

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 521

(By Senators Prezioso and Snyder)

[Originating in the Committee on The Judiciary;
reported February 15, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-27, relating to the subrogation rights of the Public Employees Insurance Agency to recover claims paid on behalf of covered employees and dependents.

Be it enacted by the Legislature of West Virginia:

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

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

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

1 (a) Submission of enrollment forms for health benefits
2 coverage to the Public Employees Insurance Agency is, as a
3 matter of law, an assignment of the right of the covered
4 employee or covered dependent or legal representative
5 thereof to recovery from liable third parties, to the extent of
6 the cost of medical services or drugs paid for by the Public
7 Employees Insurance Agency medical or drug plans. At the
8 time the employee enrolls and each plan year thereafter, the
9 Public Employees Insurance Agency shall include a state-
10 ment in the plan coverage materials provided to the em-
11 ployee that explains that the covered employee or covered
12 dependent has assigned all such rights, and the legal impli-
13 cations of making such assignment of rights as provided in
14 this section. If medical or drug claims are paid or will be
15 paid to a provider of medical care on behalf of a covered
16 employee or covered dependent because of any sickness,
17 injury, disease or disability, and another person is legally
18 liable for such expense, either pursuant to contract, negli-

19 gence or otherwise, the Public Employees Insurance Agency
20 shall have a right to recover full reimbursement from any
21 award or settlement for related damages from such other
22 person or from the covered employee or covered dependent
23 if he or she has been reimbursed by the other person. The
24 Public Employees Insurance Agency shall be legally assigned
25 the rights of the covered employee or covered dependent
26 against the person so liable, but only to the extent of the
27 reasonable value of the medical and drug claims paid and
28 attributable to the sickness, injury, disease or disability for
29 which the covered employee or covered dependent has
30 received damages. When an action or claim is brought by a
31 covered employee or covered dependent or by someone on his
32 or her behalf against a third party who may be liable for the
33 injury, disease, disability or death of a covered employee or
34 covered dependent, any settlement, judgment or award
35 obtained is subject to the claim of the Public Employees
36 Insurance Agency for reimbursement of an amount sufficient
37 to reimburse the Public Employees Insurance Agency the full
38 amount of medical and drugs claims paid on behalf of the
39 covered employee or covered dependent under the Public
40 Employees Insurance Agency plans for the injury, disease,

41 disability or death of the covered employee or covered
42 dependent. The claim of the Public Employees Insurance
43 Agency assigned by such covered employee or covered
44 dependent shall not exceed the amount of medical and drug
45 expenses for the injury, disease, disability or death of the
46 covered employee or covered dependent paid by the Public
47 Employees Insurance Agency on behalf of the covered
48 employee or covered dependent. The right of subrogation
49 provided in this section includes all portions of the cause of
50 action, by either settlement, compromise, judgment or award,
51 notwithstanding any settlement allocation or apportionment
52 that purports to dispose of portions of the cause of action not
53 subject to the subrogation. Any settlement, compromise,
54 judgment or award that excludes or limits the cost of medical
55 or drug services or care shall not preclude the Public Em-
56 ployees Insurance Agency from enforcing its rights under
57 this section. The director may compromise, settle and
58 execute a release of any such claim, in whole or in part.

59 (b) Nothing in this section may be construed so as to
60 prevent the covered employee or covered dependent from
61 maintaining an action for injuries received by him or her
62 against any other person and from including therein, as part

63 of the compensatory damages sought to be recovered, the
64 amount or amounts of his or her medical expenses, even
65 though such person received Public Employees Insurance
66 Agency plan benefits in the payment of such medical
67 expenses, in whole or in part. If the action be tried by a jury,
68 the jury shall not be informed as to the interest of the Public
69 Employees Insurance Agency, if any, and such fact shall not
70 be disclosed to the jury at any time. The trial judge shall,
71 upon the entry of judgment on the verdict, direct that an
72 amount equal to the amount of Public Employees Insurance
73 Agency benefits paid be withheld and paid over to the Public
74 Employees Insurance Agency. Irrespective of whether the
75 case be terminated by judgment or by settlement without
76 trial, from the amount required to be paid to the Public
77 Employees Insurance Agency there shall be deducted the
78 attorney fees attributable to such amount in accordance with
79 and in proportion to the fee arrangement made between the
80 covered employee or covered dependent and his or her
81 attorney of record so that the Public Employees Insurance
82 Agency shall bear the pro rata portion of such attorney fees.
83 Nothing in this section shall preclude any person who has
84 received Public Employees Insurance Agency benefits from

85 settling any cause of action which he or she may have against
86 another person and delivering to the Public Employees
87 Insurance Agency, from the proceeds of such settlement, the
88 sums received by him or her from the Public Employees
89 Insurance Agency or paid by the Public Employees Insurance
90 Agency for his or her Public Employees Insurance Agency
91 benefits. If such other person is aware of or has been in-
92 formed of the interest of the Public Employees Insurance
93 Agency in the matter, it shall be the duty of the person to
94 whose benefit the release inures to withhold so much of the
95 settlement as may be necessary to reimburse the Public
96 Employees Insurance Agency to the extent of its interest in
97 the settlement. No judgment, award of or settlement in any
98 action or claim by a Public Employees Insurance Agency
99 covered employee or covered dependent to recover damages
100 for injuries, disease or disability, in which the Public
101 Employees Insurance Agency has interest, shall be satisfied
102 without first giving the Public Employees Insurance Agency
103 notice and reasonable opportunity to establish its interest.
104 The Public Employees Insurance Agency shall have sixty
105 days from receipt of such written notice to advise the covered
106 employee or covered dependent or his or her representative

107 in writing of the desire of the Public Employees Insurance
108 Agency to establish its interest through the assignment. If no
109 such written intent is received within the sixty-day period,
110 then the covered employee or covered dependent may
111 proceed and in the event of full recovery of medical and drug
112 expense damages forward to the Public Employees Insurance
113 Agency the appropriate portion of the recovery proceeds less
114 the Public Employees Insurance Agency's share of attorney's
115 fees and costs expended in the matter. In the event of less
116 than full recovery the covered employee or covered depend-
117 ent and the Public Employees Insurance Agency shall agree
118 as to the amount to be paid to the Public Employees Insur-
119 ance Agency for its claim. If there is no recovery, the Public
120 Employees Insurance Agency shall under no circumstances
121 be liable for any costs or attorney's fees expended in the
122 matter. If, after being notified in writing of a subrogation
123 claim and possible liability of the covered employee or
124 covered dependent, guardian, attorney or personal represen-
125 tative for failure to subrogate the Public Employees Insur-
126 ance Agency, a covered employee or covered dependent, his
127 or her guardian, attorney or personal representative disposes
128 of the funds representing the judgment, settlement or award,

129 without the written approval of the Public Employees
130 Insurance Agency, that person shall be liable to the Public
131 Employees Insurance Agency for any amount that, as a result
132 of the disposition of the funds, is not recoverable by the
133 Public Employees Insurance Agency. In the event that a
134 controversy arises concerning the subrogation claims by the
135 Public Employees Insurance Agency, an attorney shall
136 interplead, pursuant to rule twenty-two of the Rules of Civil
137 Procedure, the portion of the covered employee or covered
138 dependent's settlement that will satisfy the Public Employ-
139 ees Insurance Agency exclusive of attorney's fees and costs
140 regardless of any contractual arrangement between the client
141 and the attorney.

142 (c) Nothing contained herein shall by itself authorize the
143 Public Employees Insurance Agency to institute a class
144 action or multiple plaintiff action against any manufacturer,
145 distributor or vendor of any product to recover medical or
146 drug expenditures paid for by the Public Employees Insur-
147 ance Agency plans.

(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.)