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
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.

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

(b) Spouse and dependent coverage. -- Each employee is entitled to have his or her spouse and dependents included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. For the purposes of this section, "dependent" means an eligible employee’s unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in section 152 of the Internal Revenue Code. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature,
discontinuance and resumption of any employee's coverage
for his or her spouse and dependents.

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

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

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

(f) Increased retirement benefits for retired employees with accrued annual and sick leave. -- In the alternative to
the extension of insurance coverage through premium payment provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee participating in the plan may be applied, on the basis of two days retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with those days constituting additional credited service in computation of the benefits under any state retirement system. However, the additional credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(g) Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for certain higher education employees. — Except as otherwise provided in subsection (l) of this section, when an employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as provided by law, that employee's insurance coverage, as provided by this article, shall be extended according to the following formulae: The insurance coverage for a retired higher education full-time faculty member, formerly employed on an annual contract basis other than for twelve months, shall continue beyond the effective date of his or her retirement one additional year for each three and one-third years of teaching service, as determined by uniform guidelines established by the University of West Virginia Board of Trustees and the board of directors of the state college system, for individual coverage, or one additional year for each five years of teaching service for "family" coverage.

(h) Any employee who retired prior to the twenty-first day of April, one thousand nine hundred seventy-two, and who also otherwise meets the conditions of the "retired employee" definition in section two of this article, shall be eligible for insurance coverage under the same terms and provisions of this article. The retired employee's premium
contribution for any such coverage shall be established by the
finance board.

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

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

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

(l) Participation of certain former employees. -- An
employee, eligible for coverage under the provisions of this
article who has twenty years of service with any agency or
entity participating in the public employees insurance
program or who has been covered by the public employees
insurance program for twenty years may, upon leaving
employment with a participating agency or entity, continue
to be covered by the program if the employee pays one hundred and five percent of the cost of retiree coverage:

Provided, That the employee shall elect to continue coverage under this subsection within two years of the date the employment with a participating agency or entity is terminated.

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

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.

As used in this article:

(a) "Bona fide association" means an association which has been actively in existence for at least five years; has been formed and maintained in good faith for purposes other than obtaining insurance; does not condition membership in the association on any health status-related factor relating to an individual; makes accident and sickness insurance offered through the association available to all members regardless
of any health status-related factor relating to members or
individuals eligible for coverage through a member; does not
make accident and sickness insurance coverage offered
through the association available other than in connection
with a member of the association; and meets any additional
requirements as may be set forth in this chapter or by rule.

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

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

1. A group health plan;
2. A health benefit plan;
   Medicaid, 42 U. S. C. §1396a et seq. (other than coverage
   consisting solely of benefits under Section 1928 of the Social
   Security Act); Civilian Health and Medical Program of the
   Uniformed Services (CHAMPUS), 10 U. S. C., Chapter 55;
   and a medical care program of the Indian Health Service or
   a tribal organization;
4. A health benefits risk pool sponsored by any state of
   the United States or by the District of Columbia; a health plan
   offered under 5 U. S. C., chapter 89; a public health plan as
   defined in regulations promulgated by the federal secretary
   of health and human services; or a health benefit plan as

(d) "Dependent" means an eligible employee's spouse or
any unmarried child or stepchild under the age of twenty-five
if that child or stepchild meets the definition of a "qualifying
child" or a "qualifying relative" in section 152 of the Internal
Revenue Code.
(e) "Eligible employee" means an employee, including an individual who either works or resides in this state, who meets all requirements for enrollment in a health benefit plan.

(f) "Excepted benefits" means:

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

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

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

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

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

(h) "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance
organization contract; or plan provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits.

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

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

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

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

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

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