

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2236

By: May

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8 COMMITTEE SUBSTITUTE

9 An Act relating to workers' compensation; amending
10 Section 6, Chapter 208, O.S.L. 2013, as last amended
11 by Section 4, Chapter 476, O.S.L. 2019 (85A O.S.
12 Supp. 2020, Section 6), which relates to fraud;
13 providing that failure to report material change in
14 income is a felony; prescribing punishment; modifying
15 provisions related to certain law enforcement
16 officers; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
19 2013, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A
20 O.S. Supp. 2020, Section 6), is amended to read as follows:

21 Section 6.

22 A. 1. a. Any person or entity who makes any material false
23 statement or representation, who willfully and
24 knowingly omits or conceals any material information,
or who employs any device, scheme, or artifice, or who
aids and abets any person for the purpose of:

- 1 (1) obtaining any benefit or payment,
- 2 (2) increasing any claim for benefit or payment, or
- 3 (3) obtaining workers' compensation coverage under
- 4 ~~this act~~ the Administrative Workers' Compensation
- 5 Act,

6 shall be guilty of a felony punishable pursuant to
7 Section 1663 of Title 21 of the Oklahoma Statutes.

8 b. A material false statement or representation includes,
9 but is not limited to, attempting to obtain treatment
10 or compensation for body parts that were not injured
11 in the course and scope of employment.

12 c. Fifty percent (50%) of any criminal fine imposed and
13 collected under this section shall be paid and
14 allocated in accordance with applicable law to the
15 Workers' Compensation Commission Revolving Fund.

16 2. Any person or entity with whom any person identified in
17 division (1) of subparagraph a of paragraph 1 of this subsection has
18 conspired to achieve the proscribed ends shall, by reason of such
19 conspiracy, be guilty as a principal of a felony.

20 B. Except for forms submitted through the Electronic Data
21 Interchange system employed by the Workers' Compensation Commission
22 pursuant to Section 101 of this title, a copy of division (1) of
23 subparagraph a of paragraph 1 of subsection A of this section shall
24 be included on all forms prescribed by the Commission for the use of

1 injured employees claiming benefits and for the use of employers in
2 responding to employees' claims under this act.

3 C. While receiving temporary total disability benefits, failing
4 to report a material change in income to an employer, insurance
5 carrier or third-party administrator shall be a felony punishable
6 pursuant to Section 1663 of Title 21 of the Oklahoma Statutes.

7 D. If the Workers' Compensation Commission or the Attorney
8 General finds that a violation of division (1) of subparagraph a of
9 paragraph 1 of subsection A of this section has been committed, or
10 that any other criminal violations in furtherance of this act were
11 committed, the chair of the Commission or the Attorney General shall
12 refer the matter for appropriate action to the prosecuting attorney
13 having criminal jurisdiction over the matter.

14 ~~D.~~

15 E. 1. a. There shall be established within the Office of the
16 Attorney General a Workers' Compensation Fraud
17 Investigation Unit, funded by the Commission. The
18 Attorney General shall appoint a Director of the
19 Workers' Compensation Fraud Investigation Unit, who
20 may also serve as the director of any other designated
21 insurance fraud investigation division within the
22 Attorney General's office.

23 b. (1) The Unit shall investigate workers' compensation
24 fraud, any additional criminal violations that

1 may be related to workers' compensation fraud,
2 and any other insurance fraud matters as may be
3 assigned at the discretion of the Attorney
4 General.

5 (2) The Attorney General shall designate the
6 personnel assigned to the Unit, who, on meeting
7 the qualifications established by the Oklahoma
8 Council on Law Enforcement Education and
9 Training, shall have the powers of specialized
10 law enforcement officers of the State of Oklahoma
11 for the purpose of conducting investigations
12 under this subparagraph. Personnel hired as
13 specialized law enforcement officers shall ~~have a~~
14 ~~minimum of three (3) years of certified law~~
15 ~~enforcement experience or its equivalent in~~
16 ~~national or military law enforcement experience~~
17 ~~as approved~~ be certified as a peace officer by
18 the Oklahoma Council on Law Enforcement Education
19 and Training.

20 2. The Attorney General and his or her deputies and assistants
21 and the Director of the Workers' Compensation Fraud Investigation
22 Unit and his or her deputies and assistants shall be vested with the
23 power of enforcing the requirements of this section.
24

1 3. It shall be the duty of the Unit to assist the Attorney
2 General in the performance of his or her duties. The Unit shall
3 determine the identity of employees in this state who have violated
4 division (1) of subparagraph a of paragraph 1 of subsection A of
5 this section and report the violation to the Office of the Attorney
6 General and the Commission. The Attorney General shall report the
7 violation to the prosecuting attorney having jurisdiction over the
8 matter.

9 4. a. In the course of any investigation being conducted by
10 the Unit, the Attorney General and his or her deputies
11 and assistants and the Director and his or her
12 deputies and assistants shall have the power of
13 subpoena and may:

14 (1) subpoena witnesses,

15 (2) administer oaths or affirmations and examine any
16 individual under oath, and

17 (3) require and compel the production of records,
18 books, papers, contracts, and other documents.

19 b. The issuance of subpoenas for witnesses shall be
20 served in the same manner as if issued by a district
21 court.

22 c. (1) Upon application by the commissioner or the
23 Director of the Unit, the district court located
24 in the county where a subpoena was served may

1 issue an order compelling an individual to comply
2 with the subpoena to testify.

3 (2) Any failure to obey the order of the court may be
4 punished as contempt.

5 d. If any person has refused in connection with an
6 investigation by the Director to be examined under
7 oath concerning his or her affairs, then the Director
8 is authorized to conduct and enforce by all
9 appropriate and available means any examination under
10 oath in any state or territory of the United States in
11 which any officer, director, or manager may then
12 presently be to the full extent permitted by the laws
13 of the state or territory.

14 e. In addition to the punishments described in paragraph
15 1 of subsection A of this section, any person
16 providing false testimony under oath or affirmation in
17 this state as to any matter material to any
18 investigation or hearing conducted under this
19 subparagraph, or any workers' compensation hearing,
20 shall upon conviction be guilty of perjury.

21 5. Fees and mileage of the officers serving the subpoenas and
22 of the witnesses in answer to subpoenas shall be as provided by law.

23 6. a. Every carrier or employer who has reason to suspect
24 that a violation of division (1) of subparagraph a of

1 paragraph 1 of subsection A of this section has
2 occurred shall be required to report all pertinent
3 matters to the Unit.

4 b. No carrier or employer who makes a report for a
5 suspected violation of division (1) of subparagraph a
6 of paragraph 1 of subsection A of this section by an
7 employee shall be liable to the employee unless the
8 carrier or employer knowingly and intentionally
9 included false information in the report.

10 c. (1) Any carrier or employer who willfully and
11 knowingly fails to report a violation under
12 division (1) of subparagraph a of paragraph 1 of
13 subsection A of this section shall be guilty of a
14 misdemeanor and on conviction shall be punished
15 by a fine not to exceed One Thousand Dollars
16 (\$1,000.00).

17 (2) Fifty percent (50%) of any criminal fine imposed
18 and collected under this subparagraph shall be
19 paid and allocated in accordance with applicable
20 law to the fund administered by the Commission.

21 d. Any employee may report suspected violations of
22 division (1) of subparagraph a of paragraph 1 of
23 subsection A of this section. No employee who makes a
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1 report shall be liable to the employee whose suspected
2 violations have been reported.

3 ~~E.~~ F. 1. For the purpose of imposing criminal sanctions or a
4 fine for violation of the duties of this act, the prosecuting
5 attorney shall have the right and discretion to proceed against any
6 person or organization responsible for such violations, both
7 corporate and individual liability being intended by this act.

8 2. The prosecuting attorney of the district to whom a suspected
9 violation of subsection A of this section, or any other criminal
10 violations that may be related thereto, have been referred shall,
11 for the purpose of assisting him or her in such prosecutions, have
12 the authority to appoint as special deputy prosecuting attorneys
13 licensed attorneys-at-law in the employment of the Unit or any other
14 designated insurance fraud investigation division within the
15 Attorney General's office. Such special deputy prosecuting
16 attorneys shall, for the purpose of the prosecutions to which they
17 are assigned, be responsible to and report to the prosecuting
18 attorney.

19 ~~F.~~ G. Notwithstanding any other provision of law, investigatory
20 files as maintained by the Attorney General's office and by the Unit
21 shall be deemed confidential and privileged. The files may be made
22 open to the public once the investigation is closed by the Director
23 of the Workers' Compensation Fraud Investigation Unit with the
24 consent of the Attorney General.

1 ~~G.~~ H. The Attorney General, with the cooperation and assistance
2 of the Commission, is authorized to establish rules as may be
3 necessary to carry out the provisions of this section.

4 ~~H.~~ I. Nothing in this section shall be deemed to create a civil
5 cause of action.

6 ~~I.~~ J. Except for forms submitted through the Electronic Data
7 Interchange system employed by the Commission pursuant to Section
8 101 of this title, the Commission shall include a statement on all
9 forms for notices and instructions to employees, employers, carriers
10 and third-party administrators that any person who commits workers'
11 compensation fraud, upon conviction, shall be guilty of a felony
12 punishable by imprisonment, a fine or both.

13 ~~J.~~ K. If an injured employee is charged with workers'
14 compensation fraud, any pending workers' compensation proceeding,
15 including benefits, shall be stayed after the preliminary hearing is
16 concluded and the claimant is bound over and shall remain stayed
17 until the final disposition of the criminal case. All notice
18 requirements shall continue during the stay.

19 ~~K.~~ L. If the Attorney General's Office is in compliance with
20 the discovery provisions of Section 258 of Title 22 of the Oklahoma
21 Statutes, medical records created for the purpose of treatment and
22 medical opinions obtained during the investigation shall be
23 admissible at the preliminary hearing without the appearance of the
24 medical professional creating such records or opinions. However,

1 when material evidence dispositive to the issues of whether there
2 was probable cause the crime was committed and whether the defendant
3 committed the crime, was not included in a report or opinion
4 admitted at preliminary hearing, but might be presented at a
5 pretrial hearing by a medical professional who created such report
6 or opinion, the judge may, upon the motion of either party, order
7 the appearance of the medical professional creating such report or
8 opinion. Questions of fact regarding the conduct of the defendant
9 that conflict with the findings of the medical professional
10 evaluating the defendant shall not constitute material evidence. In
11 the event of such motion, notice shall be given to the Attorney
12 General's Workers' Compensation Fraud and Investigation and
13 Prosecution Unit. A hearing shall be held and, if the motion is
14 granted, the evidence shall not be presented fewer than five (5)
15 days later.

16 ~~L.~~ M. Any person or entity who, in good faith and exercising
17 due care, reports suspected workers' compensation fraud or insurance
18 fraud, or who allows access to medical records or other information
19 pertaining to suspected workers' compensation or insurance fraud, by
20 persons authorized to investigate a report concerning the workers'
21 compensation and insurance fraud, shall have immunity from any civil
22 or criminal liability for such report or access. Any such person or
23 entity shall have the same immunity with respect to participation in
24 any judicial proceeding resulting from such reports. For purposes

1 of any civil or criminal proceeding, there shall be a presumption of
2 good faith of any person making a report, providing medical records
3 or providing information pertaining to a workers' compensation or
4 insurance fraud investigation by the Attorney General, and
5 participating in a judicial proceeding resulting from a subpoena or
6 a report.

7 SECTION 2. This act shall become effective November 1, 2021.

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