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.]
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:
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 article, unless a different meaning is clearly indicated by the context, have the following meanings:

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

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

8 (3) "Employee" means any person, including an elected officer, who works regularly full time in the service of the State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any
person who works regularly full time in the service of a
combined city-county health department created
pursuant to article two, chapter sixteen of this code; any
person designated as a 21st Century Learner Fellow
pursuant to section eleven, article three, chapter
eighteen-a of this code; and any person who works as a
long-term substitute as defined in section one, article
one, chapter eighteen-a of this code in the service of a
county board of education: Provided, That a long-term
substitute who is continuously employed for at least one
hundred thirty-three instructional days during an
instructional term and until the end of that
instructional term is eligible for the benefits provided in
this article until the first day of September following
that instructional term: Provided, however, That a long-
term substitute employed fewer than one hundred
thirty-three instructional days during an instructional
term is eligible for the benefits provided in this article
only during such time as he or she is actually employed
as a long-term substitute. On and after the first day of
January, one thousand nine hundred ninety-four, and
upon election by a county board of education to allow
elected board members to participate in the Public
Employees Insurance Program pursuant to this article,
any person elected to a county board of education shall
be considered to be an "employee" during the term of
office of the elected member. Upon election by the
State Board of Education to allow appointed board
members to participate in the Public Employees
Insurance Program pursuant to this article, any person
appointed to the State Board of Education is considered
an "employee" during the term of office of the
appointed member: Provided further, That the elected
member of a county board of education and the
appointed member of the State Board of Education
shall pay the entire cost of the premium if he or she
elects to be covered under this article. Any matters of
doubt as to who is an employee within the meaning of
this article shall be decided by the director.

On or after the first day of July, one thousand nine
hundred ninety-seven, a person shall be considered an
"employee" if that person meets the following criteria:
(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

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

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

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

(5) "Finance board" means the Public Employees
Insurance Agency finance board created by this article.

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

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

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with 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.

(a) On and after the first day of July, one thousand
eighty-nine, the director shall make
available to participants in the public employees
insurance system: (1) A dental insurance plan; (2) an
optical insurance plan; (3) a disability insurance plan;
(4) a prepaid retirement insurance plan; and (5) an
audiology and hearing-aid services insurance plan.
Public employees insurance participants may elect to
participate in any one of these plans separately or in
combination. All actuarial and administrative costs of
each plan shall be totally borne by the premium
payments of the participants or local governing bodies
electing to participate in that plan. The director is
authorized to employ such administrative practices and
procedures with respect to these optional plans as are
authorized for the administration of other plans under
this article. The director shall establish separate funds: (1) For deposit of dental insurance premiums and payment of dental insurance claims; (2) for deposit of optical insurance premium payments and payment of optical insurance claims; (3) for deposit of disability insurance premium payments and payment of disability insurance claims; and (4) for deposit of audiology and hearing-aid service insurance premiums and payment of audiology and hearing-aid insurance claims. Such funds shall not be supplemented by nor be used to supplement any other funds.

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2008.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the Day of , 2008.

[Signature]
Governor