

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

### Introduced

## House Bill 2973

FISCAL  
NOTE

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KELLY, HANSHAW (MR. SPEAKER), AND ROWAN

[Introduced March 08, 2021; Referred to the  
Committee on Pensions and Retirement then  
Finance]

1 A BILL to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating  
2 to the use of accrued annual and sick leave for retirement service credit in the Teachers  
3 Retirement System.

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

**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 contract or contracts entered into  
2 under the provisions of this article that the costs of any group hospital and surgical insurance,  
3 group major medical insurance, group prescription drug insurance, group life and accidental death  
4 insurance benefit plan or plans shall be paid by the employer and employee.

5 (b) *Spouse and dependent coverage.* -- Each employee is entitled to have his or her  
6 spouse and dependents included in any group hospital and surgical insurance, group major  
7 medical insurance or group prescription drug insurance coverage to which the employee is  
8 entitled to participate: *Provided,* That the spouse and dependent coverage is limited to excess or  
9 secondary coverage for each spouse and dependent who has primary coverage from any other  
10 source. For purposes of this section, the term "primary coverage" means individual or group  
11 hospital and surgical insurance coverage or individual or group major medical insurance coverage  
12 or group prescription drug coverage in which the spouse or dependent is the named insured or  
13 certificate holder. For the purposes of this section, "dependent" includes an eligible employee's  
14 unmarried child or stepchild under the age of twenty-five if that child or stepchild meets the  
15 definition of a "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue

16 Code. The director may require proof regarding spouse and dependent primary coverage and  
17 shall adopt rules governing the nature, discontinuance and resumption of any employee's  
18 coverage for his or her spouse and dependents.

19 (c) *Continuation after termination.* -- If an employee participating in the plan is terminated  
20 from employment involuntarily or in reduction of work force, the employee's insurance coverage  
21 provided under this article shall continue for a period of three months at no additional cost to the  
22 employee and the employer shall continue to contribute the employer's share of plan premiums  
23 for the coverage. An employee discharged for misconduct shall not be eligible for extended  
24 benefits under this section. Coverage may be extended up to the maximum period of three  
25 months, while administrative remedies contesting the charge of misconduct are pursued. If the  
26 discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed  
27 by the employee. If the employee is again employed or recalled to active employment within  
28 twelve months of his or her prior termination, he or she shall not be considered a new enrollee  
29 and may not be required to again contribute his or her share of the premium cost, if he or she had  
30 already fully contributed such share during the prior period of employment.

31 (d) *Conversion of accrued annual and sick leave for extended insurance coverage upon*  
32 *retirement for employees who elected to participate in the plan before July, 1988.* -- Except as  
33 otherwise provided in subsection (g) of this section, when an employee participating in the plan,  
34 who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire  
35 before reaching the age of sixty-five, or when a participating employee voluntarily retires as  
36 provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited  
37 toward an extension of the insurance coverage provided by this article, according to the following  
38 formulae: The insurance coverage for a retired employee shall continue one additional month for  
39 every two days of annual leave or sick leave, or both, which the employee had accrued as of the

40 effective date of his or her retirement. For a retired employee, his or her spouse and dependents,  
41 the insurance coverage shall continue one additional month for every three days of annual leave  
42 or sick leave, or both, which the employee had accrued as of the effective date of his or her  
43 retirement.

44 *(e) Conversion of accrued annual and sick leave for extended insurance coverage upon*  
45 *retirement for employees who elected to participate in the plan after June, 1988. --*

46 Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections  
47 (g) and (l) of this section, when an employee participating in the plan who elected to participate  
48 in the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the  
49 age of sixty-five, or when the participating employee voluntarily retires as provided by law, that  
50 employee's annual leave or sick leave, if any, shall be credited toward one half of the premium  
51 cost of the insurance provided by this article, for periods and scope of coverage determined  
52 according to the following formulae: (1) One additional month of single retiree coverage for every  
53 two days of annual leave or sick leave, or both, which the employee had accrued as of the  
54 effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or  
55 her spouse and dependents for every three days of annual leave or sick leave, or both, which the  
56 employee had accrued as of the effective date of his or her retirement. The remaining premium  
57 cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this  
58 subsection, an employee who has been a participant under spouse or dependent coverage and  
59 who reenters the plan within twelve months after termination of his or her prior coverage shall be  
60 considered to have elected to participate in the plan as of the date of commencement of the prior  
61 coverage. For purposes of this subsection, an employee shall not be considered a new employee  
62 after returning from extended authorized leave on or after July 1, 1988.

63 *(f) Increased retirement benefits for retired employees with accrued annual and sick leave.*

64 -- In the alternative to the extension of insurance coverage through premium payment provided in  
65 subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee  
66 participating in the plan may be applied, on the basis of two days' retirement service credit for  
67 each one day of accrued annual and sick leave, toward an increase in the employee's retirement  
68 benefits with those days constituting additional credited service in computation of the benefits  
69 under any state retirement system: ~~Provided, That for a person who first becomes a member of~~  
70 ~~the Teachers Retirement System as provided in article seven-a, chapter eighteen of this code on~~  
71 ~~or after July 1, 2015, accrued annual and sick leave of an employee participating in the plan may~~  
72 ~~not be applied for retirement service credit.~~ However, the additional credited service shall not be  
73 used in meeting initial eligibility for retirement criteria, but only as additional service credited in  
74 excess thereof.

75 (g) *Conversion of accrued annual and sick leave for extended insurance coverage upon*  
76 *retirement for certain higher education employees.* – Except as otherwise provided in subsection  
77 (l) of this section, when an employee, who is a higher education full-time faculty member  
78 employed on an annual contract basis other than for twelve months, is compelled or required by  
79 law to retire before reaching the age of sixty-five, or when such a participating employee  
80 voluntarily retires as provided by law, that employee's insurance coverage, as provided by this  
81 article, shall be extended according to the following formulae: The insurance coverage for a retired  
82 higher education full-time faculty member, formerly employed on an annual contract basis other  
83 than for twelve months, shall continue beyond the effective date of his or her retirement one  
84 additional year for each three and one-third years of teaching service, as determined by uniform  
85 guidelines established by the University of West Virginia Board of Trustees and the board of  
86 directors of the state college system, for individual coverage, or one additional year for each five  
87 years of teaching service for family coverage.

88 (h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the  
89 conditions of the "retired employee" definition in section two of this article, shall be eligible for  
90 insurance coverage under the same terms and provisions of this article. The retired employee's  
91 premium contribution for any such coverage shall be established by the finance board.

92 (i) *Retiree participation.* -- All retirees under the provisions of this article, including those  
93 defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter  
94 retiring are eligible to obtain health insurance coverage. The retired employee's premium  
95 contribution for the coverage shall be established by the finance board.

96 (j) *Surviving spouse and dependent participation.* -- A surviving spouse and dependents  
97 of a deceased employee, who was either an active or retired employee participating in the plan  
98 just prior to his or her death, are entitled to be included in any comprehensive group health  
99 insurance coverage provided under this article to which the deceased employee was entitled, and  
100 the spouse and dependents shall bear the premium cost of the insurance coverage. The finance  
101 board shall establish the premium cost of the coverage.

102 (k) *Elected officials.* -- In construing the provisions of this section or any other provisions  
103 of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent  
104 that elected public officials be provided any sick leave, annual leave or personal leave, and the  
105 enactment of this section is based upon the fact and assumption that no statutory or inherent  
106 authority exists extending sick leave, annual leave or personal leave to elected public officials and  
107 the very nature of those positions preclude the arising or accumulation of any leave, so as to be  
108 thereafter usable as premium paying credits for which the officials may claim extended insurance  
109 benefits.

110 (l) *Participation of certain former employees.* -- An employee, eligible for coverage under  
111 the provisions of this article who has twenty years of service with any agency or entity participating

112 in the public employees insurance program or who has been covered by the public employees  
113 insurance program for twenty years may, upon leaving employment with a participating agency  
114 or entity, continue to be covered by the program if the employee pays one hundred five percent  
115 of the cost of retiree coverage: *Provided*, That the employee shall elect to continue coverage  
116 under this subsection within two years of the date the employment with a participating agency or  
117 entity is terminated.

118 (m) *Prohibition on conversion of accrued annual and sick leave for extended coverage*  
119 *upon retirement for new employees who elect to participate in the plan after June, 2001.* -- Any  
120 employee hired on or after July 1, 2001, who elects to participate in the plan may not apply  
121 accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon  
122 his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick  
123 leave for increased retirement benefits, as authorized by this section: *Provided*, That any person  
124 who has participated in the plan prior to July 1, 2001, is not a new employee for purposes of this  
125 subsection if he or she becomes reemployed with an employer participating in the plan within two  
126 years following his or her separation from employment and he or she elects to participate in the  
127 plan upon his or her reemployment.

128 (n) *Prohibition on conversion of accrued years of teaching service for extended coverage*  
129 *upon retirement for new employees who elect to participate in the plan July, 2009.* -- Any  
130 employee hired on or after July 1, 2009, who elects to participate in the plan may not apply  
131 accrued years of teaching service toward the cost of premiums for extended insurance coverage  
132 upon his or her retirement.

NOTE: The purpose of this bill is to allow accrued annual or sick leave to be used for retirement service credit in the Teachers Retirement System.

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