

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 244

By: Yen

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5
6 AS INTRODUCED

7 An Act relating to admissibility of medical reports;
8 amending Section 6, Chapter 208, O.S.L. 2013 (85A
9 O.S. Supp. 2014, Section 6), which relates to
10 workers' compensation fraud; providing for
11 admissibility of certain reports; establishing
12 procedures for requiring certain testimony;
13 establishing immunity from certain liability;
14 creating certain presumption; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as
19 follows:

20 Section 6.

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

(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,
4 shall be guilty of a felony.

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

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

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

18 B. A copy of division (1) of subparagraph a of paragraph 1 of
19 subsection A of this section shall be included on all forms
20 prescribed by the Commission for the use of injured employees
21 claiming benefits and for the use of employers in responding to
22 employees' claims under this act.

23 C. Where the Commission or the Attorney General finds that a
24 violation of division (1) of subparagraph a of paragraph 1 of

1 subsection A of this section has been committed, or that any other
2 criminal violations in furtherance of this act were committed, the
3 chair of the Commission or the Attorney General shall refer the
4 matter for appropriate action to the prosecuting attorney having
5 criminal jurisdiction over the matter.

6 D. 1. a. There shall be established within the Office of the
7 Attorney General a Workers' Compensation Fraud
8 Investigation Unit, funded by the Commission. The
9 Attorney General shall appoint a Director of the
10 Workers' Compensation Fraud Investigation Unit, who
11 may also serve as the director of any other designated
12 insurance fraud investigation division within the
13 Attorney General's office.

14 b. (1) The Unit shall investigate workers' compensation
15 fraud, any additional criminal violations that
16 may be related to workers' compensation fraud,
17 and any other insurance fraud matters as may be
18 assigned at the discretion of the Attorney
19 General.

20 (2) The Attorney General shall designate the
21 personnel assigned to the Unit, who, on meeting
22 the qualifications established by the Oklahoma
23 Council on Law Enforcement Education and
24 Training, shall have the powers of specialized

1 law enforcement officers of the State of Oklahoma
2 for the purpose of conducting investigations
3 under this subparagraph. Personnel hired as
4 specialized law enforcement officers shall have a
5 minimum of three (3) years of certified law
6 enforcement experience or its equivalent in
7 national or military law enforcement experience
8 as approved by the Oklahoma Council on Law
9 Enforcement Education and Training.

10 2. The Attorney General and his or her deputies and assistants
11 and the Director of the Workers' Compensation Fraud Investigation
12 Unit and his or her deputies and assistants shall be vested with the
13 power of enforcing the requirements of this section.

14 3. It shall be the duty of the Unit to assist the Attorney
15 General in the performance of his or her duties. The Unit shall
16 determine the identity of employees in this state who have violated
17 division (1) of subparagraph a of paragraph 1 of subsection A of
18 this section and report the violation to the Office of the Attorney
19 General and the Commission. The Attorney General shall report the
20 violation to the prosecuting attorney having jurisdiction over the
21 matter.

22 4. a. In the course of any investigation being conducted by
23 the Unit, the Attorney General and his or her deputies
24 and assistants and the Director and his or her

1 deputies and assistants shall have the power of
2 subpoena and may:

- 3 (1) subpoena witnesses,
- 4 (2) administer oaths or affirmations and examine any
5 individual under oath, and
- 6 (3) require and compel the production of records,
7 books, papers, contracts, and other documents.

8 b. The issuance of subpoenas for witnesses shall be
9 served in the same manner as if issued by a district
10 court.

11 c. (1) Upon application by the commissioner or the
12 Director of the Unit, the district court located
13 in the county where a subpoena was served may
14 issue an order compelling an individual to comply
15 with the subpoena to testify.

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

18 d. If any person has refused in connection with an
19 investigation by the Director to be examined under
20 oath concerning his or her affairs, then the Director
21 is authorized to conduct and enforce by all
22 appropriate and available means any examination under
23 oath in any state or territory of the United States in
24 which any officer, director, or manager may then

1 presently be to the full extent permitted by the laws
2 of the state or territory.

3 e. In addition to the punishments described in paragraph
4 1 of subsection A of this section, any person
5 providing false testimony under oath or affirmation in
6 this state as to any matter material to any
7 investigation or hearing conducted under this
8 subparagraph, or any workers' compensation hearing,
9 shall upon conviction be guilty of perjury.

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

12 6. a. Every carrier or employer who has reason to suspect
13 that a violation of division (1) of subparagraph a of
14 paragraph 1 of subsection A of this section has
15 occurred shall be required to report all pertinent
16 matters to the unit.

17 b. No carrier or employer who makes a report for a
18 suspected violation of division (1) of subparagraph a
19 of paragraph 1 of subsection A of this section by an
20 employee shall be liable to the employee unless the
21 carrier or employer knowingly and intentionally
22 included false information in the report.

23 c. (1) Any carrier or employer who willfully and
24 knowingly fails to report a violation under

1 division (1) of subparagraph a of paragraph 1 of
2 subsection A of this section shall be guilty of a
3 misdemeanor and on conviction shall be punished
4 by a fine not to exceed One Thousand Dollars
5 (\$1,000.00).

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

10 d. Any employee may report suspected violations of
11 division (1) of subparagraph a of paragraph 1 of
12 subsection A of this section. No employee who makes a
13 report shall be liable to the employee whose suspected
14 violations have been reported.

15 E. 1. For the purpose of imposing criminal sanctions or a fine
16 for violation of the duties of this act, the prosecuting attorney
17 shall have the right and discretion to proceed against any person or
18 organization responsible for such violations, both corporate and
19 individual liability being intended by this act.

20 2. The prosecuting attorney of the district to whom a suspected
21 violation of subsection A of this section, or any other criminal
22 violations that may be related thereto, have been referred shall,
23 for the purpose of assisting him or her in such prosecutions, have
24 the authority to appoint as special deputy prosecuting attorneys

1 licensed attorneys-at-law in the employment of the Unit or any other
2 designated insurance fraud investigation division within the
3 Attorney General's office. Such special deputy prosecuting
4 attorneys shall, for the purpose of the prosecutions to which they
5 are assigned, be responsible to and report to the prosecuting
6 attorney.

7 F. Notwithstanding any other provision of law, investigatory
8 files as maintained by the Attorney General's office and by the Unit
9 shall be deemed confidential and privileged. The files may be made
10 open to the public once the investigation is closed by the Director
11 of the Workers' Compensation Fraud Investigation Unit with the
12 consent of the Attorney General.

13 G. The Attorney General, with the cooperation and assistance of
14 the Commission, is authorized to establish rules as may be necessary
15 to carry out the provisions of this section.

16 H. Nothing in this section shall be deemed to create a civil
17 cause of action.

18 I. The Commission shall include a statement on all forms for
19 notices and instructions to employees, employers, carriers and
20 third-party administrators that any person who commits workers'
21 compensation fraud, upon conviction, shall be guilty of a felony
22 punishable by imprisonment, a fine or both.

23 J. If an injured employee is charged with workers' compensation
24 fraud, any pending workers' compensation proceeding, including

1 benefits, shall be stayed after the preliminary hearing is concluded
2 and the claimant is bound over and shall remain stayed until the
3 final disposition of the criminal case. All notice requirements
4 shall continue during the stay.

5 K. If the Attorney General's Office is in compliance with the
6 discovery provisions of Section 258 of Title 22 of the Oklahoma
7 Statutes, medical records created for the purpose of treatment and
8 medical opinions obtained during the investigation shall be
9 admissible at the preliminary hearing without the appearance of the
10 medical professional creating such records or opinions. However,
11 when material evidence dispositive to the issues of whether there
12 was probable cause the crime was committed and whether the defendant
13 committed the crime, was not included in a report or opinion
14 admitted at preliminary hearing, but might be presented at a
15 pretrial hearing by a medical professional who created such report
16 or opinion, the judge may, upon the motion of either party, order
17 the appearance of the medical professional creating such report or
18 opinion. Questions of fact regarding the conduct of the defendant
19 that conflict with the findings of the medical professional
20 evaluating the defendant shall not constitute material evidence. In
21 the event of such motion, notice shall be given to the Attorney
22 General's Workers Compensation Fraud and Investigation and
23 Prosecution Unit. A hearing shall be held and, if the motion is

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1 granted, the evidence shall not be presented fewer than five (5)
2 days later.

3 L. Any person or entity who, in good faith and exercising due
4 care, reports suspected workers' compensation fraud or insurance
5 fraud, or who allows access to medical records or other information
6 pertaining to suspected workers' compensation or insurance fraud, by
7 persons authorized to investigate a report concerning the workers'
8 compensation and insurance fraud, shall have immunity from any civil
9 or criminal liability for such report or access. Any such person or
10 entity shall have the same immunity with respect to participation in
11 any judicial proceeding resulting from such reports. For purposes
12 of any civil or criminal proceeding, there shall be a presumption of
13 good faith of any person making a report, providing medical records
14 or providing information pertaining to a workers' compensation or
15 insurance fraud investigation by the Attorney General, and
16 participating in a judicial proceeding resulting from a subpoena or
17 a report.

18 SECTION 2. This act shall become effective November 1, 2015.

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