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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 revocation of a license, or penalty in lieu of the foregoing, because of violation of any provision of this chapter, it is a misdemeanor for any person to violate any provision of this chapter unless the violation is declared to be a felony by this chapter or other law of this state. Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be fined not more than one thousand dollars or confined in jail not more than 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.

(a) There is established the West Virginia Insurance Fraud Unit within the office of the Insurance Commissioner of West Virginia. The commissioner may employ full-time supervisory, legal and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the fraud unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, supplies, clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article.

(b) The fraud unit may in its discretion:

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

(2) Review reports or complaints of alleged fraud
(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

(c) The insurance fraud unit may:

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

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

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

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

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

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

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

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

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

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

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

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

The complaint shall be in the form of a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn before a magistrate in the county where the offense is alleged to have occurred.
If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall be issued to any officer authorized by law to arrest persons charged with offenses against the state.

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

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

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

(c) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is less than one thousand dollars in value is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not more than two thousand five hundred dollars, or both.
(d) Any person convicted of a violation of this section is subject to the restitution provisions of article eleven-a, chapter sixty-one of this code.

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

(f) The circuit court may award to the unit or other law-enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
President of the Senate

Speaker House of Delegates

The within is approved this the Day of , 2007.

[Signature]
Governor