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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2940

(By Cann, Kominar, White, Beach,
Barker, Perry, Perdue and Evans)



Passed March 10, 2007

In Effect July 1, 2007

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COMMITTEE SUBSTITUTE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

FOR

H. B. 2940

(BY CANN, KOMINAR, WHITE, BEACH,
BARKER, PERRY, PERDUE AND EVANS)

[Passed March 10, 2007; in effect July 1, 2007.]

AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-16-1a of said code, all relating to the public employees insurance program and group accident and sickness insurance; and increasing the age of certain dependents for health insurance coverage.

Be it enacted by the Legislature of West Virginia:

That §5-16-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-16-1a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

**§5-16-13. Payment of costs by employer and employee; spouse
and dependent coverage; involuntary employee
termination coverage; conversion of annual leave
and sick leave authorized for health or retirement
benefits; authorization for retiree participation;
continuation of health insurance for surviving
dependents of deceased employees; requirement of
new health plan, limiting employer contribution.**

1 (a) *Cost-sharing.* -- The director shall provide under any
2 contract or contracts entered into under the provisions of this
3 article that the costs of any group hospital and surgical
4 insurance, group major medical insurance, group prescription
5 drug insurance, group life and accidental death insurance
6 benefit plan or plans shall be paid by the employer and
7 employee.

8 (b) *Spouse and dependent coverage.* -- Each employee is
9 entitled to have his or her spouse and dependents included in
10 any group hospital and surgical insurance, group major
11 medical insurance or group prescription drug insurance
12 coverage to which the employee is entitled to participate:
13 *Provided,* That the spouse and dependent coverage is limited
14 to excess or secondary coverage for each spouse and
15 dependent who has primary coverage from any other source.
16 For purposes of this section, the term "primary coverage"
17 means individual or group hospital and surgical insurance
18 coverage or individual or group major medical insurance
19 coverage or group prescription drug coverage in which the
20 spouse or dependent is the named insured or certificate
21 holder. For the purposes of this section, "dependent" means
22 an eligible employee's unmarried child or stepchild under the
23 age of twenty-five if that child or stepchild meets the
24 definition of a "qualifying child" or a "qualifying relative" in
25 section 152 of the Internal Revenue Code. The director may
26 require proof regarding spouse and dependent primary
27 coverage and shall adopt rules governing the nature,

28 discontinuance and resumption of any employee's coverage
29 for his or her spouse and dependents.

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

50 (d) *Conversion of accrued annual and sick leave for*
51 *extended insurance coverage upon retirement for employees*
52 *who elected to participate in the plan before July, one*
53 *thousand nine hundred eighty-eight.* -- Except as otherwise
54 provided in subsection (g) of this section, when an employee
55 participating in the plan, who elected to participate in the plan
56 before the first day of July, one thousand nine hundred
57 eighty-eight, is compelled or required by law to retire before
58 reaching the age of sixty-five, or when a participating
59 employee voluntarily retires as provided by law, that
60 employee's accrued annual leave and sick leave, if any, shall
61 be credited toward an extension of the insurance coverage
62 provided by this article, according to the following formulae:
63 The insurance coverage for a retired employee shall continue
64 one additional month for every two days of annual leave or
65 sick leave, or both, which the employee had accrued as of the
66 effective date of his or her retirement. For a retired

67 employee, his or her spouse and dependents, the insurance
68 coverage shall continue one additional month for every three
69 days of annual leave or sick leave, or both, which the
70 employee had accrued as of the effective date of his or her
71 retirement.

72 (e) *Conversion of accrued annual and sick leave for*
73 *extended insurance coverage upon retirement for employees*
74 *who elected to participate in the plan after June, one*
75 *thousand nine hundred eighty-eight.* -- Notwithstanding
76 subsection (d) of this section, and except as otherwise
77 provided in subsections (g) and (l) of this section when an
78 employee participating in the plan who elected to participate
79 in the plan on and after the first day of July, one thousand
80 nine hundred eighty-eight, is compelled or required by law to
81 retire before reaching the age of sixty-five, or when the
82 participating employee voluntarily retires as provided by law,
83 that employee's annual leave or sick leave, if any, shall be
84 credited toward one half of the premium cost of the insurance
85 provided by this article, for periods and scope of coverage
86 determined according to the following formulae: (1) One
87 additional month of single retiree coverage for every two
88 days of annual leave or sick leave, or both, which the
89 employee had accrued as of the effective date of his or her
90 retirement; or (2) one additional month of coverage for a
91 retiree, his or her spouse and dependents for every three days
92 of annual leave or sick leave, or both, which the employee
93 had accrued as of the effective date of his or her retirement.
94 The remaining premium cost shall be borne by the retired
95 employee if he or she elects the coverage. For purposes of
96 this subsection, an employee who has been a participant
97 under spouse or dependent coverage and who reenters the
98 plan within twelve months after termination of his or her
99 prior coverage shall be considered to have elected to
100 participate in the plan as of the date of commencement of the
101 prior coverage. For purposes of this subsection, an employee
102 shall not be considered a new employee after returning from
103 extended authorized leave on or after the first day of July,
104 one thousand nine hundred eighty-eight.

105 (f) *Increased retirement benefits for retired employees*
106 *with accrued annual and sick leave.* -- In the alternative to

107 the extension of insurance coverage through premium
108 payment provided in subsections (d) and (e) of this section,
109 the accrued annual leave and sick leave of an employee
110 participating in the plan may be applied, on the basis of two
111 days retirement service credit for each one day of accrued
112 annual and sick leave, toward an increase in the employee's
113 retirement benefits with those days constituting additional
114 credited service in computation of the benefits under any
115 state retirement system. However, the additional credited
116 service shall not be used in meeting initial eligibility for
117 retirement criteria, but only as additional service credited in
118 excess thereof.

119 (g) *Conversion of accrued annual and sick leave for*
120 *extended insurance coverage upon retirement for certain*
121 *higher education employees.* -- Except as otherwise provided
122 in subsection (l) of this section, when an employee, who is a
123 higher education full-time faculty member employed on an
124 annual contract basis other than for twelve months, is
125 compelled or required by law to retire before reaching the age
126 of sixty-five, or when such a participating employee
127 voluntarily retires as provided by law, that employee's
128 insurance coverage, as provided by this article, shall be
129 extended according to the following formulae: The insurance
130 coverage for a retired higher education full-time faculty
131 member, formerly employed on an annual contract basis
132 other than for twelve months, shall continue beyond the
133 effective 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 board
137 of directors of the state college system, for individual
138 coverage, or one additional year for each five years of
139 teaching service for "family" coverage.

140 (h) Any employee who retired prior to the twenty-first
141 day of April, one thousand nine hundred seventy-two, and
142 who also otherwise meets the conditions of the "retired
143 employee" definition in section two of this article, shall be
144 eligible for insurance coverage under the same terms and
145 provisions of this article. The retired employee's premium

146 contribution for any such coverage shall be established by the
147 finance board.

148 (i) *Retiree participation.* -- All retirees under the
149 provisions of this article, including those defined in section
150 two of this article; those retiring prior to the twenty-first day
151 of April, one thousand nine hundred seventy-two; and those
152 hereafter retiring are eligible to obtain health insurance
153 coverage. The retired employee's premium contribution for
154 the coverage shall be established by the finance board.

155 (j) *Surviving spouse and dependent participation.* -- A
156 surviving spouse and dependents of a deceased employee,
157 who was either an active or retired employee participating in
158 the plan just prior to his or her death, are entitled to be
159 included in any group insurance coverage provided under this
160 article to which the deceased employee was entitled, and the
161 spouse and dependents shall bear the premium cost of the
162 insurance coverage. The finance board shall establish the
163 premium cost of the coverage.

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

176 (l) *Participation of certain former employees.* -- An
177 employee, eligible for coverage under the provisions of this
178 article who has twenty years of service with any agency or
179 entity participating in the public employees insurance
180 program or who has been covered by the public employees
181 insurance program for twenty years may, upon leaving
182 employment with a participating agency or entity, continue

183 to be covered by the program if the employee pays one
 184 hundred and five percent of the cost of retiree coverage:
 185 *Provided*, That the employee shall elect to continue coverage
 186 under this subsection within two years of the date the
 187 employment with a participating agency or entity is
 188 terminated.

189 (m) *Prohibition on conversion of accrued annual and*
 190 *sick leave for extended coverage upon retirement for new*
 191 *employees who elect to participate in the plan after June, two*
 192 *thousand one.* -- Any employee hired on or after the first day
 193 of July, two thousand one who elects to participate in the plan
 194 may not apply accrued annual or sick leave toward the cost
 195 of premiums for extended insurance coverage upon his or her
 196 retirement. This prohibition does not apply to the conversion
 197 of accrued annual or sick leave for increased retirement
 198 benefits, as authorized by this section: *Provided*, That any
 199 person who has participated in the plan prior to the first day
 200 of July, two thousand one, is not a new employee for
 201 purposes of this subsection if he or she becomes reemployed
 202 with an employer participating in the plan within two years
 203 following his or her separation from employment and he or
 204 she elects to participate in the plan upon his or her
 205 reemployment.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.

1 As used in this article:

2 (a) "Bona fide association" means an association which
 3 has been actively in existence for at least five years; has been
 4 formed and maintained in good faith for purposes other than
 5 obtaining insurance; does not condition membership in the
 6 association on any health status-related factor relating to an
 7 individual; makes accident and sickness insurance offered
 8 through the association available to all members regardless

9 of any health status-related factor relating to members or
10 individuals eligible for coverage through a member; does not
11 make accident and sickness insurance coverage offered
12 through the association available other than in connection
13 with a member of the association; and meets any additional
14 requirements as may be set forth in this chapter or by rule.

15 (b) "Commissioner" means the commissioner of
16 insurance.

17 (c) "Creditable coverage" means, with respect to an
18 individual, coverage of the individual after the thirtieth day
19 of June, one thousand nine hundred ninety-six, under any of
20 the following, other than coverage consisting solely of
21 excepted benefits:

22 (1) A group health plan;

23 (2) A health benefit plan;

24 (3) Medicare Part A or Part B, 42 U. S. C. §1395 et seq.;
25 Medicaid, 42 U. S. C. §1396a et seq. (other than coverage
26 consisting solely of benefits under Section 1928 of the Social
27 Security Act); Civilian Health and Medical Program of the
28 Uniformed Services (CHAMPUS), 10 U. S. C., Chapter 55;
29 and a medical care program of the Indian Health Service or
30 of a tribal organization;

31 (4) A health benefits risk pool sponsored by any state of
32 the United States or by the District of Columbia; a health plan
33 offered under 5 U. S. C., chapter 89; a public health plan as
34 defined in regulations promulgated by the federal secretary
35 of health and human services; or a health benefit plan as
36 defined in the Peace Corps Act, 22 U. S. C. §2504(e).

37 (d) "Dependent" means an eligible employee's spouse or
38 any unmarried child or stepchild under the age of twenty-five
39 if that child or stepchild meets the definition of a "qualifying
40 child" or a "qualifying relative" in section 152 of the Internal
41 Revenue Code.

42 (e) "Eligible employee" means an employee, including an
43 individual who either works or resides in this state, who
44 meets all requirements for enrollment in a health benefit plan.

45 (f) "Excepted benefits" means:

46 (1) Any policy of liability insurance or contract
47 supplemental thereto; coverage only for accident or disability
48 income insurance or any combination thereof; automobile
49 medical payment insurance; credit-only insurance; coverage
50 for on-site medical clinics; workers' compensation insurance;
51 or other similar insurance under which benefits for medical
52 care are secondary or incidental to other insurance benefits;
53 or

54 (2) If offered separately, a policy providing benefits for
55 long-term care, nursing home care, home health care,
56 community-based care or any combination thereof, dental or
57 vision benefits or other similar, limited benefits; or

58 (3) If offered as independent, noncoordinated benefits
59 under separate policies or certificates, specified disease or
60 illness coverage, hospital indemnity or other fixed indemnity
61 insurance, or coverage, such as medicare supplement
62 insurance, supplemental to a group health plan; or

63 (4) A policy of accident and sickness insurance covering
64 a period of less than one year.

65 (g) "Group health plan" means an employee welfare
66 benefit plan, including a church plan or a governmental plan,
67 all as defined in section three of the Employee Retirement
68 Income Security Act of 1974, 29 U. S. C. §1003, to the extent
69 that the plan provides medical care.

70 (h) "Health benefit plan" means benefits consisting of
71 medical care provided directly, through insurance or
72 reimbursement, or indirectly, including items and services
73 paid for as medical care, under any hospital or medical
74 expense incurred policy or certificate; hospital, medical or
75 health service corporation contract; health maintenance

76 organization contract; or plan provided by a
77 multiple-employer trust or a multiple-employer welfare
78 arrangement. "Health benefit plan" does not include
79 excepted benefits.

80 (i) "Health insurer" means an entity licensed by the
81 commissioner to transact accident and sickness in this state
82 and subject to this chapter. "Health insurer" does not include
83 a group health plan.

84 (j) "Health status-related factor" means an individual's
85 health status, medical condition (including both physical and
86 mental illnesses), claims experience, receipt of health care,
87 medical history, genetic information, evidence of insurability
88 (including conditions arising out of acts of domestic
89 violence) or disability.

90 (k) "Medical care" means amounts paid for, or paid for
91 insurance covering, the diagnosis, cure, mitigation, treatment
92 or prevention of disease, or amounts paid for the purpose of
93 affecting any structure or function of the body, including
94 amounts paid for transportation primarily for and essential to
95 such care.

96 (l) "Mental health benefits" means benefits with respect
97 to mental health services, as defined under the terms of a
98 group health plan or a health benefit plan offered in
99 connection with the group health plan.

100 (m) "Network plan" means a health benefit plan under
101 which the financing and delivery of medical care are
102 provided, in whole or in part, through a defined set of
103 providers under contract with the health insurer.

104 (n) "Preexisting condition exclusion" means, with respect
105 to a health benefit plan, a limitation or exclusion of benefits
106 relating to a condition based on the fact that the condition
107 was present before the enrollment date for such coverage,
108 whether or not any medical advice, diagnosis, care or
109 treatment was recommended or received before the
110 enrollment date.

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




Chairman Senate Committee



Chairman House Committee

Originating in the House.

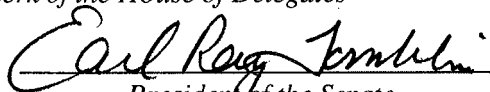
In effect on July 1, 2007



Clerk of the Senate



Clerk of the House of Delegates

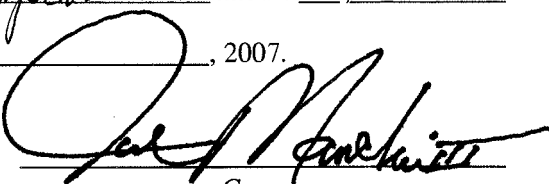


President of the Senate



Speaker of the House of Delegates

The within is approved this the 4th
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time

3:55 pm