

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3085

BY DELEGATES WESTFALL AND HOTT

[Introduced March 12, 2021; Referred to the
Committee on Banking and Insurance then
Government Organization]

1 A BILL to amend and reenact §33-41-8 and §33-41-8a of the Code of West Virginia, 1931, as
2 amended, relating to the consolidating the positions of the Inspector General of the former
3 Workers' Compensation Commission's Fraud and Abuse Unit and the position of Director
4 of the Insurance Fraud Unit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. WEST VIRGINIA INSURANCE FRAUD PREVENTION ACT.

§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 offices of the
2 commissioner. The commissioner may employ full-time supervisory, legal, and investigative
3 personnel for the unit who shall be qualified by training and experience in the areas of detection,
4 investigation, or prosecution of fraud within and against the insurance industry to perform the
5 duties of their positions. The ~~director~~ Inspector General of the unit is a full-time position and shall
6 be appointed by the commissioner and serve at his or her will and pleasure. The commissioner
7 shall provide office space, equipment, and supplies, and shall employ and train personnel,
8 including legal counsel, investigators, auditors and clerical staff necessary for the unit to carry out
9 its duties and responsibilities under this article as the commissioner determines is necessary.

10 (b) It is the duty of the unit to:

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

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

20 require further investigation;

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

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

26 (c) The unit may:

27 (1) Inspect, copy, or collect records and evidence;

28 (2) Serve subpoenas issued by grand juries and trial courts in criminal matters;

29 (3) Administer oaths and affirmations;

30 (4) Share records and evidence with federal, state, or local law-enforcement or regulatory
31 agencies, and enter into interagency agreements. For purposes of carrying out investigations
32 under this article, the unit shall be considered a criminal justice agency under all federal and state
33 laws and regulations and as such shall have access to any information that is available to other
34 criminal justice agencies concerning violations of the insurance laws of West Virginia or related
35 criminal laws;

36 (5) Make criminal referrals to the county prosecutors;

37 (6) Execute search warrants and arrest warrants for criminal violations of the insurance
38 laws of West Virginia or related criminal laws: *Provided*, That those persons designated by the
39 commissioner to do so meet the requirements of and are certified as law-enforcement officers
40 under §30-29-5 of this code and the certification is currently active;

41 (7) Arrest upon probable cause, without a warrant a person found in the act of violating or
42 attempting to violate an insurance law of West Virginia or related criminal law: *Provided*, That
43 those persons designated by the commissioner to do so meet the requirements of and are certified
44 as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

45 (8) Conduct investigations outside this state. If the information the unit seeks to obtain is

46 located outside this state, the person from whom the information is sought may make the
47 information available to the unit to examine at the place where the information is located. The unit
48 may designate representatives, including officials of the state in which the matter is located, to
49 inspect the information on behalf of the unit, and may respond to similar requests from officials of
50 other states;

51 (9) Initiate investigations and participate in the development of, and, if necessary, the
52 prosecution of, any health care provider, including a provider of rehabilitation services, suspected
53 of fraudulent activity related to the business of insurance; and

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

58 (d) Specific personnel of the unit designated by the commissioner may operate vehicles
59 owned or leased for the state displaying Class A registration plates.

60 (e) Notwithstanding any provision of this code to the contrary, specific personnel of the
61 unit designated by the commissioner may carry firearms in the course of their official duties after
62 meeting specialized qualifications established by the Governor's Committee on Crime,
63 Delinquency, and Correction, which shall include the successful completion of handgun training
64 provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in
65 this subsection shall be construed to include any person designated by the commissioner as a
66 law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code; and

67 (f) The unit is not subject to the provisions of §6-9A-1 *et seq.* of this code and the
68 investigations conducted by the unit and the materials placed in the files of the unit as a result of
69 any such investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq.*
70 of this code.

§33-41-8a. Fingerprinting and background check for applicants for employment with fraud unit.

1 (a) The Commissioner shall require any applicant for employment with the fraud unit to be
 2 fingerprinted. The Commissioner is authorized to conduct a criminal records check through the
 3 Criminal Identification Bureau of the West Virginia State Police and a national criminal history
 4 check through the Federal Bureau of Investigation. The results of any criminal records or criminal
 5 history check shall be sent to the Commissioner. The West Virginia State Police may exchange
 6 this fingerprint data with the Federal Bureau of Investigation.

7 (b) The ~~Director~~ Inspector General shall not disclose information obtained pursuant to
 8 subsection (a) of this section except for purposes directly related to the employment of the
 9 applicant.

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NOTE: The purpose of this bill is to consolidate the statutory positions of Director of the Insurance Fraud Unit and Inspector General of the former Workers' Compensation Commission Fraud and Abuse Unit. W.Va. Code §23-1-1b(g)(22) transferred the Workers' Compensation Fraud and Abuse Unit, along with the position of Inspector General, to the Insurance Commissioner and, further, provided that the former Workers' Compensation Commission's Inspector General shall serve as the initial Inspector General for the Insurance Commissioner. However, pursuant to W.Va. Code §33-41-8(a), the Insurance Commissioner's Fraud Unit is led by the position of "Director." Both positions currently exist in state code and in the Division of Personnel's Classification Specifications. The purpose of this bill is to consolidate the positions by eliminating reference to the position of "Director" of the Insurance Fraud Unit and replace it with reference to the position of Inspector General to clarify the position is one and the same.

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