

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4361

BY DELEGATES WESTFALL, AZINGER, NELSON, HOTT,

D. JEFFRIES AND ESPINOSA

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT 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 providing for legislative appropriation of fund; requiring person engaged in the business of
7 insurance to report to the Insurance Commissioner suspected insurance law violations;
8 permitting insurance fraud unit to administer oaths or affirmations, execute search and
9 arrest warrants, make arrests upon probable cause without a warrant, and participate in
10 the prosecution of workers’ compensation fraud; making the commission of a fraudulent
11 insurance act a violation of law; mandating that a person convicted of a felony involving
12 dishonesty, breach of trust, or a law reasonably related to the business of insurance is
13 disqualified from participating in the business of insurance; requiring insurance companies
14 to have antifraud initiatives; allowing the Insurance Commissioner to promulgate rules;
15 and providing for 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 (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 (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 (c) "Claim" means an application or request for payment or benefits provided under the
12 terms of a policy of insurance.

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

15 (e) "Fraudulent insurance act" means an act or omission committed by a person who
16 knowingly and with intent to defraud misrepresents or conceals any material information
17 concerning 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
43 of 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 (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 (g) "Insurance" means a contract or arrangement in which a person undertakes to:

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

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

58 (3) Pay an annuity to another person;

59 (4) Act as surety; or

60 (5) Self-insurance for workers' compensation risk, including the risk of catastrophic injuries
61 pursuant to the provisions of §23-1-1 *et seq.* of this code.

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

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

84 (k) "Reinsurance" means a contract, binder of coverage (including placement slip) or
85 arrangement under which an insurer procures insurance for itself in another insurer as to all or
86 part of an insurance risk of the originating insurer.

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

95 (m) "Unit" means the insurance fraud unit established pursuant to the provisions of this
96 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 may make expenditures from the fund in
5 order to effectuate the purposes of this article.

6 (c) The Insurance Fraud Prevention Fund is hereby created. The fund shall be
7 administered by the commissioner and shall consist of all moneys made available from court
8 ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts, including
9 all interest or other return earned from investment of the fund which may be invested in the
10 manner permitted by §12-6C-9 of this code. Expenditures from the fund shall be for the purposes

11 set forth in this article and are not authorized from collections but are to be made only in
12 accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
13 1, *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1, *et seq.* of
14 this code: *Provided*, That for the fiscal year ending June 30, 2021, expenditures are authorized
15 from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance,
16 including accrued interest and other returns, remaining in the fund at the end of each fiscal year
17 shall not revert to the General Revenue Fund but shall remain in the fund and be expended as
18 provided by this section.

**§33-41-5. 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 a fraudulent insurance act or another crime related to the business of insurance is
3 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 (c) The commissioner may prescribe a reporting form to facilitate reporting of possible
10 fraudulent insurance acts or other offenses related to the business of insurance for use by persons
11 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 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 of the unit is a full-time position and shall be appointed by
6 the commissioner and serve at his or her will and pleasure. The commissioner shall provide office
7 space, equipment, and supplies, and shall employ and train personnel, including legal counsel,
8 investigators, auditors and clerical staff necessary for the unit to carry out its duties and
9 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.

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

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

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

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

8 (d) A person in the business of insurance shall not knowingly or intentionally permit a
9 person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably
10 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 are 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 propose legislative rules for promulgation in accordance with
10 §29A-3-1 *et seq.* of this code to set forth requirements or standards for the submission of insurer
11 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 provisions of this section, the offenses enumerated in §61-3-24e
36 through §61-3-24h, inclusive, of this code are applicable to matters concerning workers'
37 compensation insurance.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor