

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 521**

4 (By Senators Prezioso and Snyder)

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6 [Originating in the Committee on The Judiciary;  
7 reported February 15, 2012.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new section, designated §5-16-27, relating to  
14 the subrogation rights of the Public Employees Insurance  
15 Agency to recover claims paid on behalf of covered employees  
16 and dependents.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended  
19 by adding thereto a new section, designated §5-16-27, to read as  
20 follows:

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

22 **§5-16-27. Assignment of rights; right of subrogation by Public**  
23 **Employees Insurance Agency to the rights of covered**  
24 **employee or covered dependents; rules as to effect of**

1                   **subrogation.**

2           (a) Submission of enrollment forms for health benefits  
3 coverage to the Public Employees Insurance Agency is, as a matter  
4 of law, an assignment of the right of the covered employee or  
5 covered dependent or legal representative thereof to recovery from  
6 liable third parties, to the extent of the cost of medical services  
7 or drugs paid for by the Public Employees Insurance Agency medical  
8 or drug plans. At the time the employee enrolls and each plan year  
9 thereafter, the Public Employees Insurance Agency shall include a  
10 statement in the plan coverage materials provided to the employee  
11 that explains that the covered employee or covered dependent has  
12 assigned all such rights, and the legal implications of making such  
13 assignment of rights as provided in this section. If medical or  
14 drug claims are paid or will be paid to a provider of medical care  
15 on behalf of a covered employee or covered dependent because of any  
16 sickness, injury, disease or disability, and another person is  
17 legally liable for such expense, either pursuant to contract,  
18 negligence or otherwise, the Public Employees Insurance Agency  
19 shall have a right to recover full reimbursement from any award or  
20 settlement for related damages from such other person or from the  
21 covered employee or covered dependent if he or she has been  
22 reimbursed by the other person. The Public Employees Insurance  
23 Agency shall be legally assigned the rights of the covered employee  
24 or covered dependent against the person so liable, but only to the

1 extent of the reasonable value of the medical and drug claims paid  
2 and attributable to the sickness, injury, disease or disability for  
3 which the covered employee or covered dependent has received  
4 damages. When an action or claim is brought by a covered employee  
5 or covered dependent or by someone on his or her behalf against a  
6 third party who may be liable for the injury, disease, disability  
7 or death of a covered employee or covered dependent, any  
8 settlement, judgment or award obtained is subject to the claim of  
9 the Public Employees Insurance Agency for reimbursement of an  
10 amount sufficient to reimburse the Public Employees Insurance  
11 Agency the full amount of medical and drugs claims paid on behalf  
12 of the covered employee or covered dependent under the Public  
13 Employees Insurance Agency plans for the injury, disease,  
14 disability or death of the covered employee or covered dependent.  
15 The claim of the Public Employees Insurance Agency assigned by such  
16 covered employee or covered dependent shall not exceed the amount  
17 of medical and drug expenses for the injury, disease, disability or  
18 death of the covered employee or covered dependent paid by the  
19 Public Employees Insurance Agency on behalf of the covered employee  
20 or covered dependent. The right of subrogation provided in this  
21 section includes all portions of the cause of action, by either  
22 settlement, compromise, judgment or award, notwithstanding any  
23 settlement allocation or apportionment that purports to dispose of  
24 portions of the cause of action not subject to the subrogation. Any

1 settlement, compromise, judgment or award that excludes or limits  
2 the cost of medical or drug services or care shall not preclude the  
3 Public Employees Insurance Agency from enforcing its rights under  
4 this section. The director may compromise, settle and execute a  
5 release of any such claim, in whole or in part.

6 (b) Nothing in this section may be construed so as to prevent  
7 the covered employee or covered dependent from maintaining an  
8 action for injuries received by him or her against any other person  
9 and from including therein, as part of the compensatory damages  
10 sought to be recovered, the amount or amounts of his or her medical  
11 expenses, even though such person received Public Employees  
12 Insurance Agency plan benefits in the payment of such medical  
13 expenses, in whole or in part. If the action be tried by a jury,  
14 the jury shall not be informed as to the interest of the Public  
15 Employees Insurance Agency, if any, and such fact shall not be  
16 disclosed to the jury at any time. The trial judge shall, upon the  
17 entry of judgment on the verdict, direct that an amount equal to  
18 the amount of Public Employees Insurance Agency benefits paid be  
19 withheld and paid over to the Public Employees Insurance Agency.  
20 Irrespective of whether the case be terminated by judgment or by  
21 settlement without trial, from the amount required to be paid to  
22 the Public Employees Insurance Agency there shall be deducted the  
23 attorney fees attributable to such amount in accordance with and in  
24 proportion to the fee arrangement made between the covered employee

1 or covered dependent and his or her attorney of record so that the  
2 Public Employees Insurance Agency shall bear the pro rata portion  
3 of such attorney fees. Nothing in this section shall preclude any  
4 person who has received Public Employees Insurance Agency benefits  
5 from settling any cause of action which he or she may have against  
6 another person and delivering to the Public Employees Insurance  
7 Agency, from the proceeds of such settlement, the sums received by  
8 him or her from the Public Employees Insurance Agency or paid by  
9 the Public Employees Insurance Agency for his or her Public  
10 Employees Insurance Agency benefits. If such other person is aware  
11 of or has been informed of the interest of the Public Employees  
12 Insurance Agency in the matter, it shall be the duty of the person  
13 to whose benefit the release inures to withhold so much of the  
14 settlement as may be necessary to reimburse the Public Employees  
15 Insurance Agency to the extent of its interest in the settlement.  
16 No judgment, award of or settlement in any action or claim by a  
17 Public Employees Insurance Agency covered employee or covered  
18 dependent to recover damages for injuries, disease or disability,  
19 in which the Public Employees Insurance Agency has interest, shall  
20 be satisfied without first giving the Public Employees Insurance  
21 Agency notice and reasonable opportunity to establish its interest.  
22 The Public Employees Insurance Agency shall have sixty days from  
23 receipt of such written notice to advise the covered employee or  
24 covered dependent or his or her representative in writing of the

1 desire of the Public Employees Insurance Agency to establish its  
2 interest through the assignment. If no such written intent is  
3 received within the sixty-day period, then the covered employee or  
4 covered dependent may proceed and in the event of full recovery of  
5 medical and drug expense damages forward to the Public Employees  
6 Insurance Agency the appropriate portion of the recovery proceeds  
7 less the Public Employees Insurance Agency's share of attorney's  
8 fees and costs expended in the matter. In the event of less than  
9 full recovery the covered employee or covered dependent and the  
10 Public Employees Insurance Agency shall agree as to the amount to  
11 be paid to the Public Employees Insurance Agency for its claim. If  
12 there is no recovery, the Public Employees Insurance Agency shall  
13 under no circumstances be liable for any costs or attorney's fees  
14 expended in the matter. If, after being notified in writing of a  
15 subrogation claim and possible liability of the covered employee or  
16 covered dependent, guardian, attorney or personal representative  
17 for failure to subrogate the Public Employees Insurance Agency, a  
18 covered employee or covered dependent, his or her guardian,  
19 attorney or personal representative disposes of the funds  
20 representing the judgment, settlement or award, without the written  
21 approval of the Public Employees Insurance Agency, that person  
22 shall be liable to the Public Employees Insurance Agency for any  
23 amount that, as a result of the disposition of the funds, is not  
24 recoverable by the Public Employees Insurance Agency. In the event

1 that a controversy arises concerning the subrogation claims by the  
2 Public Employees Insurance Agency, an attorney shall interplead,  
3 pursuant to rule twenty-two of the Rules of Civil Procedure, the  
4 portion of the covered employee or covered dependent's settlement  
5 that will satisfy the Public Employees Insurance Agency exclusive  
6 of attorney's fees and costs regardless of any contractual  
7 arrangement between the client and the attorney.

8 (c) Nothing contained herein shall by itself authorize the  
9 Public Employees Insurance Agency to institute a class action or  
10 multiple plaintiff action against any manufacturer, distributor or  
11 vendor of any product to recover medical or drug expenditures paid  
12 for by the Public Employees Insurance Agency plans.

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(NOTE: The purpose of this bill is to define subrogation rights and procedures for the West Virginia Public Employees Insurance Agency.

§5-16-27 is new, therefore, strike-throughs and underlines have been omitted.)