

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3841

                                  By: **May**

7                                   AS INTRODUCED

8                   An Act relating to workers' compensation; amending  
9                   Section 6, Chapter 208, O.S.L. 2013, as last amended  
10                  by Section 4, Chapter 476, O.S.L. 2019 (85A O.S.  
11                  Supp. 2019, Section 6), which relates to fraud;  
                  providing that failure to report material change in  
                  income is a felony; prescribing punishment; and  
                  providing an effective date.

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

15           SECTION 1.           AMENDATORY           Section 6, Chapter 208, O.S.L.  
16           2013, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A  
17           O.S. Supp. 2019, Section 6), is amended to read as follows:

18           Section 6.

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

24                                   (1) obtaining any benefit or payment,

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

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

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

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

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

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

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

23 3. It shall be the duty of the Unit to assist the Attorney  
24 General in the performance of his or her duties. The Unit shall

1 determine the identity of employees in this state who have violated  
2 division (1) of subparagraph a of paragraph 1 of subsection A of  
3 this section and report the violation to the Office of the Attorney  
4 General and the Commission. The Attorney General shall report the  
5 violation to the prosecuting attorney having jurisdiction over the  
6 matter.

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

12 (1) subpoena witnesses,

13 (2) administer oaths or affirmations and examine any  
14 individual under oath, and

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

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

20 c. (1) Upon application by the commissioner or the  
21 Director of the Unit, the district court located  
22 in the county where a subpoena was served may  
23 issue an order compelling an individual to comply  
24 with the subpoena to testify.

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

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

12 e. In addition to the punishments described in paragraph  
13 1 of subsection A of this section, any person  
14 providing false testimony under oath or affirmation in  
15 this state as to any matter material to any  
16 investigation or hearing conducted under this  
17 subparagraph, or any workers' compensation hearing,  
18 shall upon conviction be guilty of perjury.

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

21 6. a. Every carrier or employer who has reason to suspect  
22 that a violation of division (1) of subparagraph a of  
23 paragraph 1 of subsection A of this section has  
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1 occurred shall be required to report all pertinent  
2 matters to the Unit.

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

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

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

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

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

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

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

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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, 2020.

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9 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/27/2020 - DO PASS,  
10 As Coauthored.

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