

SB 381 S

FILED

WEST VIRGINIA LEGISLATURE

2007 APR 4 PM 3: 56

SEVENTY-EIGHTH LEGISLATURE OFFICE WEST VIRGINIA
REGULAR SESSION, 2007 SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 381

(SENATOR MINARD, *original sponsor*)

[Passed March 10, 2007; to take effect ninety days from passage.]

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AN ACT to amend and reenact §33-4-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 and §33-41-11 of said code; and to amend said code by adding thereto a new section, designated §33-41-8b, all relating to insurance fraud; clarifying that the insurance

code contains specific criminal penalties for felony offenses; authorizing certain employees of the fraud unit of the Insurance Commissioner to investigate fraud relating to the Public Employees Insurance Agency and to present criminal complaints directly to a magistrate with the approval of a prosecuting attorney; and modifying the monetary threshold for felonies to comport with general felony provisions.

Be it enacted by the Legislature of West Virginia:

That §33-4-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 and §33-41-11 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8b, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-8. General penalty.

1 In addition to the refusal to renew, suspension or
2 revocation of a license, or penalty in lieu of the
3 foregoing, because of violation of any provision of this
4 chapter, it is a misdemeanor for any person to violate
5 any provision of this chapter unless the violation is
6 declared to be a felony by this chapter or other law of
7 this state. Unless another penalty is provided in this
8 chapter or by the laws of this state, every person
9 convicted of a misdemeanor for the violation of any
10 provision of this chapter shall be fined not more than
11 one thousand dollars or confined in jail not more than
12 six months, or both fined and confined.

ARTICLE 41. 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
2 Fraud Unit within the office of the Insurance
3 Commissioner of West Virginia. The commissioner may
4 employ full-time supervisory, legal and investigative
5 personnel for the unit who shall be qualified by training
6 and experience in the areas of detection, investigation
7 or prosecution of fraud within and against the
8 insurance industry to perform the duties of their
9 positions. The director of the fraud unit is a full-time
10 position and shall be appointed by the commissioner
11 and serve at his or her will and pleasure. The
12 commissioner shall provide office space, equipment,
13 supplies, clerical and other staff that is necessary for the
14 unit to carry out its duties and responsibilities under
15 this article.

16 (b) The fraud unit may in its discretion:

17 (1) Initiate inquiries and conduct investigations when
18 the unit has cause to believe violations of any of the
19 following provisions of this code relating to the business
20 of insurance have been or are being committed: This
21 chapter; chapter twenty-three of this code; article three,
22 chapter sixty-one of this code; and section five, article
23 four of said chapter. Notwithstanding any provision of
24 this code to the contrary, the fraud unit may, with the
25 agreement of the Director of the Public Employees
26 Insurance Agency, conduct investigations related to
27 possible fraud under article sixteen, chapter five of this
28 code;

29 (2) Review reports or complaints of alleged fraud

30 related to the business of insurance activities from
31 federal, state and local law-enforcement and regulatory
32 agencies, persons engaged in the business of insurance
33 and the general public to determine whether the reports
34 require further investigation; and

35 (3) Conduct independent examinations of alleged
36 fraudulent activity related to the business of insurance
37 and undertake independent studies to determine the
38 extent of fraudulent insurance acts.

39 (c) The insurance fraud unit may:

40 (1) Employ and train personnel to achieve the
41 purposes of this article and to employ legal counsel,
42 investigators, auditors and clerical support personnel
43 and other personnel as the commissioner determines
44 necessary from time to time to accomplish the purposes
45 of this article;

46 (2) Inspect, copy or collect records and evidence;

47 (3) Serve subpoenas issued by grand juries and trial
48 courts in criminal matters;

49 (4) Share records and evidence with federal, state or
50 local law-enforcement or regulatory agencies, and enter
51 into interagency agreements. For purposes of carrying
52 out investigations under this article, the unit shall be
53 deemed a criminal justice agency under all federal and
54 state laws and regulations and as such shall have access
55 to any information that is available to other criminal
56 justice agencies concerning violations of the insurance
57 laws of West Virginia or related criminal laws;

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

59 (6) Conduct investigations outside this state. If the
60 information the insurance fraud unit seeks to obtain is
61 located outside this state, the person from whom the
62 information is sought may make the information
63 available to the insurance fraud unit to examine at the
64 place where the information is located. The insurance
65 fraud unit may designate representatives, including
66 officials of the state in which the matter is located, to
67 inspect the information on behalf of the insurance fraud
68 unit, and the insurance fraud unit may respond to
69 similar requests from officials of other states;

70 (7) The insurance fraud unit may initiate
71 investigations and participate in the development of
72 and, if necessary, the prosecution of any health care
73 provider, including a provider of rehabilitation services,
74 suspected of fraudulent activity related to the business
75 of insurance;

76 (8) Specific personnel, designated by the
77 commissioner, shall be permitted to operate vehicles
78 owned or leased for the state displaying Class A
79 registration plates;

80 (9) Notwithstanding any provision of this code to the
81 contrary, specific personnel designated by the
82 commissioner may carry firearms in the course of their
83 official duties after meeting specialized qualifications
84 established by the Governor's Committee on Crime,
85 Delinquency and Correction, which shall include the
86 successful completion of handgun training provided to
87 law-enforcement officers by the West Virginia State
88 Police: *Provided*, That nothing in this subsection shall

89 be construed to include any person designated by the
90 commissioner as a law-enforcement officer as that term
91 is defined by the provisions of section one, article
92 twenty-nine, chapter thirty of this code; and

93 (10) The insurance fraud unit shall not be subject to
94 the provisions of article nine-a, chapter six of this code
95 and the investigations conducted by the insurance fraud
96 unit and the materials placed in the files of the unit as
97 a result of any such investigation are exempt from
98 public disclosure under the provisions of chapter
99 twenty-nine-b of this code.

100 (d) The insurance fraud unit shall perform other
101 duties as may be assigned to it by the commissioner.

**§33-41-8b. Fraud investigators may present complaint
directly to magistrate.**

1 Notwithstanding any other provision of this code to
2 the contrary, any person authorized under this article to
3 initiate and conduct investigations may submit
4 complaints directly to a magistrate after review and
5 approval by the prosecuting attorney, if the complaint
6 is related to the business of insurance and may be
7 prosecuted as a criminal violation under this chapter;
8 chapter twenty-three of this code; article three, chapter
9 sixty-one of this code; or section five, article four of said
10 chapter.

11 The complaint shall be in the form of a written
12 statement of the essential facts constituting the offense
13 charged. The complaint shall be presented to and sworn
14 before a magistrate in the county where the offense is
15 alleged to have occurred.

16 If it appears from the complaint, or from an affidavit
17 or affidavits filed with the complaint, that there is
18 probable cause to believe that an offense has been
19 committed and that the defendant committed it, a
20 warrant for the arrest of the defendant shall be issued
21 to any officer authorized by law to arrest persons
22 charged with offenses against the state.

§33-41-11. Fraudulent claims to insurance companies.

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

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

16 (c) Any person who commits a violation of the
17 provisions of subsection (a) of this section where the
18 benefit sought is less than one thousand dollars in value
19 is guilty of a misdemeanor and, upon conviction thereof,
20 shall be confined in jail for not more than one year,
21 fined not more than two thousand five hundred dollars,
22 or both.

23 (d) Any person convicted of a violation of this section
24 is subject to the restitution provisions of article
25 eleven-a, chapter sixty-one of this code.


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

31 (f) The circuit court may award to the unit or other
32 law-enforcement agency investigating a violation of this
33 section or other criminal offense related to the business
34 of insurance its cost of investigation.

9 [Enr. Com. Sub for Com. Sub. for S. B. No. 381

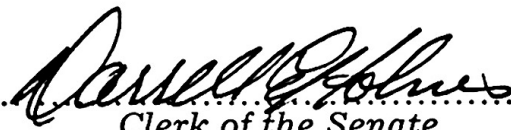
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

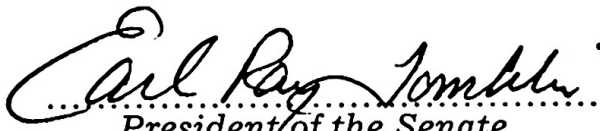

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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 4th Day of April, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:30 pm