WEST VIRGINIA LEGISLATURE

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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.]
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-41-4a, and §33-41-11a; and to amend and reenact §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 of said code, all relating to insurance law violations; defining “fraudulent insurance act”; allowing Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings; creating special revenue fund; providing for legislative appropriation of fund; requiring person engaged in the business of insurance to report to the Insurance Commissioner suspected insurance law violations; permitting insurance fraud unit to administer oaths or affirmations, execute search and arrest warrants, make arrests upon probable cause without a warrant, and participate in the prosecution of workers’ compensation fraud; making the commission of a fraudulent insurance act a violation of law; mandating that a person convicted of a felony involving dishonesty, breach of trust, or a law reasonably related to the business of insurance is disqualified from participating in the business of insurance; requiring insurance companies to have antifraud initiatives; allowing the Insurance Commissioner to promulgate rules; 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.

As used in this article:

(a) “Benefits” mean money payments, goods, services, or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance.

(b) “Business of insurance” means the writing of insurance, including the writing of workers’ compensation insurance under the provisions of §23-1-1 et seq. of this code, self-insurance by an employer or employer group for workers’ compensation risk including the risk of catastrophic injuries under the provisions of §23-1-1 et seq. of this code, or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and
the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

(c) “Claim” means an application or request for payment or benefits provided under the terms of a policy of insurance.

(d) “Commissioner” means the Insurance Commissioner of West Virginia or his or her designee.

(e) “Fraudulent insurance act” means an act or omission committed by a person who knowingly and with intent to defraud misrepresents or conceals any material information concerning one or more of the following:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker, or its agent, false information as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance or renewal of an insurance policy or reinsurance contract;

(B) The rating of an insurance policy or reinsurance contract;

(C) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(D) Premiums paid on an insurance policy or reinsurance contract;

(E) Payments made in accordance with the terms of an insurance policy or reinsurance contract;

(F) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;

(G) The financial condition of an insurer or reinsurer;

(H) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;

(I) The issuance of written evidence of insurance; or

(J) The reinstatement of an insurance policy.
(2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;

(3) Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance;

(4) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance;

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or

(6) Attempt to commit, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subdivision.

(f) “Health care provider” means a person, partnership, corporation, facility, or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist, or psychologist.

(g) “Insurance” means a contract or arrangement in which a person undertakes to:

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

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

(3) Pay an annuity to another person;

(4) Act as surety; or
(5) Self-insurance for workers’ compensation risk, including the risk of catastrophic injuries pursuant to the provisions of §23-1-1 et seq. of this code.

(h) “Insurer” means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers’ mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group, or other insurer, regardless of the type of coverage written, including the writing of workers’ compensation insurance or self insurance under the provisions of this code, benefits provided, or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

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

(j) “Policy” means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance, coverage by a self-insured employer or employer group for its workers’ compensation risk including its risk of catastrophic injuries or reinsurance, affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
(k) “Reinsurance” means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

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

(m) “Unit” means the insurance fraud unit established pursuant to the provisions of this 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.

(a) The commissioner may accept proceeds of court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts.

(b) Forfeiture proceeds shall be deposited into the special revenue account established in subsection (c) of this section, and the commissioner may make expenditures from the fund in order to effectuate the purposes of this article.

(c) The Insurance Fraud Prevention Fund is hereby created. The fund shall be administered by the commissioner and shall consist of all moneys made available from court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts, including all interest or other return earned from investment of the fund which may be invested in the manner permitted by §12-6C-9 of this code. Expenditures from the fund shall be for the purposes
set forth in this article and are not authorized from collections but are to be made only in
accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
1, et seq. of this code and upon the fulfillment of the provisions set forth in §11B-2-1, et seq. of
this code: Provided, That for the fiscal year ending June 30, 2021, expenditures are authorized
from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance,
including accrued interest and other returns, remaining in the fund at the end of each fiscal year
shall not revert to the General Revenue Fund but shall remain in the fund and be expended as
provided by this section.

§33-41-5. Mandatory reporting of insurance fraud or criminal offenses otherwise related to
the business of insurance.

(a) A person engaged in the business of insurance having knowledge or a reasonable
belief that a fraudulent insurance act or another crime related to the business of insurance is
being, will be, or has been committed shall provide to the commissioner the information required
by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent insurance
act or another crime related to the business of insurance is being, will be, or has been committed
may provide to the commissioner the information requested by, and in a manner prescribed by,
the commissioner.

(c) The commissioner may prescribe a reporting form to facilitate reporting of possible
fraudulent insurance acts or other offenses related to the business of insurance for use by persons
other than those persons referred to in subsection (a) of this section.

(d) Notwithstanding any other provision of this code, a person engaged in the business of
insurance shall furnish and disclose any information, including documents, materials, or other
information in its possession concerning a fraudulent insurance act or a suspected fraudulent
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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.

(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.

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

(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;

(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;

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

(c) The unit may:

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

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

(3) Administer oaths and affirmations;

(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 considered 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) Make criminal referrals to the county prosecutors;

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

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

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

(9) 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; and

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

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

(e) Notwithstanding any provision of this code to the contrary, specific personnel of the
unit 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 §30-29-1 of this code; and

(f) The unit is not subject to the provisions of §6-9A-1 et seq. of this code and the
investigations conducted by the 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 §29B-1-1 et seq.
of this code.

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

(a) A person shall not commit a fraudulent insurance act as defined in §33-41-2 of this
code.
(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this article or investigations of suspected or actual violations of this article.

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

d. A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably related to the business of insurance, to participate in the business of insurance.

§33-41-11a. Insurer antifraud initiatives.

(a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

(b) Antifraud initiatives may include:

1. Fraud investigators, who may be insurer employees or independent contractors; or
2. An antifraud plan submitted to the commissioner. Antifraud plans submitted to the commissioner are privileged and confidential, are exempt from public disclosure under the provisions of §29B-1-1 et seq. of this code, and are not subject to discovery or subpoena in a civil or criminal action.

(c) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to set forth requirements or standards for the submission of insurer antifraud plans.

§33-41-12. Civil and criminal penalties; injunctive relief; employment disqualification; restitution.

(a) A person or entity engaged in the business of insurance or a person or entity making a claim against an insurer who violates any provision of this article may be subject to the following:

1. Where applicable, suspension or revocation of license or certificate of authority or a civil penalty of up to $10,000 per violation, or where applicable, both. Suspension or revocation
of license or certificate of authority or imposition of civil penalties may be pursuant to an order of
the commissioner issued pursuant to the provisions of §33-2-13 of this code. The commissioner’s
order may require a person found to be in violation of this article to make reasonable restitution
to persons aggrieved by violations of this article. The commissioner may assess a person
sanctioned pursuant to the provisions of this section the cost of investigation;
(2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the
provisions of this section is mandatory and not subject to suspension;
(3) A person convicted of a felony violation law reasonably related to the business of
insurance shall be disqualified from engaging in the business of insurance; and
(4) The commissioner may apply for a temporary or permanent injunction in any
appropriate circuit court of this state seeking to enjoin and restrain a person from violating or
continuing to violate the provisions of this article or rule promulgated under this article,
notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of
the proceeding and have the power to make and enter an order or judgment awarding temporary
or permanent injunctive relief restraining any person from violating or continuing to violate any
provision of this article or rule promulgated under the article as in its judgment is proper.
(b) Any person who commits a violation of the provisions of §33-41-11 of this code where
the benefit sought is $1,000 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 10 years, fined
not more than $10,000, or both fined and imprisoned, or in the discretion of the court, confined in
jail for not more than one year and fined not more than $10,000, or both fined and confined.
(c) Any person who commits a violation of the provisions of §33-41-11 of this code where
the benefit sought is less than $1,000 in value is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for not more than one year, or fined not more than $2,500, or both
fined and confined.
(d) Any person convicted of a violation of §33-41-11 of this code is subject to the restitution provisions of §61-11A-1 of this code.

(e) A court may award to the unit or other law-enforcement agency investigating a violation of §33-41-11 of this code or other criminal offense related to the business of insurance its cost of investigation.

(f) In addition to the provisions of this section, the offenses enumerated in §61-3-24e through §61-3-24h, inclusive, of this code are applicable to matters concerning workers' compensation insurance.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

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

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 11:31 am