

SHORT TITLE: Insurance; expanding definition of insurance fraud and modifying penalties; creating Anti-Fraud Division within Insurance Department. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1056

By: Hendrick

AS INTRODUCED

An Act relating to insurance; amending 21 O.S. 1991, Section 1662, as amended by Section 380, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1662), which relates to insurance fraud, and 36 O.S. 1991, Section 306, as amended by Section 5, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 306) and 51 O.S. 1991, Section 24A.12, which relate to confidentiality of records; defining terms; expanding definition of insurance fraud; modifying and adding penalties and providing for restitution under certain conditions; creating the Anti-Fraud Division within the Insurance Department; stating duties; providing for hiring of employees; providing for promulgation of rules; requiring certain cooperation and coordination with certain agencies; making files, papers, documents, reports and evidence confidential except under certain circumstances; deeming Division investigators not subject to subpoena in civil actions; making certain provisions inapplicable to workers' compensation insurance benefits; creating revolving fund; requiring payment of certain stated fees by insurers; providing for certain expenditures; requiring and permitting insurers and other persons to report certain information; construing act; providing for certain immunity from

liability with certain exception; clarifying effect of immunity provision; entitling prevailing party to attorney fees and costs; correcting statutory reference; making certain records subject to certain provisions; providing for codification; and declaring an emergency.

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 1661A of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in Section 1662 of Title 21 of the Oklahoma Statutes:

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 policy" or "policy" means a written contract of or agreement for effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements and papers attached to and a part thereof. "Policy" includes, but is not limited to, a certificate, binder, written agreement, or contract issued by any indemnity plan, assigned risk plan, health benefit plan, nonprofit hospital or medical service or indemnity plans, mutual or fraternal benefit plan, motor club service plan, or any surety bond, cash bond, or any other alternative to insurance authorized by Chapter 7 of Title 47 of the Oklahoma Statutes;

3. "Insurance professional" means agents, managing general agents, brokers, adjusters, and third-party administrators;

4. "Insurance transaction" means a transaction by, between, or among:

- a. an insurer or a person who acts on behalf of an insurer, and
- b. an insured claimant, applicant for insurance, public adjuster, insurance professional, provider, or any person who acts on behalf of any of the foregoing,

for the purpose of obtaining, soliciting, or inducing of, including preliminary negotiations, a policy of insurance or reinsurance, calculating premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance, or obtaining the benefits thereof or therein, including any transaction of matters subsequent to effectuation of the contract and arising out of it;

5. "Insurer" means any person purporting to engage in the business of insurance or authorized to do business in this state or subject to regulation by this state, who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; multiple employer welfare arrangement (MEWA); Lloyd's insurer; fraternal benefit society; surety; and any other legal entity engaged or purportedly engaged in the business of insurance, including any person or entity which falls within the definition of insurer as stated in Sections 103, 309.1, 601, 602 and 603 of Title 36 of the Oklahoma Statutes. Insurer shall also include any health maintenance organization, preferred provider organization, or any other medical, dental, optometric, or similar health benefit plan;

6. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, limited liability company, and any other entity;

7. "Provider" means a person whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds;

8. "Premium finance company" means a person engaged or purportedly engaged in the business of advancing money, directly or indirectly, to an insurer or agent at the request of an insured pursuant to the terms of a premium finance agreement, including, but not limited to, loan contracts, notes, agreements, or obligations, wherein the insured has assigned the unearned premiums, accrued dividends, or loan payments as security for such advancement in payment of premiums on insurance policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services; and

9. "Premium finance transaction" means a transaction by, between, or among a third-party premium finance company and an insured, an agent, or other party claiming to act on behalf of an insured and, for the purposes of purportedly or actually advancing money directly or indirectly to an insurer or agent at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends, or loan payments as security for such advancement in payment of premiums on insurance policies only, and does not include the financing of insurance premiums purchased in connection with the financing of goods and services.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1662, as amended by Section 380, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1662), is amended to read as follows:

Section 1662. ~~Any~~ A. Insurance fraud is an act committed or attempted by any person who ~~presents or~~, knowingly and with intent to defraud, and for the purpose of depriving another of property, or for pecuniary gain commits, participates in, or aids, abets, or

conspires to commit or solicit another person to commit, or permits its employees or agents to commit, any of the following acts:

1. Presents or causes 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 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, shall, upon conviction be guilty of a felony. ~~The fine for a violation of this section shall not exceed One Thousand Dollars (\$1,000.00).~~

2. Presents, causes to be presented or prepares with the knowledge or belief that it will be presented by or on behalf of an insured, claimant or applicant for insurance to an insurer, insurance professional, or premium finance company, in connection with an insurance transaction or premium finance transaction, any information which contains false representations as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

- a. the application for, rating of, or renewal of, any insurance policy,
- b. a claim for payment or benefit pursuant to any insurance policy,
- c. payments made in accordance with the terms of any insurance policy, or
- d. the application used in any premium finance transaction;

3. Presents, causes to be presented, or prepares with the knowledge or belief that it will be presented to or by an insurer, insurance professional, or premium finance company, in connection with an insurance transaction or premium finance transaction, any information which contains false representation known to be false by

the person making the representation as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

- a. the solicitation for sale of any insurance policy or purported insurance policy,
- b. an application for certificate of authority,
- c. the financial condition of any insurer,
- d. the acquisition, formation, merger, affiliation, or dissolution of any insurer, or
- e. the solicitation or acceptance of new or renewal insurance risks by or for an insolvent insurer;

4. Removes the assets or record of assets, transactions, and affairs, or a material part thereof, from the home office or other place of business of the insurer, or from the place of safekeeping of the insurer, or destroys, withholds or conceals the same from the Insurance Department;

5. Diverts, misappropriates, converts, or embezzles funds of an insurer, insured, claimant, or applicant for insurance in connection with:

- a. an insurance transaction,
- b. the conduct of business activities by an insurer or insurance professional, or
- c. the acquisition, formation, merger, affiliation, or dissolution of any insurer; or

6. Engages in the unauthorized business of insurance, including, but not limited to, the solicitation, sale, or issuance of an insurance policy regardless of receipt of consideration thereof, without holding a current license or certificate of authority issued by the Insurance Commissioner or other appropriate authority, or being exempt therefrom.

B. Any person convicted of insurance fraud shall be guilty of a felony punishable pursuant to the state sentencing matrices.

C. In addition to the penalties set forth in subsection B of this section, any person convicted of, or who has pled guilty or nolo contendere to, any act described in this section shall be ordered to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at a rate of twelve percent (12%) per annum if:

1. In the opinion of the court, the person is able to pay such restitution without imposing manifest hardship on the person or the person's immediate family; and

2. The extent of damages to the victim is determinable with reasonable certainty.

D. Any person who knowingly misrepresents or makes a statement known to be false at the time it is made to any person for the purpose of causing an investigation or prosecution to be initiated pursuant to this act shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1231.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in Sections 3 through 7 of this act:

1. "Actual malice" means the intention to inflict injury by acting out of ill will or hatred, or by willfully acting in a wanton or oppressive manner, and in conscious disregard of the other's rights;

2. "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;

3. "Insurance fraud" means the actions described in and punishable pursuant to Section 1662 of Title 21 of the Oklahoma Statutes;

4. "Insurer" means any person purporting to engage in the business of insurance or authorized to do business in this state or subject to regulation by this state, who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event. "Insurer" includes, but is not limited to, an insurance company; self-insurer; reinsurer; reciprocal exchange; interinsurer; risk retention group; multiple employer welfare arrangement (MEWA); Lloyd's insurer; fraternal benefit society; surety; and any other legal entity engaged or purportedly engaged in the business of insurance, including any person or entity which falls within the definition of insurer as stated in Sections 103, 309.1, 601, 602 and 603 of Title 36 of the Oklahoma Statutes. Insurer shall also include any health maintenance organization, preferred provider organization, or any other medical, dental, optometric, or similar health benefit plan; and

5. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, limited liability company, and any other entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1231.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Insurance Department, under the control and direction of the Insurance Commissioner, a division designated as the "Anti-Fraud Division". The duties of the Anti-Fraud Division shall include, but not be limited to:

1. Initiating inquiries and conducting investigations when the Division has reason to believe that insurance fraud may have been or is being committed;

2. Responding to notifications or complaints of suspected insurance fraud that are generated by state and local police, other law enforcement authorities, governmental units, including the federal government, and any other person;

3. Reviewing notices and reports of insurance fraud that are submitted by authorized insurers, their employees, and agents, and selecting those incidents of alleged insurance fraud as, in its judgment, require further investigation and undertaking such investigation;

4. Conducting independent examination of insurance fraud; conducting studies to determine the extent of insurance fraud, deceit, or intentional misrepresentation of any kind in the insurance process; and publishing information and reports on such examinations or studies;

5. Reporting incidents of alleged insurance fraud disclosed by its investigations to appropriate prosecutorial authority, including, but not limited to, the Attorney General or district attorney and to any other appropriate law enforcement, administrative, regulatory or licensing agency, and assembling evidence, preparing charges, and otherwise assisting any prosecutorial authority having jurisdiction;

6. Administering oaths and affirmations, subpoenaing witnesses, compelling their attendance, taking evidence, and requiring the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the Division deems relevant or material to an inquiry concerning insurance fraud; and

7. Conducting investigations outside of this state. If the information that the investigating unit seeks to obtain is located outside of 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.

B. For the purposes of administering and enforcing this act, the Commissioner shall hire additional employees as needed and authorized by the Oklahoma Legislature.

C. The Insurance Commissioner shall promulgate rules deemed necessary by the Commissioner for the administration of this act.

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

E. The Anti-Fraud Division's open and ongoing files, papers, documents, reports, and evidence which relate to the subject of an investigation under this section shall be subject to Section 24A.12 of Title 51 of the Oklahoma Statutes, but may be discovered in a civil action when the Commissioner initiates a civil action. Division investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter which relates to an open and ongoing insurance fraud investigation by the Division of which they have knowledge.

F. Sections 3 through 7 of this act shall not apply to workers' compensation insurance or benefits.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1231.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Insurance Department Anti-Fraud Revolving Fund". This fund shall consist of all monies, other than appropriated monies, received and collected by the Insurance Department pursuant to the provisions of Sections 3 through 7 of this act.

B. Each insurer licensed to do business in this state shall pay annually to the Insurance Department 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 June 30, 1997.

C. The fund shall be a continuing fund not subject to fiscal year limitations and shall be subject to the administrative direction of the Insurance Commissioner. 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 insurance fraud by the Insurance Department, including expenditures incurred pursuant to subsection B of Section 4 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1231.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A person engaged in the business of insurance having knowledge or a reasonable belief that insurance fraud has been or is being committed shall, within sixty (60) days of first obtaining such knowledge, provide to the Insurance Commissioner the information required by, and in a manner prescribed by, the Commissioner.

B. Any other person having knowledge or a reasonable belief that insurance fraud has been or is being committed may provide to the Commissioner the information required by, and in a manner prescribed by, the Commissioner.

C. The provisions of Sections 3 through 7 of this act shall not be construed to:

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

2. Prevent or prohibit an insurer from investigating suspected violations of the laws of this state pertaining to insurance fraud;

3. Prevent or prohibit a person from voluntarily disclosing information concerning insurance fraud to an insurer or law enforcement or regulatory agency other than the Anti-Fraud Division of the Insurance Department; or

4. Prevent or prohibit an insurer or other persons from pursuing any other procedure or remedy provided by law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1231.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There shall be no civil liability imposed on and no cause of action shall arise from a person furnishing information concerning suspected, anticipated, or completed insurance fraud, if the information is provided to or received from:

1. The Insurance Commissioner or the Commissioner's employees, agents, or representatives;

2. Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

3. A person involved in the prevention and detection of insurance fraud or that person's agents, employees, or representatives; or

4. The National Association of Insurance Commissioners or its employees, agents, or representatives.

B. Subsection A of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning insurance

fraud, the party bringing the action shall plead specifically any allegation to which subsection A of this section does not apply as a result of the person filing the report or furnishing the information with actual malice.

C. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection A of this section.

D. The prevailing party in a civil cause of action for libel, slander, or any other relevant tort brought against a person or entity identified in subsection A of this section, or any of their employees, agents, or designees, shall be entitled to an award of attorney fees and costs.

SECTION 8. AMENDATORY 36 O.S. 1991, Section 306, as amended by Section 5, Chapter 418, O.S.L. 1997 (36 O.S. Supp. 1997, Section 306), is amended to read as follows:

Section 306. A. The records, books, and papers pertaining to the official transactions, filings, examinations, investigations, and proceedings of the Insurance Department shall be maintained by the Department until disposition thereof has been approved by the Archives and Records Commission. These records, books, and papers shall be public records of the state.—~~However;~~ however, reports of examinations of insurers shall be filed and made public only as provided in Section 309.4 of this title.

B. Open and ongoing investigative and disciplinary files shall not be made public until their completion or unless they are ordered to be made public by the proper judicial official; provided, open and ongoing files, papers, documents, reports, and evidence which relate to the subject of an investigation by the Anti-Fraud Division of the Department shall be subject to the provisions of subsection E of Section 4 of this act.

C. Files of the claims division of the ~~Commissioner's office~~ Insurance Department, including complaints and requests for

assistance from insureds, and insurance agency and company records, shall not be public records and shall not be disclosed except in connection with disciplinary proceedings by the Commissioner. Final market conduct orders shall be open public records.

~~B.~~ D. Any document or other information generated by the Insurance Department or received by the Insurance Department from a governmental agency or any other public body of any kind, including an insurance guaranty fund or risk pool board, that has a protection from disclosure under any statute or evidentiary privilege from disclosure, while in the possession of the body that generated the information, shall retain its confidential character while in the possession of the Insurance Department. The Insurance Department may require that any agency or public body providing a document or other information, if it expects the information to be treated confidentially by the Insurance Department, to also provide simultaneously an express reference to the claimed protection from disclosure.

~~C.~~ E. A court shall quash any subpoena commanding the disclosure of confidential information or closed records of the Insurance Department absent a showing of justification for such disclosure.

SECTION 9. AMENDATORY 51 O.S. 1991, Section 24A.12, is amended to read as follows:

Section 24A.12 Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, ~~and~~ the office of the municipal attorney of any municipality, and the Anti-Fraud Division of the Insurance Department may keep ~~its~~ their litigation files and investigatory reports confidential.

SECTION 10. 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.

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