

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4361

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[Originating in the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §33-41-4a, and §33-41-11a; and to amend and reenact §33-41-2,
3 §33-41-5, §33-41-8, §33-41-11, and §33-41-12 of said code, all relating to insurance law
4 violations; defining “fraudulent insurance act”; allowing Insurance Commissioner to accept
5 proceeds from court ordered forfeiture proceedings; creating special revenue fund;
6 permitting courts to award cost of investigation to insurance fraud unit or other law-
7 enforcement agency; requiring person engaged in the business of insurance to report to
8 the Insurance Commissioner suspected insurance law violations; permitting insurance
9 fraud unit to administer oaths or affirmations, execute search and arrest warrants, make
10 arrests upon probable cause without a warrant, and participate in the prosecution of
11 workers’ compensation fraud; making the commission of a fraudulent insurance act a
12 violation of law; mandating that a person convicted of a felony involving dishonesty, breach
13 of trust, or a law reasonably related to the business of insurance is disqualified from
14 participating in the business of insurance; requiring insurance companies to have antifraud
15 initiatives; allowing the Insurance Commissioner to promulgate rules; and providing for
16 criminal penalties and restitution for insurance law violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-2. Definitions.

1 As used in this article:

2 ~~(1)~~ (a) “Benefits” mean money payments, goods, services or other thing of value paid in
3 response to a claim filed with an insurer based upon a policy of insurance;

4 ~~(2)~~ (b) “Business of insurance” means the writing of insurance, including the writing of
5 workers’ compensation insurance under the provisions of §23-1-1 *et seq.* of this code, self-
6 insurance by an employer or employer group for workers’ compensation risk including the risk of
7 catastrophic injuries under the provisions of §23-1-1 *et seq.* of this code or the reinsuring of risks

8 by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and
9 the activities of persons who act as or are officers, directors, agents or employees of insurers, or
10 who are other persons authorized to act on their behalf;

11 ~~(3)~~ (c) "Claim" means an application or request for payment or benefits provided under the
12 terms of a policy of insurance;

13 ~~(4)~~ (d) "Commissioner" means the Insurance Commissioner of West Virginia or his or her
14 designee;

15 ~~(5)~~ (e) "Fraudulent insurance act" means an act or omission committed by a person who
16 knowingly and with intent to defraud commits or conceals any material information concerning
17 one or more of the following:

18 (1) Presenting, causing to be presented, or preparing with knowledge or belief that it will
19 be presented to or by an insurer, a reinsurer, broker, or its agent false information as part of, in
20 support of, or concerning a fact material to one or more of the following:

21 (A) An application for the issuance or renewal of an insurance policy or reinsurance
22 contract;

23 (B) The rating of an insurance policy or reinsurance contract;

24 (C) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

25 (D) Premiums paid on an insurance policy or reinsurance contract;

26 (E) Payments made in accordance with the terms of an insurance policy or reinsurance
27 contract;

28 (F) A document filed with the commissioner or the chief insurance regulatory official of
29 another jurisdiction;

30 (G) The financial condition of an insurer or reinsurer;

31 (H) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from
32 one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;

33 (I) The issuance of written evidence of insurance; or

34 (J) The reinstatement of an insurance policy.

35 (2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer,
36 reinsurer or other person engaged in the business of insurance by a person who knows or should
37 know that the insurer or other person responsible for the risk is insolvent at the time of the
38 transaction;

39 (3) Removal, concealment, alteration, or destruction of the assets or records of an insurer,
40 reinsurer or other person engaged in the business of insurance;

41 (4) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds,
42 premiums, credits or other property of an insurer, reinsurer, or person engaged in the business of
43 insurance;

44 (5) Transaction of the business of insurance in violation of laws requiring a license,
45 certificate of authority or other legal authority for the transaction of the business of insurance; or

46 (6) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit
47 the acts or omissions specified in this subdivision.

48 ~~(5)~~ (f) "Health care provider" means a person, partnership, corporation, facility or institution
49 licensed by, or certified in, this state or another state, to provide health care or professional health
50 care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist,
51 registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical
52 therapist or psychologist;

53 ~~(6)~~ (g) "Insurance" means a contract or arrangement in which a person undertakes to:

54 ~~(A)~~ (1) Pay or indemnify another person as to loss from certain contingencies called "risks",
55 including through reinsurance;

56 ~~(B)~~ (2) Pay or grant a specified amount or determinable benefit to another person in
57 connection with ascertainable risk contingencies;

58 ~~(C)~~ (3) Pay an annuity to another person;

59 ~~(D)~~ (4) Act as surety; or

60 ~~(E)~~ (3) Self-insurance for workers' compensation risk including the risk of catastrophic
61 injuries ~~under~~ the provisions of §23-1-1 *et seq.* of this code.

62 ~~(7)~~ (h) "Insurer" means a person entering into arrangements or contracts of insurance or
63 reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual
64 company, mutual protective association, farmers' mutual fire companies, fraternal benefit society,
65 reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care
66 corporation, nonprofit hospital service association, nonprofit dental care corporation, health
67 maintenance organization, captive insurance company, risk retention group or other insurer,
68 regardless of the type of coverage written, including the writing of workers' compensation
69 insurance or self insurance under the provisions of this code, benefits provided or guarantees
70 made by each. A person is an insurer regardless of whether the person is acting in violation of
71 laws requiring a certificate of authority or regardless of whether the person denies being an
72 insurer;

73 ~~(8)~~ (i) "Person" means an individual, a corporation, a limited liability company, a
74 partnership, an association, a joint stock company, a trust, trustees, an unincorporated
75 organization, or any similar business entity or any combination of the foregoing. "Person" also
76 includes hospital service corporations, medical service corporations and dental service
77 corporations as defined in §33-24-1 *et seq.* of this code, health care corporations as defined in,
78 §33-25-1 *et seq.* of this code or a health maintenance organization organized pursuant to §33-
79 25A-1 *et seq.* of this code;

80 ~~(9)~~ (j) "Policy" means an individual or group policy, group certificate, contract or
81 arrangement of insurance or reinsurance, coverage by a self-insured employer or employer group
82 for its workers' compensation risk including its risk of catastrophic injuries or reinsurance, affecting
83 the rights of a resident of this state or bearing a reasonable relation to this state, regardless of
84 whether delivered or issued for delivery in this state;

85 ~~(10)~~ (k) “Reinsurance” means a contract, binder of coverage (including placement slip) or
86 arrangement under which an insurer procures insurance for itself in another insurer as to all or
87 part of an insurance risk of the originating insurer;

88 ~~(11)~~ (l) “Statement” means any written or oral representation made to any person, insurer
89 or authorized agency. A statement includes, but is not limited to, any oral report or representation;
90 any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for
91 payment, invoice, account, estimate of property damages, or other evidence of loss, injury or
92 expense; any bill for services, diagnosis, prescription, hospital or doctor record, X-ray, test result
93 or other evidence of treatment, services or expense; and any application, report, actuarial study,
94 rate request or other document submitted or required to be submitted to any authorized agency.
95 A statement also includes any written or oral representation recorded by electronic or other media;
96 and

97 ~~(12)~~ (m) “Unit” means the insurance fraud unit established pursuant to the provisions of
98 this article acting collectively or by its duly authorized representatives.

**§33-41-4a. Acceptance of forfeiture proceeds by commissioner; creation of special
revenue fund; court awards of investigation costs.**

1 (a) The commissioner may accept proceeds of court ordered forfeiture proceedings
2 involving the prosecution of fraudulent insurance acts.

3 (b) Forfeiture proceeds shall be deposited into the special revenue account established
4 in subsection (c) of this section, and the commissioner has the authority to make expenditures
5 from such fund in order to effectuate the purposes of this article.

6 (c) There is hereby created in the State Treasury a special revenue fund designated the
7 Insurance Fraud Prevention Fund, which shall be an interest-bearing account and may be
8 invested in the manner permitted by §12-6C-9 of this code. Expenditures from the fund by the
9 commissioner shall be for the purposes set forth in this article, including insurance anti-fraud
10 initiatives in this state.

11 (d) A court may award to the unit or other law-enforcement agency investigating a violation
12 of §33-41-11 of this code or other criminal offense related to the business of insurance, its cost of
13 investigation.

§33-41-5. Reporting Mandatory reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

1 (a) A person engaged in the business of insurance having knowledge or a reasonable
2 belief that ~~fraud~~ a fraudulent insurance act or another crime related to the business of insurance
3 is being, will be or has been committed shall provide to the commissioner the information required
4 by, and in a manner prescribed by, the commissioner.

5 (b) Any other person having knowledge or a reasonable belief that a fraudulent insurance
6 act or another crime related to the business of insurance is being, will be, or has been committed
7 may provide to the commissioner the information requested by, and in a manner prescribed by,
8 the commissioner.

9 ~~(b)~~ (c) The commissioner may prescribe a reporting form to facilitate reporting of possible
10 ~~fraud~~ fraudulent insurance acts or other offenses related to the business of insurance for use by
11 persons other than those persons referred to in subsection (a) of this section.

12 (d) Notwithstanding any other provision of this code, a person engaged in the business of
13 insurance shall furnish and disclose any information, including documents, materials or other
14 information in its possession concerning a fraudulent insurance act or a suspected fraudulent
15 insurance act to the commissioner. Disclosures provided pursuant to this section are subject to
16 the confidentiality provisions set forth in §33-41-7 of this code.

§33-41-8. Creation of Insurance Fraud Unit; purpose; duties; personnel qualifications.

1 (a) There is established the West Virginia Insurance Fraud Unit within the ~~office~~ offices of
2 the ~~Insurance Commissioner of West Virginia~~ commissioner. The commissioner may employ full-
3 time supervisory, legal and investigative personnel for the unit who shall be qualified by training
4 and experience in the areas of detection, investigation or prosecution of fraud within and against

5 the insurance industry to perform the duties of their positions. The director of the ~~fraud~~ unit is a
6 full-time position and shall be appointed by the commissioner and serve at his or her will and
7 pleasure. The commissioner shall provide office space, equipment, and supplies, and shall
8 employ and train personnel, including legal counsel, investigators, auditors and clerical and other
9 ~~staff that is~~ necessary for the unit to carry out its duties and responsibilities under this article as
10 the commissioner determines is necessary.

11 (b) ~~The fraud unit may in its discretion~~ It is the duty of the unit to:

12 (1) Initiate inquiries and conduct investigations when the unit has cause to believe
13 violations of any of the following provisions of this code relating to the business of insurance have
14 been or are being committed: §33-1-1 *et seq.* and §23-1-1 *et seq.* of this code; §61-3-1 *et seq.* of
15 this code; and §61-4-5 of this code. Notwithstanding any provision of this code to the contrary,
16 the ~~fraud~~ unit may, with the agreement of the Director of the Public Employees Insurance Agency,
17 conduct investigations related to possible fraud under §5-16-1 *et seq.* of this code;

18 (2) Review reports or complaints of alleged fraud related to the business of insurance
19 activities from federal, state and local law-enforcement and regulatory agencies, persons
20 engaged in the business of insurance and the general public to determine whether the reports
21 require further investigation; ~~and~~

22 (3) Conduct independent examinations of alleged fraudulent activity related to the
23 business of insurance and undertake independent studies to determine the extent of fraudulent
24 insurance acts; and

25 (4) Perform any other duties related to the purposes of this article as may be assigned to
26 it by the commissioner.

27 (c) ~~The Insurance-Fraud-Unit~~ unit may:

28 ~~(1) Employ and train personnel to achieve the purposes of this article and to employ legal~~
29 ~~counsel, investigators, auditors and clerical support personnel and other personnel as the~~
30 ~~commissioner determines necessary from time to time to accomplish the purposes of this article;~~

- 31 ~~(2)~~ (1) Inspect, copy or collect records and evidence;
- 32 ~~(3)~~ (2) Serve subpoenas issued by grand juries and trial courts in criminal matters;
- 33 (3) Administer oaths and affirmations;
- 34 (4) Share records and evidence with federal, state or local law-enforcement or regulatory
- 35 agencies, and enter into interagency agreements. For purposes of carrying out investigations
- 36 under this article, the unit shall be deemed a criminal justice agency under all federal and state
- 37 laws and regulations and as such shall have access to any information that is available to other
- 38 criminal justice agencies concerning violations of the insurance laws of West Virginia or related
- 39 criminal laws;
- 40 (5) Make criminal referrals to the county prosecutors;
- 41 (6) Execute search warrants and arrest warrants for criminal violations of the insurance
- 42 laws of West Virginia or related criminal laws: *Provided*, That those persons designated by the
- 43 commissioner to do so have been trained and certified as law-enforcement officers and that
- 44 certification is currently active;
- 45 (7) Arrest upon probable cause without a warrant a person found in the act of violating or
- 46 attempting to violate an insurance law of West Virginia or related criminal law: *Provided*, That
- 47 those persons designated by the commissioner to do so have been trained and certified as law-
- 48 enforcement officers as provided in §30-29-1 *et seq.* and that certification is currently active;
- 49 ~~(6)~~ (8) Conduct investigations outside this state. If the information the ~~Insurance Fraud~~
- 50 ~~Unit~~ unit seeks to obtain is located outside this state, the person from whom the information is
- 51 sought may make the information available to the ~~insurance fraud~~ unit to examine at the place
- 52 where the information is located. The ~~Insurance Fraud Unit~~ unit may designate representatives,
- 53 including officials of the state in which the matter is located, to inspect the information on behalf
- 54 of the ~~Insurance Fraud Unit~~ unit, and the ~~Insurance Fraud Unit~~ may respond to similar requests
- 55 from officials of other states; and

56 ~~(7) The Insurance Fraud Unit may initiate~~ (9) Initiate investigations and participate in the
57 development of, and, if necessary, the prosecution of, any health care provider, including a
58 provider of rehabilitation services, suspected of fraudulent activity related to the business of
59 insurance; and

60 (10) Initiate investigations and participate in the development of, and, if necessary, the
61 investigation, control, and prosecution of, any workers' compensation fraud, as previously
62 assigned to the workers' compensation fraud and abuse unit created pursuant to §23-1-1b of this
63 code.

64 ~~(8) (d)~~ Specific personnel of the unit designated by the commissioner shall be permitted
65 to operate vehicles owned or leased for the state displaying Class A registration plates.

66 ~~(9) (e)~~ Notwithstanding any provision of this code to the contrary, specific personnel of the
67 unit designated by the commissioner may carry firearms in the course of their official duties after
68 meeting specialized qualifications established by the Governor's Committee on Crime,
69 Delinquency and Correction, which shall include the successful completion of handgun training
70 provided to law-enforcement officers by the West Virginia State Police. ~~Provided, That nothing in~~
71 ~~this subsection shall be construed to include any person designated by the commissioner as a~~
72 ~~law-enforcement officer as that term is defined by the provisions of section one, article twenty-~~
73 ~~nine, chapter thirty of this code; and~~

74 ~~(10) (f)~~ The Insurance Fraud Unit unit shall is not be subject to the provisions of §6-9A-1
75 *et seq.* of this code and the investigations conducted by the Insurance Fraud Unit unit and the
76 materials placed in the files of the unit as a result of any such investigation are exempt from public
77 disclosure under the provisions of §29B-1-1 *et seq.* of this code.

78 ~~(d) The Insurance Fraud Unit shall perform other duties as may be assigned to it by the~~
79 ~~commissioner.~~

§33-41-11. Fraudulent claims to insurance companies acts; interference and participation of convicted felons prohibited.

1 ~~(a) Any person who knowingly and willfully and with intent to defraud submits a materially~~
2 ~~false statement in support of a claim for insurance benefits or payment pursuant to a policy of~~
3 ~~insurance or who conspires to do so is guilty of a crime and is subject to the penalties set forth in~~
4 ~~the provisions of this section.~~

5 ~~(b) Any person who commits a violation of the provisions of subsection (a) of this section~~
6 ~~where the benefit sought is \$1,000 or more in value is guilty of a felony and, upon conviction~~
7 ~~thereof, shall be imprisoned in a correctional facility for not less than one nor more than ten years,~~
8 ~~fined not more than \$10,000, or both, or in the discretion of the circuit court confined in jail for not~~
9 ~~more than one year and fined not more than \$10,000, or both.~~

10 ~~(c) Any person who commits a violation of the provisions of subsection (a) of this section~~
11 ~~where the benefit sought is less than \$1,000 in value is guilty of a misdemeanor and, upon~~
12 ~~conviction thereof, shall be confined in jail for not more than one year, fined not more than \$2,500,~~
13 ~~or both.~~

14 ~~(d) Any person convicted of a violation of this section is subject to the restitution provisions~~
15 ~~of article eleven a, chapter sixty one of this code.~~

16 ~~(e) In addition to the foregoing provisions, the offenses enumerated in sections twenty-~~
17 ~~four e through twenty four h, inclusive, article three, chapter sixty one of this code are applicable~~
18 ~~to matters concerning workers' compensation insurance.~~

19 ~~(f) The circuit court may award to the unit or other law enforcement agency investigating~~
20 ~~a violation of this section or other criminal offense related to the business of insurance its cost of~~
21 ~~investigation.~~

22 (a) A person shall not commit a fraudulent insurance act as defined in §33-41-2 of this
23 code.

24 (b) A person shall not knowingly or intentionally interfere with the enforcement of the
25 provisions of this article or investigations of suspected or actual violations of this article.

26 (c) A person convicted of a felony involving dishonesty or breach of trust, or a felony
27 violation law reasonably related to the business of insurance, shall not participate in the business
28 of insurance.

29 (d) A person in the business of insurance shall not knowingly or intentionally permit a
30 person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably
31 related to the business of insurance, to participate in the business of insurance.

§33-41-11a. Insurer antifraud initiatives.

1 (a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute and
2 prevent fraudulent insurance acts.

3 (b) Antifraud initiatives may include:

4 (1) Fraud investigators, who may be insurer employees or independent contractors; or

5 (2) An antifraud plan submitted to the commissioner. Antifraud plans submitted to the
6 commissioner shall be privileged and confidential, are exempt from public disclosure under the
7 provisions of §29B-1-1 et seq. of this code and are not subject to discovery or subpoena in a civil
8 or criminal action.

9 (c) The commissioner may promulgate rules to set forth requirements or standards for the
10 submission of insurer antifraud plans.

§33-41-12. Civil and criminal penalties; injunctive relief; employment disqualification;
restitution.

1 (a) A person or entity engaged in the business of insurance or a person or entity making
2 a claim against an insurer who violates any provision of this article may be subject to the following:

3 (1) Where applicable, suspension or revocation of license or certificate of authority or a
4 civil penalty of up to \$10,000 per violation, or where applicable, both. Suspension or revocation
5 of license or certificate of authority or imposition of civil penalties may be pursuant to an order of

6 the commissioner issued pursuant to the provisions of §33-2-13 of this code. The commissioner's
7 order may require a person found to be in violation of this article to make reasonable restitution
8 to persons aggrieved by violations of this article. The commissioner may assess a person
9 sanctioned pursuant to the provisions of this section the cost of investigation;

10 (2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the
11 provisions of this section is mandatory and not subject to suspension;

12 (3) A person convicted of a felony violation law reasonably related to the business of
13 insurance shall be disqualified from engaging in the business of insurance; and

14 (4) The commissioner may apply for a temporary or permanent injunction in any
15 appropriate circuit court of this state seeking to enjoin and restrain a person from violating or
16 continuing to violate the provisions of this article or rule promulgated under this article,
17 notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of
18 the proceeding and have the power to make and enter an order or judgment awarding temporary
19 or permanent injunctive relief restraining any person from violating or continuing to violate any
20 provision of this article or rule promulgated under the article as in its judgment is proper.

21 (b) Any person who commits a violation of the provisions of §33-41-11 of this code where
22 the benefit sought is \$1,000 or more in value is guilty of a felony and, upon conviction thereof,
23 shall be imprisoned in a correctional facility for not less than one nor more than 10 years, fined
24 not more than \$10,000, or both fined and imprisoned, or in the discretion of the court, confined in
25 jail for not more than one year and fined not more than \$10,000, or both fined and confined.

26 (c) Any person who commits a violation of the provisions of §33-41-11 of this code where
27 the benefit sought is less than \$1,000 in value is guilty of a misdemeanor and, upon conviction
28 thereof, shall be confined in jail for not more than one year, or fined not more than \$2,500, or both
29 fined and confined.

30 (d) Any person convicted of a violation of §33-41-11 of this code is subject to the restitution
31 provisions of §61-11A-1 of this code.

32 (e) A court may award to the unit or other law-enforcement agency investigating a violation
33 of §33-41-11 of this code or other criminal offense related to the business of insurance its cost of
34 investigation.

35 (f) In addition to the foregoing provisions, the offenses enumerated in §61-3-24e through
36 §61-3-24h, inclusive, of this code are applicable to matters concerning workers' compensation
37 insurance.

NOTE: The purpose of this bill is to update the provisions of the Insurance Fraud Prevention Act.

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