceding calendar
17 quarter and estimated cost savings and enhanced
18 revenues resulting therefrom, and a certification that
19 the director made a good faith effort to develop and
20 implement all reasonable health care cost containment
21 alternatives;

22 (d) Expected claim costs for the next calendar year;

23 (e) Such other information as the director deems
24 appropriate; and

25 (f) Any other financial or other information as may
26 be requested by the joint committee on government
27 and finance.

§5-16-27. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-
3 stitutional or invalid, such unconstitutionality or
4 invalidity shall not affect other provisions or applica-
5 tions of the article, and to this end the provisions of
6 this article are declared to be severable.

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

Fredrick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Samuel Ballou
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Will Swadlow
.....
President of the Senate

Bill Miller
.....
Speaker House of Delegates

The within is approved this the *7th*.....
day of *September*....., 1990.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 8/29/90

Time 4:47 PM

RECEIVED

1990 SEP -4 PM 12 00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE