

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 462

By: Stipe and Wright of the
Senate

and

Settle of the House

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; creating the Workers' Compensation Fraud Act; providing short title; defining terms; creating the Workers' Compensation Fraud Unit; stating duties of the Fraud Unit; stating powers and duties of the Attorney General; providing for access to records; establishing confidentiality of certain records; providing immunity; prohibiting and identifying acts constituting workers' compensation fraud; defining term; imposing sanctions; amending 85 O.S. 1991, Section 3.4, which relates to the commencement of claims; requiring certain statements on documents filed in a workers' compensation case; stating presumptions; updating statutory references; requiring recipients of temporary disability benefits to report certain occurrences; amending 85 O.S. 1991, Section 3, as amended by Section 2, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 3), which relates to definitions; modifying definitions; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 301 of Title 85, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 6 of this act shall be known and may be cited as the "Workers' Compensation Fraud Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 302 of Title 85, unless there is created a duplication in numbering, reads as follows:

As used in the Workers' Compensation Fraud Act:

1. "Agent" means a person authorized by another to act for him;
2. "Attorney General" means the Attorney General of this state, his employees or his authorized representatives;
3. "Bribe" means any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action;
4. "Claim" means a communication used to identify a workers' compensation benefit payable or a good, item or service payable or reimbursable pursuant to the Workers' Compensation Act, or which states income or expense that is or may be used to determine the rate of payment pursuant to the Workers' Compensation Act;
5. "Claimant" means any individual entitled to make a claim for workers' compensation benefits or any firm, corporation, professional association, partnership, limited liability company, organization or other legal entity which is entitled to make a claim for reimbursements for goods, items or services rendered pursuant to the Workers' Compensation Act;
6. "Insured" means any individual, firm, company, corporation, professional association, partnership, limited liability company, organization or other legal entity which has purchased workers' compensation insurance from an insurance provider, or which is self-insured as provided in Section 61 of Title 85 of the Oklahoma Statutes;
7. "Kickback" means the giving of money or any other thing of value either directly or indirectly by or on behalf of any person, or the agent of any person, for furnishing goods or services of any kind to any purchaser of the goods or services, or the agent of any purchaser; and
8. "Records" means, but is not limited to, all medical, professional or business records or documents relating to the treatment, care or employment of any recipient or potential recipient of workers' compensation benefits, all documents

provided in support of a claim made for workers' compensation benefits, all records necessary to allow an insurer or other insurance provider to determine the appropriate premium, all records of an individual self-insured employer or group self-insurance association that would allow the Administrator of the Workers' Compensation Court to review, approve and monitor the individual self-insured employer or group self-insurance association, and court records; provided, however, that any privilege granted pursuant to Article V of the Oklahoma Evidence Code, Section 2502 of Title 12 of the Oklahoma Statutes, shall be held inviolate.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 303 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. In accordance with the provisions of Section 18b of Title 74 of the Oklahoma Statutes, there is hereby created within the Office of the Attorney General, a Workers' Compensation Fraud Unit.

B. The Workers' Compensation Fraud Unit shall be the state entity to which cases of suspected workers' compensation fraud shall be referred for the purposes of investigation, civil action, criminal action or referral to the district attorney.

C. 1. In carrying out the responsibilities given to the Workers' Compensation Fraud Unit, the Attorney General shall have the power to issue or cause to be issued subpoenas or other process in aid of investigations and prosecutions, to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by the Workers' Compensation Fraud Act and shall have all the powers of a district attorney.

2. Subpoenas ad testificandum or duces tecum issued pursuant to this subsection may be served by the Attorney General, any peace officer or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify or produce records at the place and time

specified shall constitute contempt and shall be enforced by the district court of the county where issued or the county where served, at the election of the Attorney General, as if it was a contempt on that court.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 304 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General shall be allowed access to such records as may be determined necessary for the purpose of investigating the commission or suspected commission of the crime of workers' compensation fraud, or for use or potential use in any legal, administrative or judicial proceeding. The Attorney General may take possession of such records by subpoena, in which case copies of those records obtained by the Attorney General which are necessary for the record custodian to continue doing business shall be supplied to the record custodian, or the Attorney General may elect to require that the record custodian supply the Workers' Compensation Fraud Unit with copies of the records.

B. Records obtained or created by the Attorney General pursuant to the Workers' Compensation Fraud Act shall be classified as confidential information and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except if authorized by the Attorney General in relation to a legal, administrative or judicial proceeding.

C. No person holding such records may refuse to provide the Attorney General with access to such records on the basis that release would violate any claimant's or insured's right of privacy, any claimant's or insured's privilege against disclosure or use or any professional or other privilege or right; provided, however, that any privilege granted pursuant to Article V of the Oklahoma Evidence Code, Section 2502 of Title 12 of the Oklahoma Statutes, shall be held inviolate. The disclosure of any records as required by the Workers' Compensation Fraud Act shall not subject any person, company, agency or physician or other health services provider to liability for breach of any confidential

relationship which may exist. In the absence of fraud or malice, a person, insurer or agent of an insurer shall not be liable for damages in a civil action or subject to criminal prosecution for oral or written statements made or any other action taken necessary to supply the information required pursuant to the Workers' Compensation Fraud Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 305 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful and constitute workers' compensation fraud for any person to willfully and knowingly:

1. Make or cause to be made a claim or defense under the Workers' Compensation Act, knowing the claim or defense to be false, in whole or in part, by commission or omission;

2. Misrepresent or fail to disclose a material fact to his employer or the employer's insurance carrier which may deny payment, cause an insurer to cease payment or alter the amount of payment of benefits under the Workers' Compensation Act;

3. Make or cause to be made a statement or representation for use by another in obtaining a good or a service pursuant to the Workers' Compensation Act, knowing the statement or representation to be false, in whole or in part, by commission or omission;

4. Misrepresent any fact or fail to disclose a material fact in order to obtain insurance from The State Insurance Fund or from any other insurance provider, at less than the proper rate for such insurance, or in order to obtain payment from any insurance provider or self-insured employer;

5. Solicit, offer, deliver, receive or accept any benefit, including pecuniary benefit, kickback or bribe in connection with goods, services or benefits paid or claimed to be payable pursuant to the Workers' Compensation Act;

6. Misrepresent or fail to disclose to the employer or the employer's insurance carrier that there has been any change in the amount of income he is receiving or any change in his employment status occurring during the period of receipt of such benefits;

7. Misrepresent or fail to disclose a material fact to any individual who is a claimant or such claimant's attorney, which may tend to increase such claimant's or his attorney's entitlement to payment or have an affect which will benefit the claimant or his attorney on a workers' compensation claim or alter or increase the amount of payment of benefits under the Workers' Compensation Act;

8. Make or cause to be made a statement or representation for use by another in terminating, delaying or limiting goods or services pursuant to the Workers' Compensation Act, knowing the statement or representation to be false, in whole or in part, by commission or omission;

9. Misrepresent any fact or fail to disclose a material fact in order to avoid or delay payment to any claimant or his attorney;

10. Solicit, offer, deliver, receive or accept any benefit, including pecuniary benefit, kickback or bribe in connection with defending or attempting to avoid, delay or limit the delivery of goods or the rendering of services of the payment of benefits pursuant to the Workers' Compensation Act; or

11. Misrepresent or fail to disclose to any claimant or the claimant's attorney that there has been any change of fact which would affect adversely or positively the payment or receipt of any benefits under the Workers' Compensation Act.

B. For the purposes of this section, a person shall be deemed to have made or caused to be made a claim, defense, statement or representation if the person:

1. Had the authority or responsibility to make the claim, defense, statement or representation, to supervise those who made the claim, defense, statement or representation, or to authorize the making of the claim, defense, statement or representation, whether by operation of law, business or professional practice or office procedure; and

2. Exercised such authority or responsibility or failed to exercise such authority or responsibility and as a direct or

indirect result, the false claim, defense, statement or representation was made.

C. For the purposes of this section, a person shall be deemed to have known that a claim, defense, statement or representation was false if the person knew, or by virtue of his position, authority or responsibility had reason to know, of the falsity of the claim, defense, statement or representation.

D. For the purposes of this section, "material fact" means:

1. A fact which, if communicated to the employer, agent or insurer, may induce him either to decline, alter or cease or proceed to cease payment of benefits;

2. A fact which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium;

3. A fact which, if communicated to any claimant or his attorney, might induce him to seek, claim or attempt to obtain payment or receipt of benefits; or

4. A fact which has a tendency to make the validity of the claim of a claimant or his attorney or of anyone providing benefits to such claimant more likely than it would have been without the fact.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 306 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any person committing workers' compensation fraud where the aggregate amount of payments illegally claimed or received is Two Thousand Five Hundred Dollars (\$2,500.00) or more, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not more than three times the amount of payments illegally claimed or received or Ten Thousand Dollars (\$10,000.00), whichever is greater, or by imprisonment in the State Penitentiary for not more than ten (10) years, or by both such fine and imprisonment.

B. Any person committing workers' compensation fraud where the aggregate amount of payments illegally claimed or received is less than Two Thousand Five Hundred Dollars (\$2,500.00), upon conviction, shall be guilty of a misdemeanor punishable by the

imposition of a fine of not more than three times the amount of payments illegally claimed or received or One Thousand Dollars (\$1,000.00), whichever is greater, or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

C. Any person committing workers' compensation fraud in any other manner not related to the aggregate amount of payments illegally claimed or received, upon conviction, shall be guilty of a felony punishable by a fine of not more than Two Thousand Dollars (\$2,000.00) or by imprisonment in the State Penitentiary for not more than two (2) years, or by both such fine and imprisonment.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 3.4, is amended to read as follows:

Section 3.4 All claims for any compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a notice of injury with the Administrator. All claims filed for workers' compensation benefits shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the claimant and his agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at his direction. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the authorization of the respondent, its insurer and agent to be acting at their direction. All matters pertaining to such claims shall be presented to the Administrator until such time as the

Administrator is notified in writing by a party that there is a controverted issue that cannot be resolved by the parties or that the parties have received an agreed final order from the Court. The Administrator shall, within seven (7) days of the receipt of such notification, set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state judicial districts on a rotating basis for the purpose of holding prehearing conferences and hearing cases. At the request of either party, a prehearing conference shall be held before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to mediate and encourage settlement of the case or determine issues in dispute. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence.

All claims so filed shall be heard by the Judge sitting without a jury. All petitions for final orders or awards filed pursuant to the provisions of Section 84 of ~~Title 85 of the Oklahoma Statutes~~ this title must be approved by the Court having jurisdiction before a final order or award may be entered. All matters relating to a claim for benefits under the Workers' Compensation Act shall be filed with the Administrator.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22.1 of Title 85, unless there is created a duplication in numbering, reads as follows:

Any person receiving temporary disability benefits from an employer or the employer's insurance carrier immediately shall report in writing to the employer or insurance carrier any change in a material fact or the amount of income he is receiving or any

change in his employment status, occurring during the period of receipt of such benefits.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 3, as amended by Section 2, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1992, Section 3), is amended to read as follows:

Section 3. As used in the Workers' Compensation Act:

1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act.
2. "Court" means the Workers' Compensation Court.
3. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association ~~or~~, corporation or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as herein defined.
4. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall

not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all members of a limited liability company or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors or members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by

the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor.

5. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer for pecuniary gain or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker.

6. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act.

7. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Provided, only injuries having as their source a risk not purely personal but one that is reasonably connected with the conditions of employment shall be deemed to arise out of the employment.

b. "Injury" or "personal injury" includes heart-related or perivascular injury, illness or death if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.

c. "Injury" or "personal injury" shall not include mental injury that is unaccompanied by physical injury.

8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time

of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer.

9. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of paragraph 4 of subsection A of Section 61 of this title.

10. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease.

11. "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining physician shall not follow the guides based on race or ethnic origin and shall not deviate from said guides except as may be specifically provided for in the guides. These officially adopted guides shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides.

12. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee is or becomes physically suited and reasonably fitted by education, training or experience; loss

of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability.

13. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment.

SECTION 10. This act shall become effective September 1, 1993.

44-1-6891

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