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STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1220

By: Shedrick

COMMITTEE SUBSTITUTE

(Insurance - creating Insurance Fraud Unit in Office of
Attorney General - codification - effective date -
emergency)

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1662, is
amended to read as follows:

Section 1662. ~~Every person who presents~~ A.

"Fraudulent insurance act" means an act or omission
committed by a person who, knowingly and with
intent to defraud, commits, or conceals any
material information concerning, one or more of the
following:

1. Presenting or ~~causes~~ causing to be presented any
false or fraudulent claim, or any proof in support
of any such claim, upon any contract of insurance,
for the payment of any loss, or ~~who prepares, makes
or subscribes~~ preparing, making or subscribing any
account, certificate, survey affidavit, proof of
loss, or other book, paper or writing, with intent
to present or use the same, or to allow it to be

~~presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not exceeding three (3) years, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both.;~~

2. Presenting, causing to be presented or preparing with knowledge or belief that it will be presented, by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

- a. an application for the issuance of an insurance policy or reinsurance contract,
- b. the rating of an insurance policy or reinsurance contract,
- c. a claim for payment or benefit pursuant to an insurance policy or reinsurance contract,
- d. premiums paid on an insurance policy or reinsurance contract,
- e. payments made in accordance with the terms of an insurance policy or reinsurance contract,
- f. a document filed with the Insurance Commissioner,
- g. the financial condition of an insurer or reinsurer,
- h. the formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer,
- i. the issuance of written evidence of insurance, or
- j. the reinstatement of an insurance policy;

3. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer or other person engaged in the business of insurance by a person who knows or should know that the

insurer or other person responsible for the risk is insolvent at the time of the transaction;

4. Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance;

5. Willful embezzlement, abstracting, purloining or conversion of monies, funds, premiums, credits or other property of an insurer, reinsurer or other person engaged in the business of insurance; or

6. Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.

B. 1. A person shall not commit a fraudulent insurance act.

2. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this act or investigations of suspected or actual violations of this act.

3. a. A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance.

b. A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

C. 1. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed shall provide to the Attorney General of this state the information required by, and in a manner prescribed by, the Attorney General.

2. Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed may provide to the Attorney General the information required by, and in a manner prescribed by, the Attorney General.

D. A person who violates the provisions of this section is subject to the following penalties:

1. Suspension or revocation of a license or certificate of authority to transact the business of insurance in this state, administrative penalties of up to Five Thousand Dollars (\$5,000.00) per violation, or both. Suspension or revocation of a license or certificate of authority and imposition of administrative penalties shall be pursuant to an order of the Insurance Commissioner issued under Article 3 of Title 36 of the Oklahoma Statutes. The Commissioner's order may require a person found to be in violation of the provisions of this section to make restitution to persons aggrieved by violations of these provisions;

2. If convicted by a court of competent jurisdiction, a finding of guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not exceeding five (5) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00) per violation, or by both such imprisonment and fine. A person convicted of a violation of the provisions of this section shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment; and

3. Disqualification from engaging in the business of insurance if convicted of a felony violation pursuant to paragraph 2 of this subsection.

E. As used in this section:

1. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf;

2. "Insurance" means a contract or arrangement in which one undertakes to:

- a. pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance,
- b. pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies,
- c. pay an annuity to another, or
- d. act as surety;

3. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in paragraph 2 of this subsection. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer;

4. "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state; and

5. "Reinsurance" means a contract, binder of coverage including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 612.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "single state insurer" means a domestic insurer which:

- 1. Writes business only in this state;
- 2. Assumes no reinsurance; and

3. Writes physicians' or hospitals' professional liability insurance.

B. This section shall apply only to single state insurers which shall be governed by its provisions to the extent provided herein. Single state insurers shall be governed by all other provisions of Title 36 of the Oklahoma Statutes only to the extent that such provisions are not in conflict with the provisions of this section. No law relating to insurance enacted after the effective date of this act shall supersede the provisions of this section unless so expressly stated therein.

C. No provision of the National Association of Insurance Commissioners' annual statement instruction handbooks or of the National Association of Insurance Commissioners' accounting practices and procedures manuals which require that the sufficiency of the "surplus as regards policyholders" of an insurer be determined by reference to any formula, whether denominated "risk-based capital" or otherwise, which formula is designed to calculate a minimum level of capital and surplus related to the amounts and types of risks assumed by such insurer, shall be applicable to any single state insurer.

D. 1. A single state insurer shall possess and maintain surplus in regard to policyholders, which is defined as the aggregate of the capital and surplus if a stock insurer, or surplus if a mutual or reciprocal insurer, in an amount at least equal to the greater of Five Hundred Thousand Dollars (\$500,000.00) or twenty percent (20%) of gross annual written premiums.

2. In addition to the minimum surplus in regard to policyholders as required by paragraph 1 of this subsection, each single state insurer shall possess at the time of initial authorization expendable surplus funds in an amount of not less than one-half (1/2) of the minimum surplus in regard to policyholders.

E. 1. A single state insurer shall maintain adequate unearned premium, loss, and loss expense reserves. Single state insurers shall file an annual actuarial opinion certifying to the adequacy of these reserves. For purposes of this subsection, "adequate" means that such insurers' reserves fall within a range of values that make reasonable provision for losses and loss expenses.

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the single state insurer with the Insurance Commissioner on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society. An actuarial opinion that meets the requirements of this subsection shall be accepted by the Insurance Commissioner as conclusive evidence of the adequacy of such reserves.

F. Single state insurers may use present value discounting for computing reserves for physicians' and hospitals' professional liability insurance. Section 1509 of Title 36 of the Oklahoma Statutes shall not apply to single state insurers.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 612.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

Single state insurers discounting reserves pursuant to Section 2 of this act shall invest and maintain their funds only in cash or in securities described in the following sections of Title 36 of the Oklahoma Statutes:

1. Section 1607 (securities of or guaranteed by the United States);
2. Section 1608 (state and Canadian public obligations);
3. Section 1609 (county, municipal and district obligations);
4. Section 1610 (public improvement bonds);

5. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record;

6. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record; and

7. Section 1620 (deposits, banks, savings and loans); and any other investment specifically approved by the Insurance Commissioner.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18n-1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Office of the Attorney General an Insurance Fraud Unit.

B. It shall be the duty of the Insurance Fraud Unit to:

1. Initiate independent inquiries and conduct independent investigations when the Insurance Fraud Unit has cause to believe that a fraudulent insurance act, as defined in Section 1662 of Title 21 of the Oklahoma Statutes, may be, is being or has been committed;

2. Review reports or complaints of alleged fraudulent insurance activities from federal, state and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and

3. Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.

C. The Insurance Fraud Unit shall have the authority to:

1. Inspect, copy or collect records and evidence;
2. Serve subpoenas;
3. Administer oaths and affirmations;

4. Share records and evidence with federal, state or local law enforcement or regulatory agencies;

5. Make criminal referrals to prosecuting authorities; and

6. Conduct investigations outside of this state. If the information the Insurance Fraud Unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the Insurance Fraud Unit to examine at the place where the information is located. The Insurance Fraud Unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the Insurance Fraud Unit, and the Insurance Fraud Unit may respond to similar requests from officials of other states.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18n-2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General and the Office of the Attorney General, the Insurance Commissioner and the Insurance Department, every district attorney and every law enforcement agency shall cooperate and coordinate efforts for the investigation and prosecution of suspected fraudulent insurance acts.

B. If the Attorney General or a designee has reason to believe as a result of inquiry or complaint that a person has engaged in or is engaging in a fraudulent insurance act, the Attorney General or a designee shall have all of the powers of a district attorney.

C. Records, documents, reports and evidence obtained or created by the Office of the Attorney General as a result of the work of the Insurance Fraud Unit shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual except when authorized by the Attorney General or when required by an administrative or judicial proceeding.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18n-3 of Title 74, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 4 and 5 of this act shall not:

1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

2. Prevent or prohibit a person from disclosing voluntary information concerning insurance fraud to a law enforcement or regulatory agency other than the Insurance Fraud Unit; or

3. Limit the powers granted elsewhere by the laws of this state to the Insurance Commissioner to investigate and examine possible violations of law and to take appropriate action against violators.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a revolving fund for the Office of the Attorney General, to be designated the "Insurance Fraud Unit Revolving Fund". This fund shall consist of all monies received and collected by the Attorney General pursuant to the provisions of this section.

B. Each insurer licensed to do business in this state shall pay annually to the Office of the Attorney General a fee of Five Hundred Dollars (\$500.00). This fee shall be payable quarterly in the amount of One Hundred Twenty-five Dollars (\$125.00) per quarter, beginning July 1, 1996.

C. The fund shall be a continuing fund not subject to fiscal year limitations and shall be subject to the administrative direction of the Attorney General. Expenditures from the fund shall be made upon warrants issued by the Oklahoma State Treasurer against claims made to the Director of State Finance. Monies in the fund are hereby appropriated and may be expended for salaries and

operating expenses relative to the investigation and prosecution of fraudulent insurance acts by the Attorney General.

SECTION 8. This act shall become effective July 1, 1996.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-2-2448

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