

*Barb Baxter*

Senate/House Bill No.

(By )

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[Introduced , 2016;

referred to the Committee on ]

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A Bill to amend said code by adding thereto a new article, designated § 48-14 of the code of West Virginia, 1931, relating to data matches with insurance providers for the purpose of establishing, modifying and enforcing child support, spousal support, and medical support.

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

That § 48-13A, of the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated § 48-13A, all to read as follows:

**§ 48-14-1101. Applicability, definitions and effective date.**

(a) The provisions of this article apply to every insurance company authorized to issue policies in this state for liability insurance or workers' compensation coverage. Insurance companies authorized to issue policies in this state for workers' compensation coverage includes for the purposes of this article employers that have been approved pursuant to section nine, article two, chapter twenty-three of this code to self-insure their workers' compensation risk and to third party administrators that administer claims for such employers.

(b) As used in this article:

(1) "Claimant" means a person who has filed a claim for personal injury, personal damages, workers' compensation, wrongful or accidental death, lost wages or disability under a liability insurance or workers' compensation policy.

(2) "Bureau" means the Bureau for Child Support Enforcement within the West Virginia Department of Health and Human Resources created by article eighteen, chapter forty-eight of the Code of West Virginia.

(3) "Health insurance company" means any insurance company or other entity that is authorized to transact and is currently transacting health insurance business in this state pursuant to any article under chapter thirty-three of this code, including, but not limited to, self-insured plans, group health plans as defined in Section 607(1) of the Employee Retirement Income Security Act of 1974, service benefit plans, mutual insurance companies, managed care organizations, health care corporations, health maintenance organizations, pharmacy benefit managers, third-party administrators and any other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

(4) "Past-due support" or "arrearages" means the total of any matured, unpaid installments of support required to be paid by an order entered or modified by a court of competent jurisdiction as described in section two hundred forty-four, article one, chapter forty-eight of this code.

(c) This article takes effect on July 1, 2015.

**§48-14-1102. General provisions.**

(a) Every insurance company licensed to do business in the State of West Virginia that is authorized to issue liability insurance coverage or workers' compensation coverage shall participate in an information data match program with the Bureau for Child Support Enforcement.

(b) Any insurance company that participates in the Federal Office of Child Support Enforcement Insurance Match Program or the Child Support Lien Network operated by the State of Rhode Island is deemed to have met the reporting requirements of this section.

(c) Any insurance company required by subsection (a) to participate in the information data match program that does not utilize any of the options set forth in subsection (b) shall participate in the following manner:

(i) The insurance company shall notify the bureau of any settlement for a nonrecurring payment of insurance proceeds that are not otherwise exempt from the requirements of this article in an amount equal to or in excess of \$2,500. Notice shall be provided to the bureau at least fifteen days prior to making the payment or as soon as the payment is authorized, whichever is sooner.

(ii) The insurance company shall provide to the bureau all available identifying information that will assist the bureau in determining whether the claimant has a child support obligation. The information may include the claimant's name, address, social security number and date of birth. The identifying information shall be submitted in a manner and format specified by the bureau.

(iii) In the event payment of the claim is in the form of a structured settlement or annuity, the primary property and casualty insurer is responsible for reporting to the bureau the information required by this article prior to placing any funds in the settlement or annuity.

(d) The bureau shall notify the insurance company if the payment is subject to withholding pursuant to part 4, article fourteen, chapter forty-eight of the Code of West Virginia, for unpaid child support or spousal support and provide the insurance company the amount of any child support or spousal support arrearage or obligation that must be withheld from the settlement proceeds.

(e) Upon notice from the bureau, the insurance company shall remit to the bureau the funds otherwise payable

to the claimant up to the amount of the past-due support.

(f) The income withholding notice for past-due support has priority over all other liens or levies upon the payment with the exception of:

(1) Legal services and medical services guaranteed pursuant to such representation provided by a third party in relation to the claim; and

(2) Security interests in lost or damaged property covered by the claim, to the extent that such security interest would otherwise have precedence over the income withholding.

(g) If an income withholding notice is not received from the bureau within fifteen days of the insurance company's notification of intent to disburse funds, the insurance company shall disburse the payment to the claimant in accordance with the contract of insurance and shall not be liable to the claimant or the bureau for any failure to withhold child support or spousal support obligations as required by this article.

**§48-14-1103. Exemptions.**

(a) The requirements of this article do not apply to insurance payments made for claims for property damage; surgical or medical bills and expenses paid on a liability claim; non-liability first-party claims for health, hospital surgical or other medical insurance; or claims for disability insurance, long-term care, disability insurance, credit disability income or mortgage disability income.

(b) Upon request from an insurance company, the Secretary or his or her designee may grant further exemptions to the requirements of this article upon a showing of undue hardship, financial burdens or other factors that the Secretary, or his or her designee's discretion, deems appropriate.

**§ 48-14-1104. Medical insurance reporting.**

(a) In order to fulfill the State's obligations imposed by State and Federal legislation regarding the

establishment and enforcement of medical support for children in this State, the Legislature finds that it is necessary for certain health insurance policy information be released to the Bureau for Child Support Enforcement.

(b) All health insurance companies in this State shall participate in a data matching program with the Bureau for Child Support Enforcement to assist in determining the availability of sources of health care insurance or coverage for beneficiaries of the child support program.

(c) The Bureau may send to health insurance companies a request for review of policies to determine whether specifically designated individuals are covered under any medical or health insurance policy. The list shall include only individuals who have been ordered by a court of competent jurisdiction to provide health insurance coverage to their children or dependents. The health insurance company shall provide to the bureau or its designee electronic reports of which individuals, if any, are covered by any health insurance policy issued by the company, the nature of coverage provided, the policy holder's social security number, address, date of birth, policy holder name, policy identification number, group number, effective dates and any other information required by the Secretary or his or her design that will assist in identifying coverage for establishing, modifying and enforcing medical child support orders administered by the bureau. The information shall be provided in a format suitable for electronic data matches conducted under the direction of the bureau.

(d) The bureau shall send requests for policy reviews to health insurance companies on a periodic basis, but in any case no less than annually. The health insurer must respond within thirty working days after receipt of a request for enrollment data from the bureau or its designee.

(e) The requirements of this section do not apply to the following types of insurance: limited benefit health and accident, fixed indemnity, long-term care, Medicare supplement and Medicare Advantage.

(f) The Bureau for Child Support Enforcement, after obtaining information from a health insurer, may disclose such health insurance policy information to another party only for the purpose of, and to the extent necessary, to establish,

modify or enforce a medical support obligation for a minor child.

**§ 48-14-1105. Liability and penalties.**

(a) Notwithstanding any other provision of this code, an insurance company, including any agent of an insurer, is not liable under Federal or State law and related rules, to the bureau, a claimant or other interested party for:

(1) Disclosing any insurance record of an individual, as required by this article, to the Bureau for Child Support Enforcement, the Federal Office of Child Support Enforcement Insurance Match, or the Child Support Lien Network operated by the State of Rhode Island;

(2) Disclosing health insurance policy information to the Bureau for Child Support Enforcement or its designee;

(3) Encumbering or surrendering assets held by such insurance company as required by this section;

(4) The sufficiency of payments made based upon information provided through an intercept matching system, regardless of the accuracy of the information;

(5) Any delay in payment that results from compliance with the requirements of this article; or

(6) Any other action taken in good faith to comply with the requirements of this article.

(b) The Bureau for Child Support Enforcement is solely responsible for the enforcement of the requirements of this article and may file a petition in any circuit court of this state seeking relief and damages against any insurance company that fails to participate in the data matching program or make any required payment. Any insurance company that fails or refuses to provide information as required by this article may have a penalty assessed of \$500 per violation by the Bureau for Child Support Enforcement. Per violation means per person not reported.

(c) If an insurance company has received an income withholding notice for a child support obligation from the bureau and fails or refuses to surrender property subject to the income withholding, the insurance company is liable to the bureau for the amount of support included in the notice.

(d) Information provided by the bureau to an insurance company under this article may only be used for the purpose of assisting the bureau in collecting past-due child support and in establishing, modifying or enforcing a medical support order. Any individual or company who uses such information for any other purpose is subject to a penalty of up to \$1,000 per violation. per violation means per person whose information is used inappropriately.

(e) A delay in payment of insurance proceeds to a claimant as a result of an insurance company's compliance with the provisions of this article shall not result in a violation of the Unfair Trade Practice Act, section four, article eleven, chapter thirty-three of this code or to the provisions in chapter twenty-three relating to workers' compensation claims handling or related administrative rules.

Note: The purpose of this bill is to: (1) provide for the interception of insurance settlement claims by the bureau for child support enforcement for past-due support owed by an obligor; and (2) require health insurance providers to release coverage information to the Bureau for Child Support Enforcement for purposes of establishing, modifying or enforcing medical support orders.

This article is new; therefore, strike-throughs and underscoring have been omitted.