

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 520

**FISCAL
NOTE**

BY SENATORS GAUNCH, TRUMP, ASHLEY, PREZIOSO AND

BLAIR

[Introduced February 5, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL 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; authorizing set-off by the director to recover
 4 overpayment; authorizing investigation by the director of misrepresentations by an
 5 employer, employee or providers under the Public Employees Insurance Act; authorizing
 6 the director to issue administrative subpoenas; providing requirements for service of
 7 subpoenas; authorizing fees for service and witnesses; establishing a process to compel
 8 obedience with a subpoena; authorizing the agency to recover benefits or claims obtained
 9 by fraud through administrative hearing; providing for the confidentiality of data; and
 10 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) Any person who knowingly secures or attempts to secure benefits payable under this~~
 2 ~~article or anything of value to which the person is not entitled, or who knowingly secures or~~
 3 ~~attempts to secure greater benefits than those to which the person is entitled, by willfully~~
 4 ~~misrepresenting the presence or extent of benefits to which the person is entitled under a~~
 5 ~~collateral insurance source, or by willfully misrepresenting any material fact relating to any other~~
 6 ~~information requested by the director or by willfully overcharging for services provided, or by~~
 7 ~~willfully misrepresenting the diagnosis or nature of the service provided, may be found to be~~
 8 ~~overpaid and shall be civilly liable for any overpayment. In addition to the civil remedy provided~~
 9 ~~herein, the director shall withhold payment of any benefits or other payment due to that person~~
 10 ~~until any overpayment has been recovered or may directly set off, after holding internal~~
 11 ~~administrative proceedings to assure due process, any such overcharges or improperly derived~~

12 ~~payment against benefits or other payment due such person hereunder. Nothing in this section~~
13 ~~shall be construed to limit any other remedy or civil or criminal penalty provided by law.~~

14 ~~(b) Any person who knowingly secures or attempts to secure benefits payable under this~~
15 ~~article or any other thing of value to which the person is not entitled, or knowingly attempts to~~
16 ~~secure greater benefits than those to which the person is entitled, by willfully misrepresenting, or~~
17 ~~aiding in the misrepresentation of, any material fact relating to employment, diagnosis or services~~
18 ~~rendered is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000,~~
19 ~~imprisoned for not longer than two years, or both. Errors in coding for purposes of billing shall not~~
20 ~~be presumed to be evidence of criminal conduct in the absence of other competent evidence to~~
21 ~~the contrary.~~

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

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

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

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

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

31 (5) Willfully overcharge for services provided; or

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

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

37 (c) In addition to any civil liability for a violation pursuant to subsection (a) of this section

38 any person who knowingly secures or attempts to secure benefits payable under this article, or
 39 knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully
 40 misrepresenting or aiding in the misrepresentation of any material fact relating to employment,
 41 diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not
 42 more than \$1,000, imprisoned for not longer than one year, or both. Errors in coding for billing
 43 purposes shall not be considered a violation of this subsection absent other evidence of willful
 44 wrongdoing.

45 (d) Any person who violates any provision of this article which results in a loss to or
 46 overpayment from the plan or to the State of West Virginia of less than \$1,000 and for which no
 47 other penalty is specifically provided is guilty of a misdemeanor and, upon conviction thereof, is
 48 subject to a fine of not less than \$100 but not more than \$500, or imprisonment for a period of not
 49 less than twenty-four hours but not more than fifteen days, or both. Any person who violates any
 50 provision of this article which results in a loss to or overpayment from the plan or the State of
 51 West Virginia of \$1,000 or more and for which no other penalty is specifically provided is guilty of
 52 a felony and, upon conviction thereof, is subject to a fine of not less than \$1,000 but not more
 53 than \$25,000, or imprisonment for a period of not less than fifteen days but not more than one
 54 year, 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 ~~shall include~~
 4 includes, but is not limited to employment or eligibility records sufficient to verify actual full-time
 5 employment and eligibility of ~~the employer's~~ employees who participate in the Public Employees
 6 Insurance 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 who
17 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 paid to an employee or dependents
20 fraudulently.

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 which he or she may be lawfully interrogated or to
42 produce documents subpoenaed, the circuit court of the county in which the hearing is being held,
43 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.

49 ~~(c) Any person who violates any provision of this article for which no other penalty is~~
50 ~~specifically provided is guilty of a misdemeanor and, upon conviction thereof, is subject to a fine~~
51 ~~of not less than \$100 but not more than \$500, or imprisonment for a period of not less than twenty-~~
52 ~~four hours but not more than fifteen days, or both.~~

NOTE: This purpose of this bill is to provide the Public Employees Insurance Agency the ability to recover through administrative proceeding benefits or claims obtained through fraud, provide a penalty for such fraud, and to authorize the agency to issue administrative subpoenas to aid in the recovery.

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