

SB 446

FILED

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 446**

(SENATORS HELMICK, KESSLER,  
UNGER AND PLYMALE, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

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CLARENCE M. BROWN  
SECRETARY OF STATE

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# Senate Bill No. 446

(SENATORS HELMICK, KESSLER, UNGER AND PLYMALE, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating to clarifying that the surviving spouse and dependents of a deceased public employee participating in a plan of the Public Employees Insurance Agency may only participate in comprehensive group health insurance coverage provided by the Public Employees Insurance Agency.

*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 to read as follows:

### 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  
3 this article that the costs of any group hospital and  
4 surgical insurance, group major medical insurance, group  
5 prescription drug insurance, group life and accidental  
6 death insurance benefit plan or plans shall be paid by the  
7 employer and employee.

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

31 (c) *Continuation after termination.* – If an employee  
32 participating in the plan is terminated from employment

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

51 (d) *Conversion of accrued annual and sick leave for*  
52 *extended insurance coverage upon retirement for employ-*  
53 *ees who elected to participate in the plan before July, 1988.*  
54 – Except as otherwise provided in subsection (g) of this  
55 section, when an employee participating in the plan, who  
56 elected to participate in the plan before July 1, 1988, is  
57 compelled or required by law to retire before reaching the  
58 age of sixty-five, or when a participating employee  
59 voluntarily retires as provided by law, that employee's  
60 accrued annual leave and sick leave, if any, shall be  
61 credited toward an extension of the insurance coverage  
62 provided by this article, according to the following  
63 formulae: The insurance coverage for a retired employee  
64 shall continue one additional month for every two days of  
65 annual leave or sick leave, or both, which the employee  
66 had accrued as of the effective date of his or her retire-  
67 ment. For a retired employee, his or her spouse and  
68 dependents, the insurance coverage shall continue one

69 additional month for every three days of annual leave or  
70 sick leave, or both, which the employee had accrued as of  
71 the effective date of his or her retirement.

72 (e) *Conversion of accrued annual and sick leave for*  
73 *extended insurance coverage upon retirement for employ-*  
74 *ees who elected to participate in the plan after June, 1988.*  
75 – Notwithstanding subsection (d) of this section, and  
76 except as otherwise provided in subsections (g) and (l) of  
77 this section when an employee participating in the plan  
78 who elected to participate in the plan on and after July 1,  
79 1988, is compelled or required by law to retire before  
80 reaching the age of sixty-five, or when the participating  
81 employee voluntarily retires as provided by law, that  
82 employee's annual leave or sick leave, if any, shall be  
83 credited toward one half of the premium cost of the  
84 insurance provided by this article, for periods and scope of  
85 coverage determined according to the following formulae:  
86 (1) One additional month of single retiree coverage for  
87 every two days of annual leave or sick leave, or both,  
88 which the employee had accrued as of the effective date of  
89 his or her retirement; or (2) one additional month of  
90 coverage for a retiree, his or her spouse and dependents for  
91 every three days of annual leave or sick leave, or both,  
92 which the employee had accrued as of the effective date of  
93 his or her retirement. The remaining premium cost shall  
94 be borne by the retired employee if he or she elects the  
95 coverage. For purposes of this subsection, an employee  
96 who has been a participant under spouse or dependent  
97 coverage and who reenters the plan within twelve months  
98 after termination of his or her prior coverage shall be  
99 considered to have elected to participate in the plan as of  
100 the date of commencement of the prior coverage. For  
101 purposes of this subsection, an employee shall not be  
102 considered a new employee after returning from extended  
103 authorized leave on or after July 1, 1988.

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

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

140 (h) Any employee who retired prior to April 21, 1972,  
141 and who also otherwise meets the conditions of the  
142 "retired employee" definition in section two of this article,  
143 shall be eligible for insurance coverage under the same  
144 terms and provisions of this article. The retired em-  
145 ployee's premium contribution for any such coverage shall  
146 be established by the finance board.

147 (i) *Retiree participation.* – All retirees under the provi-  
148 sions of this article, including those defined in section two  
149 of this article; those retiring prior to April 21, 1972; and  
150 those hereafter retiring are eligible to obtain health  
151 insurance coverage. The retired employee's premium  
152 contribution for the coverage shall be established by the  
153 finance board.

154 (j) *Surviving spouse and dependent participation.* – A  
155 surviving spouse and dependents of a deceased employee,  
156 who was either an active or retired employee participating  
157 in the plan just prior to his or her death, are entitled to be  
158 included in any comprehensive group health insurance  
159 coverage provided under this article to which the deceased  
160 employee was entitled, and the spouse and dependents  
161 shall bear the premium cost of the insurance coverage.  
162 The finance board shall establish the premium cost of the  
163 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  
167 the Legislature's intent that elected public officials be  
168 provided any sick leave, annual leave or personal leave,  
169 and the enactment of this section is based upon the fact  
170 and assumption that no statutory or inherent authority  
171 exists extending sick leave, annual leave or personal leave  
172 to elected public officials and the very nature of those  
173 positions preclude the arising or accumulation of any  
174 leave, so as to be thereafter usable as premium paying

175 credits for which the officials may claim extended insur-  
176 ance benefits.

177 (l) *Participation of certain former employees.* – An  
178 employee, eligible for coverage under the provisions of this  
179 article who has twenty years of service with any agency or  
180 entity participating in the public employees insurance  
181 program or who has been covered by the public employees  
182 insurance program for twenty years may, upon leaving  
183 employment with a participating agency or entity, con-  
184 tinue to be covered by the program if the employee pays  
185 one hundred five percent of the cost of retiree coverage:  
186 *Provided,* That the employee shall elect to continue  
187 coverage under this subsection within two years of the  
188 date the employment with a participating agency or entity  
189 is terminated.

190 (m) *Prohibition on conversion of accrued annual and sick*  
191 *leave for extended coverage upon retirement for new*  
192 *employees who elect to participate in the plan after June,*  
193 *2001.* – Any employee hired on or after July 1, 2001, who  
194 elects to participate in the plan may not apply accrued  
195 annual or sick leave toward the cost of premiums for  
196 extended insurance coverage upon his or her retirement.  
197 This prohibition does not apply to the conversion of  
198 accrued annual or sick leave for increased retirement  
199 benefits, as authorized by this section: *Provided,* That any  
200 person who has participated in the plan prior to July 1,  
201 2001, is not a new employee for purposes of this subsection  
202 if he or she becomes reemployed with an employer partici-  
203 pating in the plan within two years following his or her  
204 separation from employment and he or she elects to  
205 participate in the plan upon his or her reemployment.

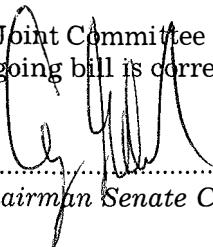
206 (n) *Prohibition on conversion of accrued years of teach-*  
207 *ing service for extended coverage upon retirement for new*  
208 *employees who elect to participate in the plan July, 2009.*  
209 – Any employee hired on or after July 1, 2009, who elects



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210 to participate in the plan may not apply accrued years of  
211 teaching service toward the cost of premiums for extended  
212 insurance coverage upon his or her retirement.

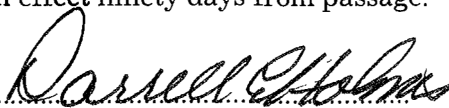
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

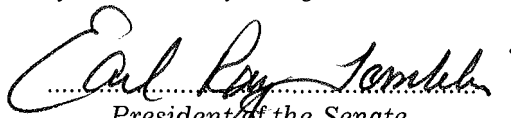
  
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Chairman House Committee

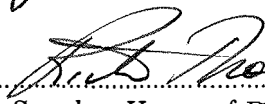
Originated in the Senate.

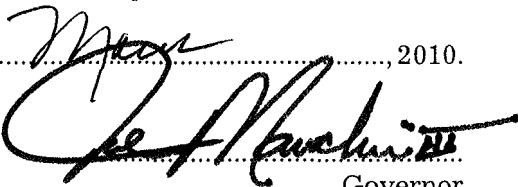
In effect ninety days from passage.

  
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Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is appended* ..... this the *31<sup>st</sup>* .....  
Day of *May* ....., 2010.  
  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 3:45 pm