

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 520

BY SENATORS GAUNCH, TRUMP, ASHLEY, PREZIOSO AND

BLAIR, *original sponsors*

[Passed March 10, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §5-16-12 and §5-16-12a of the Code of West Virginia, 1931, as
2 amended, all relating to willful misrepresentation to gain benefits or payment under the
3 Public Employees Insurance Act; establishing certain acts as violations of the act;
4 providing for civil liability for improperly received benefits, overpayments or other sums;
5 authorizing set off by the director to recover overpayment; authorizing investigation by the
6 director of misrepresentations by an employer, employee or providers under the Public
7 Employees Insurance Act; authorizing the director to issue administrative subpoenas;
8 providing requirements for service of subpoenas; authorizing fees for service and
9 witnesses; establishing a process to compel obedience with a subpoena; authorizing the
10 agency to recover benefits or claims obtained by fraud through administrative hearing;
11 providing for the confidentiality of data; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That §5-16-12 and §5-16-12a of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-12. Misrepresentation by employer, employee or provider; penalty.

1 (a) It shall be a violation of this article for any person to:

2 (1) Knowingly secure or attempt to secure benefits payable under this article to which they
3 are not entitled;

4 (2) Knowingly secure or attempt to secure greater benefits than those to which the person
5 is entitled;

6 (3) Willfully misrepresent the presence or extent of benefits to which the person is entitled
7 under a collateral insurance source;

8 (4) Willfully misrepresent any material fact relating to any other information requested by
9 the director;

10 (5) Willfully overcharge for services provided; or

11 (6) Willfully misrepresent a diagnosis or nature of the service provided.

12 Any person who has violated any of the foregoing provisions shall be civilly liable for the
13 amount of benefits, overpayment or other sums improperly received in addition to any other relief
14 available in a court of competent jurisdiction.

15 (b) If, after notice and an administrative proceeding, it is determined the person has
16 violated the article, the person is liable for any overpayment received. The director shall withhold
17 and set off any payment of any benefits or other payment due to that person until any overpayment
18 is recovered.

19 (c) In addition to any civil liability for a violation pursuant to subsection (a) of this section,
20 any person who knowingly secures or attempts to secure benefits payable under this article, or
21 knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully
22 misrepresenting or aiding in the misrepresentation of any material fact relating to employment,
23 diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not
24 more than \$1,000, imprisoned for not less than one nor more than five years, or both. Errors in
25 coding for billing purposes shall not be considered a violation of this subsection absent other
26 evidence of willful wrongdoing.

27 (d) Any person who violates any provision of this article which results in a loss to, or
28 overpayment from, the plan, or to the State of West Virginia of less than \$1,000, and for which no
29 other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, is
30 subject to a fine of not less than \$100 but not more than \$500, or imprisonment for a period of not
31 less than twenty-four hours but not more than fifteen days, or both. Any person who violates any
32 provision of this article which results in a loss to, or overpayment from, the plan or the State of
33 West Virginia of \$1,000 or more, and for which no other penalty is specifically provided, is guilty
34 of a felony and, upon conviction thereof, is subject to a fine of not less than \$1,000 but not more
35 than \$5,000, or imprisonment for a period of not less than one nor more than five years, or both.

§5-16-12a. Inspections; violations and penalties.

1 (a) Employers and employees participating in any of the Public Employees Insurance
2 Agency plans shall provide, to the director, upon request, all documentation reasonably required
3 for the director to discharge the responsibilities under this article. This documentation includes,
4 but is not limited to, employment or eligibility records sufficient to verify actual full-time
5 employment and eligibility of employees who participate in the Public Employees Insurance
6 Agency plans.

7 (b) Upon a determination of the director or his or her designated representative that there
8 is probable cause to believe that fraud, abuse or other illegal activities involving transactions with
9 the agency has occurred, the director or his or her designated representative is authorized to refer
10 the alleged violations to the Insurance Commissioner for investigation and, if appropriate,
11 prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this
12 section, "transactions with the agency" includes, but is not limited to, application by any insured
13 or dependent, any employer or any type of health care provider for payment to be made to that
14 person or any third party by the agency.

15 (c) The Public Employees Insurance Agency is authorized through administrative
16 proceeding to recover any benefits or claims paid to or for any employee, or their dependents,
17 who obtained or received benefits through fraud. The Public Employees Insurance Agency is also
18 authorized through administrative proceeding to recover any funds due from an employer that
19 knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or
20 dependents.

21 (d) For the purpose of any investigation or proceeding under this article, the director or
22 any officer designated by him or her may administer oaths and affirmations, issue administrative
23 subpoenas, take evidence, and require the production of any books, papers, correspondences,
24 memoranda, agreements or other documents or records which may be relevant or material to the
25 inquiry.

26 (1) Administrative subpoenas shall be served by personal service by a person over the
27 age of eighteen, or by registered or certified mail addressed to the entity or person to be served
28 at his or her residence, principal office or place of business. Proof of service, when necessary,
29 shall be made by a return completed by the person making service, or in the case of registered
30 or certified mail, such return shall be accompanied by the post office receipt of delivery of the
31 subpoena. A party requesting the administrative subpoena is responsible for service and payment
32 of any fees for service. Any person who serves the administrative subpoena pursuant to this
33 section is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts
34 of this state.

35 (2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for
36 witnesses before the circuit courts of this state. All such fees related to any administrative
37 subpoena issued at the request of a party to an administrative proceeding shall be paid by the
38 requesting party. All requests by parties for administrative subpoenas shall be in writing and shall
39 contain a statement acknowledging that the requesting party agrees to pay such fees.

40 (3) In case of disobedience or neglect of any administrative subpoena served, or the
41 refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or
42 to produce documents subpoenaed, the circuit court of the county in which the hearing is being
43 held, or the judge thereof in vacation, upon application by the director, may compel obedience by
44 attachment proceedings for contempt as in the case of disobedience of the requirements of a
45 subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.
46 Witnesses at such hearings shall testify under oath or affirmation.

47 (e) Only authorized employees or agents shall have access to confidential data or systems
48 and applications containing confidential data within the Public Employees Insurance Agency.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor