

This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <https://www.lrl.mn.gov>



Department of Commerce Fraud Bureau

SPECIAL REVIEW
January 2022

OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

**State of Minnesota
Office of the Legislative Auditor**

Special Reviews

We conduct special reviews in response to requests from legislators and other public officials, or to address a government issue that has come to our attention in some other way.

While the focus of a special review is more narrow than an audit or evaluation, our objective is the same: to find the facts and report them accurately and objectively.

For more information about the Office of the Legislative Auditor, go to our website at:

www.auditor.leg.state.mn.us



January 2022

Members of the Legislative Audit Commission:

In September 2021, the Office of the Legislative Auditor (OLA) received a complaint about the Department of Commerce's Fraud Bureau. The complaint questioned whether the bureau acted appropriately by investigating fraud allegations that did not pertain to insurance.

We reviewed the complaint and determined that it had merit. State law limits the jurisdiction of the Commerce Fraud Bureau to "offenses related to insurance fraud," and department officials acknowledged to us that the bureau sometimes investigates cases unrelated to insurance. In addition, the bureau receives all of its funding from insurance-related sources, so the use of bureau resources for noninsurance cases raises questions from a funding perspective.

We suggest two possible solutions. First, the Legislature could amend state law to authorize the Commerce Fraud Bureau to investigate any issues that are within the Department of Commerce's purview; if it does this, the Legislature should also reconsider the bureau's funding sources. Alternatively, if the Legislature does not adopt such changes, the Commerce Fraud Bureau should operate within the confines of current law and limit its investigations to insurance-related cases.

We received full cooperation from the Department of Commerce as we conducted this review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel Alter', with a stylized flourish extending to the left.

Joel Alter
Director, Special Reviews



OLA

Summary

The Minnesota Department of Commerce has a law enforcement unit—the Commerce Fraud Bureau (CFB)—that, by statute, may only investigate “offenses related to insurance fraud.”¹ This bureau does many investigations related to insurance fraud, but we found that it sometimes also investigates other types of fraud, contrary to what the law allows.

For example, CFB spent considerable time investigating a company (Able Energy) that contracted to provide solar-related installations to consumers. CFB’s investigation supported Hennepin County’s decision to file a criminal charge of theft by swindle in August 2021 against the company’s owner. However, there is no indication in the charging document that the alleged fraud in this case was related to insurance, and a CFB official told us that an examination of whether Able Energy paid workers’ compensation premiums was a very small part of CFB’s investigation.

The department has conducted other investigations that were not related to insurance. It has justified these actions by citing a portion of statute that authorizes the department to “otherwise assist any law enforcement authority having jurisdiction.”² However, that language comes from a statute that specifically pertains to “alleged insurance fraud.”

In our view, the Legislature should consider the proper jurisdiction of the Commerce Fraud Bureau. If the Legislature chooses to keep statutory language that limits the jurisdiction of the Commerce Fraud Bureau to insurance-related cases, then the bureau should limit its activities accordingly. Alternatively, the Legislature could authorize the bureau to investigate any allegations of fraud that are within the purview of the Department of Commerce’s regulatory duties. If the Legislature broadens CFB’s authority in this way, it should also reconsider CFB’s sources of funding. CFB’s state funding now comes entirely from insurance-related sources.

Finally, we think it is appropriate for CFB to consider assisting other law enforcement entities with investigations, but (1) CFB’s role in these investigations should be confined to matters within the limits of CFB’s statutory jurisdiction, and (2) the Department of Commerce should adopt a written policy that outlines the circumstances in which such assistance will be provided.

¹ *Minnesota Statutes* 2021, 45.0135, subd. 2a.

² *Minnesota Statutes* 2021, 45.0135, subd. 2b(4).



OLA

Table of Contents

1	Introduction
3	Background
5	Findings
11	Recommendations
13	Agency Response



OLA

Introduction

In August 2021, the Hennepin County Attorney’s Office announced that Michael James Harvey had been charged in district court with theft by swindle. Harvey was the sole owner and chief executive officer of Able Energy, a company started in 2010 for the purpose of providing solar electric energy and solar thermal insulation. According to the criminal complaint, Harvey and his company collected more than \$1 million in contract payments from at least 53 Minnesota consumers, but Able Energy did not complete work on any of the projects and did not begin work on most of them.

The Hennepin County Attorney’s Office said the charge against Harvey “comes after a year-and-a-half long criminal investigation by the Minnesota Commerce Fraud Bureau, in addition to the Minnesota Department of Labor and Industry’s Construction Codes and Licensing Division which conducted the civil licensing investigation.”³

Our office made inquiries into the Able Energy case after receiving a complaint from a member of the public. The complaint questioned why the Commerce Fraud Bureau (CFB) investigated a noninsurance matter, asserting that CFB does not have statutory authority to conduct such investigations. We examined whether CFB has complied with statutory language that specifies the cases for which it has jurisdiction; we did not examine the operations or performance of CFB.

³ Hennepin County Attorney’s Office, “Former Owner and CEO of Defunct Able Energy, Michael Harvey, Charged with Theft-by-Swindle,” <https://www.hennepinattorney.org/news/news/2021/August/Michael-harvey-charged-with-theft-by-swindle>, accessed September 16, 2021.



OLA

Background

The Commerce Fraud Bureau (CFB) is a law enforcement agency in the Minnesota Department of Commerce. According to CFB's most recent annual report (for Calendar Year 2020), CFB's staff consisted of 20 professionals: a director, 2 supervisory special agents, 13 special agents, and 4 analysts.⁴ According to CFB, the bureau is the sixth largest state law enforcement agency in the U.S. that is responsible for investigating insurance fraud.

All of CFB's state funding comes from three insurance-related sources, as shown in the box at right. The largest source is an assessment paid by all insurers.⁵ According to state law:

Each insurer authorized to sell insurance in the state of Minnesota, including surplus lines carriers, and having Minnesota earned premium the previous calendar year shall remit an assessment to the commissioner for deposit in the insurance fraud prevention account on or before June 1 of each year. The amount of the assessment shall be based on the insurer's total assets and on the insurer's total written Minnesota premium, for the preceding fiscal year [based on schedule of assessments specified in the statute].⁶

Consumer Fraud Bureau Funding Sources, Fiscal Year 2020

Assessment on all insurers	\$1,777,400
Surcharge on all automobile insurance policies	1,520,000
Workers' compensation assessments	<u>200,000</u>
TOTAL	\$3,497,400

SOURCE: Minnesota Department of Commerce

The Insurance Fraud Prevention Account—where the insurer assessments are deposited—is a special revenue account in the state treasury. Such accounts are created by law or by the executive branch, and they can be used only for specific purposes. The Insurance Fraud Prevention Account was created by state law to fund Department of Commerce activities specified in the insurance fraud sections of the statutes.⁷

The second source of funding for CFB is an Automobile Theft Prevention Surcharge that is charged on all automobile insurance policies. According to state law:

Each insurer engaged in the writing of policies of automobile insurance shall collect a surcharge, at the rate of 50 cents per vehicle for every six

⁴ Minnesota Department of Commerce, Commerce Fraud Bureau, *Commerce Fraud Bureau Annual Report, 2020* (St. Paul, undated), 8.

⁵ Minnesota Department of Commerce, Commerce Fraud Bureau, *Commerce Fraud Bureau Annual Report, 2020* (St. Paul, undated), 21. The report said the remainder of the bureau's funding is from (1) a legislative appropriation from the Minnesota Department of Labor and Industry to investigate workers' compensation fraud, (2) an administrative fee to offset the costs of managing the Auto Theft Prevention Grant Program, and (3) an appropriation from the Auto Theft Prevention Grant Program.

⁶ *Minnesota Statutes 2021*, 45.0135, subd. 7.

⁷ The Insurance Fraud Prevention Account is established by *Minnesota Statutes 2021*, 45.0135, subd. 6. This statute limits the account's use to purposes specified in *Minnesota Statutes 2021*, 60A.951 to 60A.956, all of which pertain to insurance fraud.

months of coverage, on each policy of automobile insurance providing comprehensive insurance coverage issued or renewed in this state.⁸

State law requires that \$1.3 million of the revenues from the Automobile Theft Prevention Surcharge be transferred annually to the Insurance Fraud Prevention Account, discussed above.⁹ In Fiscal Year 2020, CFB used another \$220,000 from the Automobile Theft Prevention Surcharge to administer an Automobile Theft Prevention Program.

The third source of CFB funding in Fiscal Year 2020 was \$200,000 from the state's Special Compensation Fund, also called the Workers' Compensation Fund. Like the Insurance Fraud Prevention Account, the Workers' Compensation Fund is a special revenue account in the state treasury. State law requires employers (unless exempted by law) to annually pay assessments into this fund, which is used to pay for workers' compensation benefits as well as certain state operating costs related to workers' compensation activities. State law says that "investigation" costs necessary to administer the Workers' Compensation Fund shall be paid from this fund, and the Department of Commerce's chief operating officer told us: "It is my understanding that the amount appropriated [to the Department of Commerce] from the Workers' Comp[ensation] Fund should be used for workers' compensation enforcement and investigations."¹⁰

⁸ *Minnesota Statutes* 2021, 297I.11, subd. 1.

⁹ *Minnesota Statutes* 2021, 297I.11, subd. 2.

¹⁰ *Minnesota Statutes* 2021, 176.129, subd. 11; and Tim Jahnke, Deputy Commissioner and Chief Operating Officer, Minnesota Department of Commerce, e-mail to Joel Alter, Director of Special Reviews, Office of the Legislative Auditor, November 1, 2021.

Findings

Minnesota statutes authorize the commissioner of the Minnesota Department of Commerce to establish a law enforcement agency—the Commerce Fraud Bureau (CFB)—and appoint peace officers to conduct investigations and make arrests.¹¹ This agency was not created to be a general-purpose law enforcement agency. Rather, the law says: “The jurisdiction of the [CFB] is limited to offenses related to insurance fraud.”¹²

The statutes further outline four duties of CFB, as shown in the box at right. Each of the duties—as indicated by the red highlighting—specifically pertains to insurance fraud.

The Commerce Fraud Bureau’s investigation of Able Energy did not comply with the limits on the bureau’s jurisdiction in statute.

The Able Energy case was not an insurance fraud case.¹³ The criminal complaint filed by Hennepin County in August 2021 never used the term “insurance.” The criminal complaint alleged that the company engaged in fraud, but not insurance fraud:

Defendant placed an emphasis on obtaining new customers and large down payments on these contracts even as he failed to complete solar installations for customers who already had contracts with Able Energy. Once the contracts were signed, Defendant repeatedly lied about the company’s ability to complete the installations and made misrepresentations about when the installation work would begin.¹⁴

Duties of the Commerce Fraud Bureau

The Commerce Fraud Bureau shall:

- (1) review notices and reports of **insurance fraud** submitted by authorized insurers, their employees, and agents or producers;
- (2) respond to notifications or complaints of suspected **insurance fraud** generated by other law enforcement agencies, state or federal governmental units, or any other person;
- (3) initiate inquiries and conduct investigations when the bureau has reason to believe that **insurance fraud** has been or is being committed; and
- (4) report incidents of **alleged insurance fraud** disclosed by its investigations to appropriate law enforcement agencies, including, but not limited to, the attorney general, county attorneys, or any other appropriate law enforcement or regulatory agency, and shall assemble evidence, prepare charges, and otherwise assist any law enforcement authority having jurisdiction.

— **Minnesota Statutes 2021, 45.0135, subd. 2b.**
[Emphasis added.]

¹¹ *Minnesota Statutes 2021*, 45.0135, subd. 2a.

¹² *Ibid.*

¹³ While insurance fraud may be committed by persons other than licensed insurance agents, it is worth noting that the Department of Commerce told us there is no record of Harvey ever holding an insurance license in Minnesota.

¹⁴ County of Hennepin, Fourth Judicial District Court, Complaint, August 25, 2021, p. 5, *State of Minnesota v. Michael James Harvey*, 27-CR-21-16205.

The Able Energy case came to CFB through a referral from a local law enforcement agency. On March 5, 2018, the Plymouth Police Department—after learning of a case in which Able Energy may have defrauded a Plymouth resident—contacted CFB and asked for assistance with a broader criminal investigation. CFB opened a criminal investigation into Able Energy on March 8, 2018. Current Commerce Commissioner Grace Arnold told us: “Based on the number of victims and the Plymouth Police Department’s request for assistance, the Office of the Commerce Commissioner authorized the CFB to open a criminal investigation.”¹⁵ (Commissioner Arnold was not the commissioner of Commerce in 2018; the commissioner at that time was Jessica Looman.)

Commissioner Arnold told us the department’s decision to open an investigation in response to the Plymouth request was done pursuant to the fourth point in the box on the previous page that outlines CFB’s statutory duties. She said CFB’s statutory duty to “otherwise assist any law enforcement authority having jurisdiction” allowed CFB to undertake this investigation. She further said, “The Able Energy case was opened due to the fact [that] CFB personnel believed federal mail fraud statutes may have been violated,” and the department has memoranda of understandings with several federal agencies—including the U.S. Postal Inspection Service—that are intended to foster cooperation on investigations of various types of crimes.¹⁶

The Department of Commerce told us that, at one point during the Able Energy investigation, CFB staff examined whether Harvey provided workers’ compensation coverage for his employees, and they found that he did. A department official said this check for compliance with workers’ compensation requirements was a very small (perhaps 2 percent) part of the overall investigation.

In our view, state law is quite clear about the limits on CFB’s jurisdiction. As stated above, CFB’s jurisdiction is explicitly limited by statute to cases “related to insurance fraud.”¹⁷ In addition, the language cited by Commissioner Arnold—that CFB may “otherwise assist any law enforcement authority having jurisdiction”—is from a clause of statute that pertains specifically to insurance fraud investigations.

Furthermore, the use of CFB funds for noninsurance investigations seems inconsistent with CFB’s state funding, which all comes from special revenue accounts dedicated to insurance-related purposes.¹⁸ For example, in Fiscal Year 2020, 88 percent of CFB’s

¹⁵ Grace Arnold, Commissioner, Department of Commerce, letter to Joel Alter, Director of Special Reviews, Office of the Legislative Auditor, September 14, 2021, 1. The commissioner told us there is no record of the department providing written authorization to start this investigation; she said the department’s practice has been to authorize investigations verbally rather than in writing.

¹⁶ *Ibid.*, 2. The Department of Commerce has agreements with the U.S. Postal Inspection Service, the U.S. Secret Service, the U.S. Drug Enforcement Agency, and the U.S. Immigration and Customs Enforcement. The department told us that only one of these agreements provides any reimbursement for department activities, and that funding is very small (capped at \$18,000 per year).

¹⁷ *Minnesota Statutes* 2021, 45.0135, subd. 2a.

¹⁸ The director of the Commerce Fraud Bureau told us that CFB’s revenue sources are commingled, and it is not possible for him to say which funds paid for a particular investigation.

revenues came from the Insurance Fraud Prevention Account.¹⁹ The law says money in this account is appropriated to the commissioner of Commerce “for the purposes specified in this section and [Minnesota Statutes] sections 60A.951 to 60A.956.”²⁰ The cited sections of statute all pertain to insurance fraud. In response to our inquiries, the Department of Commerce emphasized to us the language highlighted below (in boldface) from *Minnesota Statutes* 2021, 60A.956:

Nothing in sections 60A.951 to 60A.956...**limits any of the powers granted elsewhere by the laws of this state to the commissioner of commerce to investigate alleged violations of law and to take appropriate action.**²¹

This sentence simply states that the insurance fraud sections of *Minnesota Statutes* 2021, Chapter 60A, do not limit the broader authority granted in statute to the commissioner of Commerce. The sentence does not modify the language in *Minnesota Statutes* 2021, 45.0135, subd. 2a, which limits CFB’s jurisdiction to insurance-related cases.

CFB’s other revenues (which accounted for about 12 percent of CFB’s Fiscal Year 2020 budget) are supposed to be used for (1) workers’ compensation enforcement and investigations and (2) administration of an automobile theft prevention program.

The Commerce Fraud Bureau does not have a written policy that outlines factors it should consider when deciding whether to assist other law enforcement agencies with criminal investigations.

Commissioner Arnold told us that CFB does not grant all requests from other law enforcement agencies for assistance with investigations. For example, she said CFB rejects requests that the requesting law enforcement agencies are equipped to handle with their own staff. However, she said CFB does not have a written policy outlining the circumstances in which it will assist another law enforcement entity with a criminal investigation.

Commissioner Arnold said CFB investigated Able Energy because CFB suspected mail fraud in the Able Energy case, which related to the department’s participation in an interagency agreement with the U.S. Postal Inspection Service.²² But we do not think this agreement with a federal law enforcement agency provided a sound justification for CFB’s investigation of Able Energy. Commissioner Arnold correctly noted that state law authorizes state agencies with law enforcement units to participate in “special purpose task force[s]”—“coalition[s] of city, county, state, and federal law enforcement officers directed to accomplish specific state and federal law enforcement objectives.”²³

¹⁹ CFB’s revenues from the Insurance Fraud Prevention Account included (1) \$1,777,400 from the assessment imposed on all insurers and (2) a statutorily required annual transfer to the Insurance Fraud Prevention Account of \$1,300,000 in revenues from the Automobile Theft Prevention Surcharge.

²⁰ *Minnesota Statutes* 2021, 45.0135, subd. 7.

²¹ *Minnesota Statutes* 2021, 60A.956.

²² Commissioner Arnold said the U.S. Postal Inspection Service had opened a mail fraud case related to Able Energy.

²³ *Minnesota Statutes* 2021, 626.8453, subd. 1(d).

However, it is reasonable to expect CFB to participate in such task forces only to the extent that CFB does not, in doing so, violate other state laws. State law limits CFB's jurisdiction to investigating crimes related to insurance fraud, so an investigation of possible mail fraud (without an allegation of insurance fraud) would be inconsistent with CFB's statutory authority.

Besides the Able Energy investigation, the Commerce Fraud Bureau has conducted other investigations that did not directly relate to allegations of insurance fraud.

CFB devotes significant attention to insurance fraud. For example, CFB's 2020 annual report said the bureau received 3,600 referrals in 2020, and the most common areas of alleged fraud were in automobile insurance, health care insurance, homeowner insurance, workers' compensation insurance, and insurance agent or broker fraud. The bureau's annual reports provide many examples of cases in which CFB investigations contributed to criminal charges against individuals for insurance fraud.

But CFB's director acknowledged to us that CFB investigates noninsurance cases, too. For example:

- CFB investigated allegations of embezzlement from a local athletic association. The city police department requested assistance because it did not have expertise in this area.
- CFB investigated embezzlement from a church and Boy Scouts organization because the county sheriff's office said it lacked the resources to do the investigation.

The 2020 CFB annual report said:

There are many categories of criminal action tracked by the CFB. Senior scams, identification theft, medical ID theft, fraudulent health insurance claims, businesses illegally trying to avoid paying workers' compensation premiums, cyber-crimes, property and casualty insurance schemes and funeral insurance fraud.²⁴

This statement mentions various types of insurance fraud, but it also references other crimes that do not necessarily relate to insurance—such as scams targeting seniors and cybercrimes.

It is also worth noting that CFB's mission statement—as presented in the 2020 annual report—is: “To protect Minnesotans from fraud by conducting aggressive criminal investigations in the pursuit of justice.”²⁵ This statement references “fraud” but not specifically “insurance fraud.”²⁶

²⁴ Minnesota Department of Commerce, Commerce Fraud Bureau, *Commerce Fraud Bureau Annual Report, 2020* (St. Paul, undated), 7.

²⁵ *Ibid.*, 8.

²⁶ On page 8 of the same annual report, the Commerce Fraud Bureau lists “[u]ncovering insurance and associated fraud” as one of the bureau's purposes.

The CFB director said the bureau's practices regarding investigating noninsurance cases have varied over the years, depending on who was commissioner of the department. He said CFB gave increased attention to securities fraud cases starting in 2011, noting that many individuals who sell securities are also licensed to sell insurance. He said CFB has recently investigated "labor trafficking"—that is, using force, fraud, or coercion to get individuals to work or perform services. He noted that employers engaged in labor trafficking generally do not pay workers' compensation insurance, and he said that no entity besides CFB is actively investigating labor trafficking in Minnesota. In general, he noted, CFB agents have expertise in white-collar crime that local law enforcement agencies may lack.



OLA

Recommendations

When Minnesotans allege that they have been victims of fraud, it is reasonable to expect that there will be public entities that can investigate and pursue these allegations. However, it is also important for investigative offices to function within the boundaries set forth in law.

Department of Commerce Commissioner Arnold told our office that “CFB’s *primary jurisdiction* is to investigate crimes related to insurance fraud” [emphasis added]. But, according to state law, CFB’s sole area of jurisdiction—not the primary area of jurisdiction—is offenses related to insurance fraud. Because CFB sometimes investigates types of fraud not related to insurance, the Legislature is faced with a choice about how to proceed.

RECOMMENDATION

The Legislature should consider whether to (1) keep statutory language that limits the jurisdiction of the Commerce Fraud Bureau to insurance-related cases, or, alternatively, (2) authorize the bureau to investigate any allegations of fraud that are within the purview of the Department of Commerce’s regulatory duties.

If the Legislature keeps the existing statutory language, CFB should comply with the law and confine its investigations to those related to insurance fraud. In such a case, it would be helpful if the Department of Commerce clarifies the circumstances in which investigations may be considered to be “insurance-related.” For example, if a case involves allegations of multiple types of fraud, CFB’s policy could describe circumstances in which allegations of insurance fraud and other crimes are so intertwined that it would be reasonable for CFB to proceed with an investigation that is not limited solely to insurance fraud.

But, if the Legislature believes that CFB investigators should be authorized to pursue a wider array of consumer fraud—perhaps including crimes such as securities or investment fraud, or embezzlement—the Legislature could expand CFB’s jurisdiction in statute so that it has clear authority to investigate allegations in addition to those related to insurance. CFB’s director told us his bureau provides critical investigative services on behalf of Minnesotan consumers and businesses. For example, he said that the Minnesota Bureau of Criminal Apprehension has a financial crimes unit, but that unit does not focus on crimes such as embezzlement and securities fraud. The CFB director said that, in some cases, CFB functions as an investigative agency of last resort.

According to CFB’s annual reports, CFB investigations have had a substantial economic impact. CFB calculates economic impact as being the cash losses that occurred in prosecuted cases, based on the criminal complaints filed by prosecutors. CFB has estimated that the annual economic impacts of its investigated cases ranged in recent years from \$6.8 million in 2020 to \$163.5 million in 2017. (These amounts are based on the years in which charges were filed, not the years in which the losses

occurred.) The size of the 2017 estimated impact was largely due to a single case in which individuals worldwide were defrauded of \$150 million.

If the Department of Commerce believes it is unreasonable that state law limits CFB's jurisdiction to cases related to insurance fraud, it should seek legislative sponsors for possible amendments to state law. However, it is important to reiterate that CFB's revenues now come from licensed insurers and insurance policies. Insurers, employers, and consumers may have concerns if the insurance-related assessments they pay to support CFB are used to pay for investigations of noninsurance fraud. For this reason, any reconsideration of CFB's jurisdiction should be accompanied by a reconsideration of its revenue sources.

RECOMMENDATION

The Department of Commerce should adopt a written policy that specifies the circumstances in which CFB will assist another law enforcement agency with an investigation.

There is a clause in the CFB statute that allows CFB to “otherwise assist any law enforcement authority having jurisdiction” for cases.²⁷ Commissioner Arnold told us:

[W]hen the CFB does choose to participate in an investigation outside of its primary jurisdiction, it does so based on an investigative request made by another law enforcement agency or under the powers of its federal task force agreements. *[Note: Elsewhere in this letter, Commissioner Arnold said that insurance fraud is CFB's “primary jurisdiction.”]*²⁸

The statutory clause cited above—if read in its full context—relates to “incidents of alleged insurance fraud.”²⁹ The language does not clearly authorize CFB to assist law enforcement agencies with investigations other than those related to insurance fraud. However, it appears—from the commissioner's statement and examples presented earlier in this report—as if CFB has sometimes used this language to assist other agencies with investigations that go beyond the scope of CFB's statutory jurisdiction.

As noted previously, the department and CFB do not have formal policies about the circumstances in which CFB may decide to assist another law enforcement entity. In some cases—such as the Able Energy case—CFB has investigated alleged crimes other than insurance fraud. Unless current law is amended to explicitly broaden CFB's authority, the policy adopted by the department should clearly prohibit CFB from assisting other agencies with investigations of alleged crimes unrelated to insurance fraud.

²⁷ *Minnesota Statutes* 2021, 45.0135, subd. 2b(4).

²⁸ Grace Arnold, Commissioner, Department of Commerce, letter to Joel Alter, Director of Special Reviews, Office of the Legislative Auditor, September 14, 2021, 2.

²⁹ *Minnesota Statutes* 2021, 45.0135, subd. 2b(4).

January 7, 2022

Joel Alter
Director of Special Reviews
Office of the Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Director Alter,

Thank you for the opportunity to comment on the Office of the Legislative Auditor's ("OLA") report regarding the focus of Commerce Fraud Bureau ("CFB") Investigations. The Minnesota Department of Commerce ("the Department") accepts the OLA's guidance and recommendations related to the statutory interpretation of Minn. Stat. § 45.0135.

The Department is committed to its mission to protect the public interest; advocate for Minnesota consumers; ensure a strong, competitive, and fair marketplace; strengthen the state's economic future; and serve as a trusted public resource for consumers and businesses. The CFB works to protect Minnesota consumers and insurance companies from fraud by conducting criminal investigations in the pursuit of justice.

As your report acknowledges, when Minnesotans are victims of fraud, it is reasonable to expect that there will be public entities that can investigate. Due to the CFB's expertise in investigating financial fraud, the CFB is sometimes asked to be an investigatory agency of last resort to protect Minnesotans. It is in the public interest to ensure Minnesotans have a law enforcement team able to conduct investigations into fraud. Therefore, the Department intends to introduce legislation to clarify the CFB's authority to investigate all financial fraud. To that end, the Department will work with legislators to determine whether there is a legislative desire to authorize the CFB to investigate other fraud allegations that are within the purview of the Department's regulatory duties and identify an appropriate funding source for these additional investigatory activities.

The Department is committed to adopting the OLA's recommendations and has begun reviewing and revising the CFB's operating procedures and practices to clarify that investigations and agent time and resources will not be committed to work without an initial indication of insurance fraud. We note that at the outset of many investigations in which the CFB is involved, it is not immediately clear whether the conduct investigated could result in insurance fraud charges or whether suspected insurance fraud is only a small component of a larger, more complex criminal scheme. Only during the investigatory process do many of these issues become clear. The Department is currently in the process of drafting a new policy and accompanying procedures to help identify when the CFB's time and resources should be withdrawn from an investigation.

Joel Alter, Director of Special Reviews

January 7, 2022

Page 2 of 2

The Department is also working on a new written policy that clarifies the CFB jurisdiction and establishes an initial and periodic review process to determine whether CFB's continued assistance is consistent with its limited jurisdiction. These policies will ensure a process that includes greater oversight and review of external requests, while still allowing for timely responses to extra-agency collaboration requests.

The Department is committed to implementing the OLA's recommended policies and procedures within 45 days of the OLA's Report.

Thank you for the OLA's thoughtful and thorough review of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Grace Arnold". The signature is written in a cursive, flowing style.

Grace Arnold
Commissioner

For more information about OLA and to access its reports, go to: <https://www.auditor.leg.state.mn.us>.

To offer comments about our work or suggest an audit, evaluation, or special review, call 651-296-4708 or email legislative.auditor@state.mn.us.

To obtain printed copies of our reports or to obtain reports in electronic ASCII text, Braille, large print, or audio, call 651-296-4708. People with hearing or speech disabilities may call through Minnesota Relay by dialing 7-1-1 or 1-800-627-3529.



Printed on Recycled Paper



OFFICE OF THE LEGISLATIVE AUDITOR
CENTENNIAL OFFICE BUILDING – SUITE 140
658 CEDAR STREET – SAINT PAUL, MN 55155