

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2695**

**FISCAL  
NOTE**

BY DELEGATES WESTFALL, HOTT, ESPINOSA, L. PACK

AND ROWE

[By Request of the Insurance Commissioner]

[Introduced February 23, 2021; Referred to the

Committee on Banking and Insurance then

Government Organization]

1 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 consolidation 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.

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.