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AB-2802 Insurance payments: interception. (2017-2018)

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Assembly Bill No. 2802

CHAPTER 439

An act to add Article 8 (commencing with Section 13550) to Chapter 2 of Division 3 of the Insurance Code, relating to insurance.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2802, Friedman. Insurance payments: interception.

Existing law creates the Department of Child Support Services and provides for the interception of funds from state tax refunds, lottery winnings, unemployment compensation benefits, and benefits under the Public Employees' Retirement System that otherwise would be paid to a person owing past due child support. Existing law creates the Department of Insurance, headed by the Insurance Commissioner, and prescribes the department's powers and duties.

This bill would, beginning January 1, 2020, require an insurer to cooperate with the Department of Child Support Services to identify claimants who are also obligors who owe past-due child support, and to report those claimants to the department. The bill would require an insurer to identify and report a claimant if his or her claim seeks an economic benefit, as defined, but would exempt specified economic benefits, including a payment to the mortgagee or lienholder of the property or a payment from an accelerated death benefit, and would limit withholding from a qualifying disability insurance payment to 50% of the claim for the benefits. The bill would require an insurer to comply with the requirements of a notice from the Department of Child Support Services that a reported insurance claim is payable to an obligor who owes past-due child support, unless the notice is received after the insurer has paid the claim. The bill would provide that an insurer, specified agent, specified insured, and a central reporting organization, as defined, that releases information in accordance with this bill, withholds payments, as specified, and makes disbursements, as specified, is immune from liability under certain circumstances. The bill would also require that the data obtained by the department, or by an insurer or its designated agent, only be used for the purpose of identifying claimants who are also obligors who owe past-due child support, and would specify that various laws protecting the privacy and security of data apply. The bill would authorize an insurer to use a central reporting organization to automate its claims identifying process, and would require an insurer that does not use a central reporting organization to determine if a claimant owes past-due child support before paying a claim, as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 8 (commencing with Section 13550) is added to Chapter 2 of Division 3 of the Insurance Code, to read:

Article 8. Insurance Payment Intercept Program

13550. (a) An insurer shall cooperate with the Department of Child Support Services to identify claimants who are also obligors who owe past-due child support and report those claimants to the Department of Child Support Services.

(b) An insurer shall identify and report a claimant to the Department of Child Support Services if the claim seeks an economic benefit for an obligor who owes past-due child support.

(1) An "economic benefit" under a life insurance policy, disability income insurance policy, or annuity means a payment totaling at least one thousand dollars (\$1,000) in which an individual is paid as the payee or copayee for any of the following:

(A) A claim by a beneficiary under a life insurance policy.

(B) A payment of the cash surrender value of a life insurance policy or annuity.

(C) A payment to an annuitant.

(D) A payment from a disability income insurance policy.

(E) A loan against the cash value or surrender value of an insurance policy or annuity, including loans for premium payments.

(2) An "economic benefit" under a property and casualty insurance policy means a payment totaling at least one thousand dollars (\$1,000), not including a claim for property damage, under a liability insurance policy or underinsured motorist policy issued by an insurance company authorized to do business in this state.

(c) Notwithstanding subdivision (b), and except as provided in subdivision (h), a claimant with any of following economic benefits shall not be reported:

(1) Payments made after the claimant presents a final bill or signed invoice from a vendor or repair facility showing payment made by the claimant for repair or replacement of the damaged property in an amount equal to or greater than the insurance payment.

(2) Payments to the mortgagee or lienholder of the property.

(3) Payments resulting from an accelerated death benefit.

(4) A claim for benefits assigned to be paid to a health care provider or facility for actual medical expenses owed by the insured that are not otherwise paid or reimbursed, or a payment made after the claimant provides proof of the amount actually paid by the claimant to a health care provider if the amount is at least as much as the insurance payment, but not any amounts billed but not paid.

(5) A claim for benefits to be paid under a limited benefit insurance policy that provides one of the following:

(A) Coverage for one or more specified diseases or illnesses.

(B) Dental or vision benefits.

(C) Hospital indemnity or other fixed indemnity coverage.

(D) Accident only coverage.

(6) A claim for benefits that are the result of a state of emergency, as defined in Section 8558 of the Government Code.

(7) A claim for benefits under a workers' compensation policy, except as provided in Section 17510 of the Family Code and Section 138.5 of the Labor Code.

(d) An insurer in California subject to the requirements of this article shall identify and report a claimant to the Department of Child Support Services if any of the following apply:

(1) A payment is made to the owner of a life policy or annuity that was issued to the owner while residing or located in California.

(2) A beneficiary making a claim resides or is located in California.

(3) A claimant is making a property claim for property located in California.

(e) Withholding from a qualifying disability insurance payment made to an obligor who owes past-due child support shall be limited to 50 percent of the claim for benefits.

(f) (1) If an insurer identifies a claimant as an obligor who owes past-due child support and reports the claimant to the Department of Child Support Services, the Department of Child Support Services shall provide the insurer with either of the following to secure the payment of the amount of past-due child support:

(A) A notice of child support lien.

(B) An income-withholding order.

(2) Upon receiving notice from the Department of Child Support Services that a reported insurance claim is payable to an obligor with a child support delinquency, an insurer shall comply with the requirements of the notice.

(3) Notwithstanding paragraph (2), this section does not require an insurer to comply with a notice from the Department of Child Support Services on a reported insurance claim payable to an obligor with a child support delinquency if the notice is received after the insurer has paid the claim.

(g) For the purposes of this section, "insurer" includes a fraternal benefit society.

(h) This section does not prohibit an insurer from cooperating voluntarily with the Department of Child Support Services to identify claimants who are also obligors who owe past-due child support and report those claimants to the Department of Child Support Services.

13551. Notwithstanding any other law, an insurer or insurance company, its directors, agents, and employees, an insured individual on whose behalf the company makes a payment, and a central reporting organization and its respective employees and agents authorized by an insurer to act on its behalf who, in good faith, release information in accordance with this article, withhold amounts from payment based on the latest information supplied by the Department of Child Support Services pursuant to Section 13550, or make disbursements in accordance with Section 13550 shall be in compliance with this section and any applicable fair claim settlement act, and shall be immune from any liability to the claimant or other interested party arising from the payment.

13552. (a) Data obtained pursuant to this article shall only be used for the purpose of identifying claimants who are also obligors who owe past-due child support. If the Department of Child Support Services does not identify an obligor in the data obtained pursuant to this article with a child support obligor, the Department of Child Support Services shall not maintain that data and shall immediately destroy that data.

(b) An insurer that provides, attempts to provide, or in any way accesses data pursuant to this article shall comply with all applicable state and federal laws for the protection of the privacy and the security of that data, including, but not limited to, the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1), the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(c) The Department of Child Support Services shall consider any information received from an insurer as confidential. That information shall be used or disclosed only for the purpose of collecting past-due child support.

(d) Information provided by the Department of Child Support Services to an insurer, or its designated agent, for the purpose of identifying claimants who are also obligors shall not be used by the insurer or its agent for any other purpose, and shall not be disclosed to any person except to the extent necessary to identify and report a claimant who owes past-due child support. This subdivision does not apply to information contained in a child support lien or an income-withholding order received from the Department of Child Support Services after the insurer has identified and reported a claimant.

(e) This section does not prohibit the Department of Child Support Services from disclosing aggregate data that does not reveal personally identifying information.

13553. (a) An insurer may satisfy its obligation to identify and report a claimant who owes past-due child support through the use of a central reporting organization. If an insurer does not use a central reporting organization to automate the process, the insurer shall determine if the claimant owes past-due child support before paying a claim.

(b) For claims involving periodic payments after the insurer has determined that benefits will be paid, the insurer shall only determine if the claimant owes past-due child support before the initial payment and either 12 months thereafter, or the insurer

may provide a copy of the settlement to the Department of Child Support Services.

(c) If a central reporting organization identifies a claimant who is also an obligor, the central reporting organization shall notify the Department of Child Support Services, and the Department of Child Support Services shall follow the requirements of subdivision (e) of Section 13550.

13554. For the purposes of this article, "central reporting organization" means a third-party service that automates the claims identifying process or provides interactive lookups.

13555. This article shall become operative on January 1, 2020.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 13552 to the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of insurance claimants and persons owed past-due support, it is necessary that the data obtained by the Department of Child Support Services from insurers pursuant to this act be kept confidential.