

SB 715

FILED

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 715

(SENATORS PLYMALE AND MINARD, *original sponsors*)

[Passed March 8, 2008; to take effect July 1, 2008.]

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OF DEPT. OF STATE
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 715

(SENATORS PLYMALE AND MINARD, *original sponsors*)

[Passed March 8, 2008; to take effect July 1, 2008.]

AN ACT to amend and reenact §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, all relating to the participation in the Public Employees Insurance Agency of certain retired employees; mandatory participation in Retiree Health Benefit Trust Fund; requiring written certification from nonstate employers who opt out of the other post-employment benefits plan of the fund; providing that agency is not liable to provide benefit where employer opted out; and directing the finance board to study an oral health benefit to children of covered employees.

Be it enacted by the Legislature of West Virginia:

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That §5-16-2 and §5-16-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

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

4 (1) "Agency" means the Public Employees Insurance
5 Agency created by this article.

6 (2) "Director" means the Director of the Public
7 Employees Insurance Agency created by this article.

8 (3) "Employee" means any person, including an
9 elected officer, who works regularly full time in the
10 service of the State of West Virginia and, for the
11 purpose of this article only, the term "employee" also
12 means any person, including an elected officer, who
13 works regularly full time in the service of a county
14 board of education; a county, city or town in the state;
15 any separate corporation or instrumentality established
16 by one or more counties, cities or towns, as permitted by
17 law; any corporation or instrumentality supported in
18 most part by counties, cities or towns; any public
19 corporation charged by law with the performance of a
20 governmental function and whose jurisdiction is
21 coextensive with one or more counties, cities or towns;
22 any comprehensive community mental health center or
23 comprehensive mental retardation facility established,
24 operated or licensed by the Secretary of Health and
25 Human Resources pursuant to section one, article
26 two-a, chapter twenty-seven of this code and which is
27 supported in part by state, county or municipal funds;
28 any person who works regularly full time in the service
29 of the Higher Education Policy Commission, the West
30 Virginia Council for Community and Technical College
31 Education or a governing board, as defined in section
32 two, article one, chapter eighteen-b of this code; any

33 person who works regularly full time in the service of a
34 combined city-county health department created
35 pursuant to article two, chapter sixteen of this code; any
36 person designated as a 21st Century Learner Fellow
37 pursuant to section eleven, article three, chapter
38 eighteen-a of this code; and any person who works as a
39 long-term substitute as defined in section one, article
40 one, chapter eighteen-a of this code in the service of a
41 county board of education: *Provided*, That a long-term
42 substitute who is continuously employed for at least one
43 hundred thirty-three instructional days during an
44 instructional term and until the end of that
45 instructional term is eligible for the benefits provided in
46 this article until the first day of September following
47 that instructional term: *Provided, however*, That a long-
48 term substitute employed fewer than one hundred
49 thirty-three instructional days during an instructional
50 term is eligible for the benefits provided in this article
51 only during such time as he or she is actually employed
52 as a long-term substitute. On and after the first day of
53 January, one thousand nine hundred ninety-four, and
54 upon election by a county board of education to allow
55 elected board members to participate in the Public
56 Employees Insurance Program pursuant to this article,
57 any person elected to a county board of education shall
58 be considered to be an "employee" during the term of
59 office of the elected member. Upon election by the
60 State Board of Education to allow appointed board
61 members to participate in the Public Employees
62 Insurance Program pursuant to this article, any person
63 appointed to the State Board of Education is considered
64 an "employee" during the term of office of the
65 appointed member: *Provided further*, That the elected
66 member of a county board of education and the
67 appointed member of the State Board of Education
68 shall pay the entire cost of the premium if he or she
69 elects to be covered under this article. Any matters of
70 doubt as to who is an employee within the meaning of
71 this article shall be decided by the director.

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

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

78 (ii) Has been designated, in writing, by all other
79 participants in that job-sharing arrangement as the
80 "employee" for purposes of this section; and

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

83 (4) "Employer" means the State of West Virginia, its
84 boards, agencies, commissions, departments,
85 institutions or spending units; a county board of
86 education; a county, city or town in the state; any
87 separate corporation or instrumentality established by
88 one or more counties, cities or towns, as permitted by
89 law; any corporation or instrumentality supported in
90 most part by counties, cities or towns; any public
91 corporation charged by law with the performance of a
92 governmental function and whose jurisdiction is
93 coextensive with one or more counties, cities or towns;
94 any comprehensive community mental health center or
95 comprehensive mental retardation facility established,
96 operated or licensed by the Secretary of Health and
97 Human Resources pursuant to section one, article
98 two-a, chapter twenty-seven of this code and which is
99 supported in part by state, county or municipal funds;
100 a combined city-county health department created
101 pursuant to article two, chapter sixteen of this code;
102 and a corporation meeting the description set forth in
103 section three, article twelve, chapter eighteen-b of this
104 code that is employing a 21st Century Learner Fellow
105 pursuant to section eleven, article three, chapter
106 eighteen of this code but the corporation is not
107 considered an employer with respect to any employee
108 other than a 21st Century Learner Fellow. Any matters
109 of doubt as to who is an "employer" within the meaning
110 of this article shall be decided by the director. The term
111 "employer" does not include within its meaning the
112 National Guard.

113 (5) "Finance board" means the Public Employees

114 Insurance Agency finance board created by this article.

115 (6) "Person" means any individual, company,
116 association, organization, corporation or other legal
117 entity, including, but not limited to, hospital, medical or
118 dental service corporations; health maintenance
119 organizations or similar organization providing prepaid
120 health benefits; or individuals entitled to benefits under
121 the provisions of this article.

122 (7) "Plan", unless the context indicates otherwise,
123 means the medical indemnity plan, the managed care
124 plan option or the group life insurance plan offered by
125 the agency.

126 (8) "Retired employee" means an employee of the state
127 who retired after the twenty-ninth day of April, one
128 thousand nine hundred seventy-one, and an employee
129 of the Higher Education Policy Commission, the Council
130 for Community and Technical College Education, a
131 state institution of higher education or a county board
132 of education who retires on or after the twenty-first day
133 of April, one thousand nine hundred seventy-two, and
134 all additional eligible employees who retire on or after
135 the effective date of this article, meet the minimum
136 eligibility requirements for their respective state
137 retirement system and whose last employer immediately
138 prior to retirement under the state retirement system is
139 a participating employer in the state retirement system
140 and in the Public Employees Insurance Agency:
141 *Provided*, That for the purposes of this article, the
142 employees who are not covered by a state retirement
143 system, but who are covered by a state-approved or
144 state-contracted retirement program or a system
145 approved by the director, shall, in the case of education
146 employees, meet the minimum eligibility requirements
147 of the State Teachers Retirement System and in all
148 other cases, meet the minimum eligibility requirements
149 of the Public Employees Retirement System and may
150 participate in the Public Employees Insurance Agency
151 as retired employees upon terms as the director sets by
152 rule as authorized in this article. Employers with
153 employees who are, or who are eligible to become,

154 retired employees under this article shall be mandatory
155 participants in the Retiree Health Benefit Trust Fund
156 created pursuant to article sixteen-d of this chapter.
157 Nonstate employers may opt out of the West Virginia
158 other post-employment benefits plan of the Retiree
159 Health Benefit Trust Fund and elect to not provide
160 benefits under the Public Employees Insurance Agency
161 to retirees of the nonstate employer, but may do so only
162 upon the written certification, under oath, of an
163 authorized officer of the employer that the employer has
164 no employees who are, or who are eligible to become,
165 retired employees and that the employer will defend
166 and hold harmless the Public Employees Insurance
167 Agency from any claim by one of the employer's past,
168 present or future employees for eligibility to participate
169 in the Public Employees Insurance Agency as a retired
170 employee. As a matter of law, the Public Employees
171 Insurance Agency shall not be liable in any respect to
172 provide plan benefits to a retired employee of a nonstate
173 employer which has opted out of the West Virginia
174 other post-employment benefits plan of the Retiree
175 Health Benefit Trust Fund pursuant to this section.

§5-16-15. Optional dental, optical, disability and prepaid retirement plan, and audiology and hearing-aid service plan.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-nine, the director shall make
3 available to participants in the public employees
4 insurance system: (1) A dental insurance plan; (2) an
5 optical insurance plan; (3) a disability insurance plan;
6 (4) a prepaid retirement insurance plan; and (5) an
7 audiology and hearing-aid services insurance plan.
8 Public employees insurance participants may elect to
9 participate in any one of these plans separately or in
10 combination. All actuarial and administrative costs of
11 each plan shall be totally borne by the premium
12 payments of the participants or local governing bodies
13 electing to participate in that plan. The director is
14 authorized to employ such administrative practices and
15 procedures with respect to these optional plans as are
16 authorized for the administration of other plans under

17 this article. The director shall establish separate funds:
18 (1) For deposit of dental insurance premiums and
19 payment of dental insurance claims; (2) for deposit of
20 optical insurance premium payments and payment of
21 optical insurance claims; (3) for deposit of disability
22 insurance premium payments and payment of disability
23 insurance claims; and (4) for deposit of audiology and
24 hearing-aid service insurance premiums and payment
25 of audiology and hearing-aid insurance claims. Such
26 funds shall not be supplemented by nor be used to
27 supplement any other funds.

28 (b) The finance board shall study the feasibility of an
29 oral health benefit for children of participants.

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


.....
Chairman Senate Committee


.....
Chairman House Committee


Originated in the Senate.

To take effect July 1, 2008.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this
the 28th Day of March, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 24 2008

Time 3:10 pm