STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1502 By: Cox of the House

and

Fisher of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; creating an "Anti-Fraud Unit" within the Insurance Department; stating duties and authority; requiring certain investigations and referrals; making certain information confidential and exempt from the Oklahoma Open Records Act and stating exceptions; creating revolving funds and providing for deposit and expenditure of monies; imposing a fee on all licensed insurers and providing for payment; requiring apportionment of funds; requiring insurers to notify the Insurance Department of suspected fraud; limiting liability of insurers for providing information and making exceptions; prohibiting issuance of new title insurance policies unless the insurer maintains additional surplus; amending 74 O.S. 1991, Section 18b, as last amended by Section 1, Chapter 295, O.S.L. 1996 (74 O.S. Supp. 1998, Section 18b), which relates to powers of the Attorney General; expanding duties of the Attorney General; creating an Insurance Fraud Unit in the Office of the Attorney General; stating duties and authority; limiting liability of certain persons for providing information and making exceptions; requiring cooperation by certain officials; preserving evidentiary privileges; defining term; amending 74 O.S. 1991, Section 150.5, as amended by Section 5, Chapter 227, O.S.L. 1994 (74 O.S. Supp. 1998, Section 150.5), which relates to investigations by the Oklahoma State Bureau of Investigation; expanding authorization to receive certain reports; 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 361 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, an "Anti-Fraud Unit" within the Division of the General Counsel of the Insurance Department.

B. The Anti-Fraud Unit, upon inquiry, complaint, or referral shall investigate the extent, if any, to which a violation has occurred of any statute or administrative rule of this state pertaining to insurance fraud and may initiate any necessary investigation. Whenever the Unit determines that a violation of any criminal law of this state may have occurred, it shall refer the matter to the Oklahoma State Bureau of Investigation for further investigation pursuant to Section 150.5 of Title 74 of the Oklahoma Statutes. The Insurance Department shall retain the authority to initiate and prosecute any civil action it deems necessary or advisable.

C. Records, documents, reports and evidence obtained or created by the Anti-Fraud Division as a result of an inquiry or investigation of suspected insurance fraud shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual, but shall be subject to court order. Information and records shall be disclosed upon request to officers and agents of federal, state, county, or municipal law enforcement agencies, to the Oklahoma State Bureau of Investigation, to the Attorney General's office and to district attorneys, in the furtherance of criminal investigations.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 362 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Insurance Commissioner to be designated the "Insurance Department Anti-Fraud Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations and shall

consist of all monies received and collected by the Insurance Department pursuant to subsection B of this section and all other monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Insurance Commissioner for the purposes of investigation of suspected insurance fraud and civil or administrative action in cases involving suspected insurance fraud. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. Each insurer licensed to do business in this state shall pay an annual fee of Five Hundred Dollars ($500.00) to the Insurance Department which shall be payable quarterly in the amount of One Hundred Twenty-five Dollars ($125.00). The payments shall be due on or before the last day of the month following each calendar quarter. The first payment shall be made not later than July 30, 1999. Within sixty (60) days after each calendar quarter, the Commissioner shall transfer:

1. Twenty-five percent (25%) of all monies collected by the Insurance Department pursuant to this section to the Attorney General's Revolving Fund created in Section 20 of Title 74 of the Oklahoma Statutes, for use by the Attorney General in the investigation and prosecution of insurance fraud; and

2. Fifteen percent (15%) of all monies collected by the Insurance Department pursuant to this section to the OSBI Revolving Fund created in Section 150.19a of Title 74 of the Oklahoma Statutes, for use by the Oklahoma State Bureau of Investigation in the investigation of insurance fraud.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 363 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any insurer who has reason to believe that a person or entity has engaged in or is engaging in an act or practice that violates any statute or administrative rule of this state related to insurance fraud shall immediately notify the Anti-Fraud Unit of the Insurance Department.

B. In the absence of fraud, bad faith, reckless disregard for the truth, or actual malice, no person, insurer, or agent of an insurer shall be liable for damages in a civil action or subject to criminal prosecution for supplying information about suspected insurance fraud to the Anti-Fraud Division of the Insurance Department or any other agency involved in the investigation or prosecution of suspected insurance fraud. The immunity provided in this subsection shall not extend to any person, insurer, or agent of an insurer for communications or publications about suspected insurance fraud to any other person or entity.

SECTION 4. 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:

No insurer authorized to write title insurance in this state but is not issuing title insurance on or before November 1, 1999, nor any insurer who requests to write title insurance in this state on or after November 1, 1999, shall be permitted to transact the business of title insurance in this state unless the insurer possesses and maintains a surplus as regards policyholders of at least Two Million Five Hundred Thousand Dollars ($2,500,000.00). The requirements of this section shall be in addition to other surplus requirements imposed by the Insurance Code.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 18b, as last amended by Section 1, Chapter 295, O.S.L. 1996 (74 O.S. Supp. 1998, Section 18b), is amended to read as follows:

Section 18b. A. The duties of the Attorney General as the chief law officer of the state shall be:

1. To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court and Court of Criminal Appeals in which the state is interested as a party;

2. To appear for the state and prosecute and defend all actions and proceedings in any of the federal courts in which the state is interested as a party;

3. To initiate or appear in any action in which the interests of the state or the people of the state are at issue, or to appear at the request of the Governor, the Legislature, or either branch thereof, and prosecute and defend in any court or before any commission, board or officers any cause or proceeding, civil or criminal, in which the state may be a party or interested; and when so appearing in any such cause or proceeding, the Attorney General may, if the Attorney General deems it advisable and to the best interest of the state, take and assume control of the prosecution or defense of the state's interest therein;

4. To consult with and advise district attorneys, when requested by them, in all matters pertaining to the duties of their offices, when said district attorneys shall furnish the Attorney General with a written opinion supported by citation of authorities upon the matter submitted;

5. To give an opinion in writing upon all questions of law submitted to the Attorney General by the Legislature or either branch thereof, or by any state officer, board, commission or department, provided, that the Attorney General shall not furnish opinions to any but district attorneys, the Legislature or either branch thereof, or any other state official, board, commission or department, and to them only upon matters in which they are officially interested;

6. At the request of the Governor, State Auditor and Inspector, State Treasurer, or either branch of the Legislature, to prosecute any official bond or any contract in which the state is interested,

upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their Departments;

7. Whenever requested by any state officer, board or commission, to prepare proper drafts for contracts, forms and other writing which may be wanted for the use of the state;

8. To prepare drafts of bills and resolutions for individual members of the Legislature upon their written request stating the gist of the bill or resolution desired;

9. To enforce the proper application of monies appropriated by the Legislature and to prosecute breaches of trust in the administration of such funds;

10. To institute actions to recover state monies illegally expended, to recover state property and to prevent the illegal use of any state property, upon the request of the Governor or the Legislature;

11. To pay into the State Treasury, immediately upon its receipt, all monies received by the Attorney General belonging to the state;

12. To keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts and forms according to subject and section of the law construed or applied;

13. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General in behalf of the state. Said register or docket shall give the style of the case or investigation, where pending, court number, office number, the gist of the matter, result and the names of the assistants who handled the matter;

14. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the state;

15. To report to the Legislature or either branch thereof whenever requested upon any business relating to the duties of the Attorney General's office;

16. To institute civil actions against members of any state board or commission for failure of such members to perform their duties as prescribed by the statutes and the Constitution and to prosecute members of any state board or commission for violation of the criminal laws of this state where such violations have occurred in connection with the performance of such members' official duties;

17. To respond to any request for an opinion of the Attorney General's office, submitted by a member of the Legislature, regardless of subject matter, by written opinion determinative of the law regarding such subject matter;

18. To convene multicounty grand juries in such manner and for such purposes as provided by law; provided, such grand juries are composed of citizens from each of the counties on a pro rata basis by county;

19. To investigate any report by the State Auditor and Inspector filed with the Attorney General pursuant to Section 223 of this title and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of this state;

20. To represent and protect the collective interests of all utility consumers of this state in rate-related proceedings before the Corporation Commission or in any other state or federal judicial or administrative proceeding;

21. To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Property and Casualty Rate Board or in any other state or federal judicial or administrative proceeding; ~~and~~

22. To certify local crimestoppers programs qualified to receive repayments of rewards pursuant to Section 991a of Title 22 of the Oklahoma Statutes; and

23. To investigate and prosecute any criminal action relating to insurance fraud, if in the opinion of the Attorney General a criminal prosecution is warranted, or to refer such matters to the appropriate district attorney.

B. Nothing in this section shall be construed as requiring the Attorney General to appear and defend or prosecute in any court any cause or proceeding for or on behalf of the Oklahoma Tax Commission, the Board of Managers of the State Insurance Fund, or the Commissioners of the Land Office.

C. In all appeals from the Corporation Commission to the Supreme Court of Oklahoma in which the state is a party, the Attorney General shall have the right to designate counsel of the Corporation Commission as the Attorney General's legally appointed representative in such appeals, and it shall be the duty of the said Corporation Commission counsel to act when so designated and to consult and advise with the Attorney General regarding such appeals prior to taking action therein.

SECTION 6. 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. The Insurance Fraud Unit, upon inquiry or complaint or upon referral from the Insurance Department, shall determine the extent, if any, to which a violation has occurred of any statute or administrative rule of this state pertaining to insurance fraud and may initiate any necessary investigation, civil action, criminal action, referral to the Insurance Commissioner or Insurance Department, referral to a district attorney, or referral to any

appropriate official of this or any other state or of the federal government.

C. In the absence of fraud, bad faith, reckless disregard for the truth, or actual malice, no person, insurer, or agent of an insurer shall be liable for damages in a civil action or subject to criminal prosecution for supplying information about suspected insurance fraud to the Insurance Fraud Unit of the Office of the Attorney General or any other agency involved in the investigation or prosecution of suspected insurance fraud.

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

SECTION 7. 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. If the Attorney General or a designee has reason to believe as a result of inquiry or complaint or as a result of referral from the Insurance Department that a person has engaged in or is engaging in an act or practice that violates any administrative rule or statute pertaining to Insurance Fraud, the Attorney General or a designee shall have all the powers of a district attorney.

B. Nothing in this section shall be construed to waive, limit or impair any evidentiary privilege recognized by law.

C. As used in this section, “records” include, but are not limited to, anything for which a request to produce may be served pursuant to Section 3234 of Title 12 of the Oklahoma Statutes.

D. Records, documents, reports and evidence obtained or created by the Office of the Attorney General as a result of insurance fraud, including workers’ compensation insurance fraud, shall be confidential and shall not be subject to the Oklahoma Open Records

Act or to outside review or release by any individual. An employee of the Attorney General's Office may disclose, at the discretion of the Attorney General, such investigative information to officers and agents of federal, state, county or municipal law enforcement agencies, to the Insurance Commissioner or Insurance Department, and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions.

SECTION 8. 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:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Attorney General's Insurance Fraud Unit Revolving Fund". The fund shall be a continuing fund, not subject to fiscal limitations, and shall consist of any monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purposes of investigation, civil action, criminal action, or referral to the district attorney in cases involving suspected insurance fraud. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 150.5, as amended by Section 5, Chapter 227, O.S.L. 1994 (74 O.S. Supp. 1998, Section 150.5), is amended to read as follows:

Section 150.5 A. Oklahoma State Bureau of Investigation investigations not covered under Section 150.2 of this title shall be initiated at the request of the following persons:

1. The Governor;

2. The Attorney General;

3. The Council on Judicial Complaints upon a vote by a majority of said Council; or

4. The chairman of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of said Committee.

Such requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. The chairman of any Senate committee which is fulfilling the statutory responsibility for approving nominations made by the Governor may, upon a vote by a majority of the committee and with the written consent of the person who is to be the subject of the investigation, initiate a special background investigation of any nominee for the Oklahoma Horse Racing Commission as established by Provision No. 1, State Question No. 553, Initiative Petition No. 315 (3A O.S. Supp. 1982, Section 201). The Bureau shall submit a report to the committee within thirty (30) days of the receipt of the request. Any consideration by the committee of a report from the Bureau shall be for the exclusive use of the committee and shall be considered only in executive session.

D. All records relating to any investigation being conducted by the Bureau shall be confidential and shall not be open to the public or to the Commission except as provided in Section 150.4 of this title; provided, however, officers and agents of the Bureau may disclose, at the discretion of the Director, such investigative information to officers and agents of federal, state, county, or municipal law enforcement agencies and to district attorneys, in the furtherance of criminal investigations within their respective jurisdictions. Any unauthorized disclosure of any information

contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in this section, and the Attorney General in the case of investigations initiated by the Insurance Commissioner, shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed willful neglect of duty and shall be grounds for removal from office.

E. The State Treasurer must initiate a complete background investigation of the positions with the written consent of the persons who are the subject of the investigation pursuant to subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes. The Bureau shall advise the State Treasurer and the Cash Management and Investment Oversight Commission in writing of the results of the investigation.

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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