

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 238**

By Senators Nelson and Swope

[Introduced January 16, 2023; referred  
to the Committee on Health and Human Resources; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §5-16-13 of the Code of West Virginia, 1931, as amended, relating to  
 2 specifying when a public employee's spouse may be covered by Public Employee  
 3 Insurance Act; providing for the premium cost and premium coverage associated with such  
 4 coverage; and establishing an effective date.

*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: *Provided, however, That, if an employee's spouse has health insurance available through*  
 11 *an employer not defined by §5-16-2 of this code, then the employer may not cover any portion of*  
 12 *premiums for the employee's spouse coverage, but the employee may add his or her spouse to his*  
 13 *or her coverage by paying the full spousal premium at the actuarially determined amount.*  
 14 *However, for spousal premium coverage by the employer, this section does not apply to voluntary*

15 employers pursuant to section §5-16-22 of this code. For purposes of this section, the term  
16 "primary coverage" means individual or group hospital and surgical insurance coverage or  
17 individual or group major medical insurance coverage or group prescription drug coverage in  
18 which the spouse or dependent is the named insured or certificate holder. For the purposes of this  
19 section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of  
20 25 if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in  
21 Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and  
22 dependent primary coverage and shall adopt rules governing the nature, discontinuance and  
23 resumption of any employee's coverage for his or her spouse and dependents.

24 (c) *Continuation after termination.* -- If an employee participating in the plan is terminated  
25 from employment involuntarily or in reduction of workforce, the employee's insurance coverage  
26 provided under this article shall continue for a period of three months at no additional cost to the  
27 employee and the employer shall continue to contribute the employer's share of plan premiums for  
28 the coverage. An employee discharged for misconduct shall not be eligible for extended benefits  
29 under this section. Coverage may be extended up to the maximum period of three months, while  
30 administrative remedies contesting the charge of misconduct are pursued. If the discharge for  
31 misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the  
32 employee. If the employee is again employed or recalled to active employment within 12 months of  
33 his or her prior termination, he or she shall not be considered a new enrollee and may not be  
34 required to again contribute his or her share of the premium cost, if he or she had already fully  
35 contributed such share during the prior period of employment.

36 (d) *Conversion of accrued annual and sick leave for extended insurance coverage upon*  
37 *retirement for employees who elected to participate in the plan before July 1988.* – Except as  
38 otherwise provided in subsection (g) of this section, when an employee participating in the plan,  
39 who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire  
40 before reaching the age of 65, or when a participating employee voluntarily retires as provided by

41 law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an  
42 extension of the insurance coverage provided by this article, according to the following formulae:  
43 The insurance coverage for a retired employee shall continue one additional month for every two  
44 days of annual leave or sick leave, or both, which the employee had accrued as of the effective  
45 date of his or her retirement. For a retired employee, his or her spouse and dependents, the  
46 insurance coverage shall continue one additional month for every three days of annual leave or  
47 sick leave, or both, which the employee had accrued as of the effective date of his or her  
48 retirement.

49 (e) *Conversion of accrued annual and sick leave for extended insurance coverage upon*  
50 *retirement for employees who elected to participate in the plan after June 1988.* -- Notwithstanding  
51 subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this  
52 section, when an employee participating in the plan who elected to participate in the plan on and  
53 after July 1, 1988, is compelled or required by law to retire before reaching the age of 65, or when  
54 the participating employee voluntarily retires as provided by law, that employee's annual leave or  
55 sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided  
56 by this article, for periods and scope of coverage determined according to the following formulae:  
57 (1) One additional month of single retiree coverage for every two days of annual leave or sick  
58 leave, or both, which the employee had accrued as of the effective date of his or her retirement; or  
59 (2) one additional month of coverage for a retiree, his or her spouse and dependents for every  
60 three days of annual leave or sick leave, or both, which the employee had accrued as of the  
61 effective date of his or her retirement. The remaining premium cost shall be borne by the retired  
62 employee if he or she elects the coverage. For purposes of this subsection, an employee who has  
63 been a participant under spouse or dependent coverage and who reenters the plan within 12  
64 months after termination of his or her prior coverage shall be considered to have elected to  
65 participate in the plan as of the date of commencement of the prior coverage. For purposes of this  
66 subsection, an employee shall not be considered a new employee after returning from extended

67 authorized leave on or after July 1, 1988.

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

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

80 (g) *Conversion of accrued annual and sick leave for extended insurance coverage upon*

81 *retirement for certain higher education employees.* – Except as otherwise provided in subsection

82 (l) of this section, when an employee, who is a higher education full-time faculty member employed

83 on an annual contract basis other than for 12 months, is compelled or required by law to retire

84 before reaching the age of 65, or when such a participating employee voluntarily retires as

85 provided by law, that employee's insurance coverage, as provided by this article, shall be

86 extended according to the following formulae: The insurance coverage for a retired higher

87 education full-time faculty member, formerly employed on an annual contract basis other than for

88 12 months, shall continue beyond the effective date of his or her retirement one additional year for

89 each three and one-third years of teaching service, as determined by uniform guidelines

90 established by the University of West Virginia Board of Trustees and the board of directors of the

91 state college system, for individual coverage, or one additional year for each five years of teaching

92 service for family coverage.

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

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

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

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

115 (l) *Participation of certain former employees.* -- An employee, eligible for coverage under  
116 the provisions of this article who has 20 years of service with any agency or entity participating in  
117 the public employees insurance program or who has been covered by the public employees  
118 insurance program for 20 years may, upon leaving employment with a participating agency or

119 entity, continue to be covered by the program if the employee pays 105 percent of the cost of  
120 retiree coverage: *Provided*, That the employee shall elect to continue coverage under this  
121 subsection within two years of the date the employment with a participating agency or entity is  
122 terminated.

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

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

138 (o) The amendments to this section enacted in 2023 shall become effective beginning July  
139 1, 2024.

NOTE: The purpose of this bill is to prevent state, county or municipal agencies from covering any portion of PEIA premiums for a spouse.

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