

**H. B. 2367**

(By Delegate Rodighiero)

[Introduced January 26, 2015; referred to the

Committee on Banking and Insurance then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §5-16-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-15-8b of said code, all relating to permitting members of volunteer fire departments to participate in the state’s public employees insurance plan; adding to the definitions of employer and employee; and authorizing the payment of the costs of the insurance coverage.

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

That §5-16-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-15-8b of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,  
SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD  
OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.  
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

1 **§5-16-2. Definitions.**

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

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

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

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

1 pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works  
2 as a long-term substitute as defined in section one, article one, chapter eighteen-a of this code in the  
3 service of a county board of education: *Provided*, That a long-term substitute who is continuously  
4 employed for at least one hundred thirty-three instructional days during an instructional term, and  
5 until the end of that instructional term, is eligible for the benefits provided in this article until  
6 September 1 following that instructional term: *Provided, however*, That a long-term substitute  
7 employed fewer than one hundred thirty-three instructional days during an instructional term is  
8 eligible for the benefits provided in this article only during such time as he or she is actually  
9 employed as a long-term substitute. ~~On and after January 1, 1994, and~~ Upon election by a county  
10 board of education to allow elected board members to participate in the Public Employees Insurance  
11 Program pursuant to this article, any person elected to a county board of education shall be  
12 considered to be an “employee” during the term of office of the elected member. Upon election by  
13 the State Board of Education to allow appointed board members to participate in the Public  
14 Employees Insurance Program pursuant to this article, any person appointed to the State Board of  
15 Education is considered an “employee” during the term of office of the appointed member: *Provided*  
16 *further*, That the elected member of a county board of education and the appointed member of the  
17 State Board of Education shall pay the entire cost of the premium if he or she elects to be covered  
18 under this article. Any matters of doubt as to who is an employee within the meaning of this article  
19 shall be decided by the director.

20 ~~On or after July 1, 1997~~, A person shall be considered an “employee” if that person meets  
21 the following criteria:

22 (i) Participates in a job-sharing arrangement as defined in section one, article one, chapter

1 eighteen-a of this code;

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

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

5 On or after July 1, 2015, a person is also considered an “employee” if that person meets the  
6 following criteria:

7 (i) Is a volunteer firefighter of a volunteer fire company that receives revenues from the  
8 Municipal Pensions and Protection Fund or the Fire Protection Fund pursuant to section eight-a,  
9 article fifteen, chapter eight of this code;

10 (ii) Complies with all the responsibilities of a volunteer firefighter as set forth in Part II,  
11 article fifteen, chapter eight of this code, including, but not limited to, required and necessary  
12 firefighters training; and

13 (iii) Fulfills all the duties of a volunteer firefighter required by the volunteer fire company.

14 (4) “Employer” means the State of West Virginia, its boards, agencies, commissions,  
15 departments, institutions or spending units; a county board of education; a county, city or town in  
16 the state; any separate corporation or instrumentality established by one or more counties, cities or  
17 towns, as permitted by law; any corporation or instrumentality supported in most part by counties,  
18 cities or towns; any public corporation charged by law with the performance of a governmental  
19 function and whose jurisdiction is coextensive with one or more counties, cities or towns; any  
20 comprehensive community mental health center or comprehensive mental retardation facility  
21 established, operated or licensed by the Secretary of Health and Human Resources pursuant to  
22 section one, article two-a, chapter twenty-seven of this code and which is supported in part by state,

1 county or municipal funds; a combined city-county health department created pursuant to article two,  
2 chapter sixteen of this code; a volunteer fire company that receives revenues from the Municipal  
3 Pensions and Protection Fund or the Fire Protection Fund pursuant to section eight-a, article fifteen,  
4 chapter eight of this code; and a corporation meeting the description set forth in section three, article  
5 twelve, chapter eighteen-b of this code that is employing a Twenty-First Century Learner Fellow  
6 pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not  
7 considered an employer with respect to any employee other than a Twenty-First Century Learner  
8 Fellow. Any matters of doubt as to who is an “employer” within the meaning of this article shall be  
9 decided by the director. The term “employer” does not include within its meaning the National  
10 Guard.

11 (5) “Finance board” means the Public Employees Insurance Agency finance board created  
12 by this article.

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

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

19 (8) “Retired employee” means an employee of the state who retired after April 29, 1971, and  
20 an employee of the Higher Education Policy Commission, the Council for Community and Technical  
21 College Education, a state institution of higher education or a county board of education who retires  
22 on or after April 21, 1972, and all additional eligible employees who retire on or after the effective

1 date of this article, meet the minimum eligibility requirements for their respective state retirement  
2 system and whose last employer immediately prior to retirement under the state retirement system  
3 is a participating employer in the state retirement system and in the Public Employees Insurance  
4 Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a  
5 state retirement system, but who are covered by a state-approved or state-contracted retirement  
6 program or a system approved by the director, shall, in the case of education employees, meet the  
7 minimum eligibility requirements of the state Teachers Retirement System and in all other cases,  
8 meet the minimum eligibility requirements of the Public Employees Retirement System and may  
9 participate in the Public Employees Insurance Agency as retired employees upon terms as the  
10 director sets by rule as authorized in this article. Employers with employees who are, or who are  
11 eligible to become, retired employees under this article shall be mandatory participants in the Retiree  
12 Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers  
13 may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit  
14 Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to  
15 retirees of the nonstate employer, but may do so only upon the written certification, under oath, of  
16 an authorized officer of the employer that the employer has no employees who are, or who are  
17 eligible to become, retired employees and that the employer will defend and hold harmless the Public  
18 Employees Insurance Agency from any claim by one of the employer's past, present or future  
19 employees for eligibility to participate in the Public Employees Insurance Agency as a retired  
20 employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any  
21 respect to provide plan benefits to a retired employee of a nonstate employer which has opted out  
22 of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund

1 pursuant to this section.

2 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

3 **ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL**  
4 **SERVICE FOR PAID FIRE DEPARTMENTS.**

5 **§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection**  
6 **fund and the fire protection fund.**

7 Revenues allocated to volunteer and part volunteer fire companies and departments may be  
8 expended only for the items listed in subdivisions (1) through ~~(15)~~ (16) of this section.

9 Funds received from the state for volunteer and part volunteer fire companies and  
10 departments, pursuant to sections fourteen-d and thirty-three, article three, and section seven, article  
11 twelve-c, all of chapter thirty-three of this code, may not be commingled with funds received from  
12 any other source. Expenditures may be made for the following:

13 (1) Personal protective equipment, including protective head gear, bunker coats, pants, boots,  
14 combination of bunker pants and boots, coats and gloves;

15 (2) Equipment for compliance with the national fire protection standard or automotive fire  
16 apparatus, NFPA-1901;

17 (3) Compliance with insurance service office recommendations relating to fire departments;

18 (4) Rescue equipment, communications equipment and ambulance equipment: *Provided,*

19 That no moneys received from the municipal pensions and protection fund or the fire protection fund  
20 may be used for equipment for personal vehicles owned or operated by volunteer fire company or  
21 department members;

22 (5) Capital improvements reasonably required for effective and efficient fire protection

- 1 service and maintenance of the capital improvements;
- 2 (6) Retirement of debts;
- 3 (7) Payment of utility bills;
- 4 (8) Payment of the cost of immunizations, including any laboratory work incident to the  
5 immunizations, for firefighters against hepatitis-b and other blood borne pathogens: *Provided*, That  
6 the vaccine shall be purchased through the state immunization program or from the lowest cost  
7 vendor available: *Provided, however*, That volunteer and part volunteer fire companies and  
8 departments shall seek to obtain no cost administration of the vaccinations through local boards of  
9 health: *Provided further*, That in the event any volunteer or part volunteer fire company or  
10 department is unable to obtain no cost administration of the vaccinations through a local board of  
11 health, the company or department shall seek to obtain the lowest cost available for the  
12 administration of the vaccinations from a licensed health care provider;
- 13 (9) Any filing fee required to be paid to the Legislative Auditor's Office under section  
14 fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures  
15 submitted by volunteer or part volunteer fire companies or departments that receive state funds or  
16 grants;
- 17 (10) Property/casualty insurance premiums for protection and indemnification against loss  
18 or damage or liability;
- 19 (11) Operating expenses reasonably required in the normal course of providing effective and  
20 efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage  
21 and accounting costs;
- 22 (12) Dues paid to national, state and county associations;

- 1 (13) Workers' Compensation premiums;
- 2 (14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters; and
- 3 (15) Educational and training supplies and fire prevention promotional materials, not to
- 4 exceed \$500 per year.
- 5 (16) The employer's portion of the costs of insurance coverage provided by the West Virginia
- 6 Public Employees Insurance Act for qualified volunteer firefighters.

NOTE: This bill permits qualified volunteer firefighters to be covered by the state's public health insurance plan. The bill also adds "volunteer firefighter" to the definition of employee and "volunteer fire company" to the definition of employer, and permits the payment of the employer's portion of the costs relating to the plan to be paid from funds available to volunteer fire companies.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.