

HOUSE OF REPRESENTATIVES  
Monday, February 22, 1999

## Committee Substitute for House Bill No. 1502

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1502 -- By COX of the House and FISHER of the Senate.

An Act relating to insurance; creating the Insurance Fraud Unit within the Office of the Attorney General; authorizing the Insurance Fraud Unit to investigate and initiate certain actions for insurance fraud; prohibiting certain actions against persons providing information about insurance fraud; requiring cooperation among certain agencies; giving the Attorney General certain powers; authorizing the Attorney General to use subpoenas and other process; allowing the Attorney General to take possession of and copy certain records; providing for issuance and service of subpoenas; making certain actions contempt; limiting application of certain provisions; providing for the confidentiality of certain records and documents; defining certain terms; creating the Attorney General's Insurance Fraud Unit Revolving Fund; stating purpose of the fund; creating the Anti-Fraud Division within the Insurance Department; authorizing the Anti-Fraud Division to investigate and initiate certain actions for insurance fraud; providing for the confidentiality of certain records and documents; allowing the release of certain information to certain agencies; creating the Insurance Department Anti-Fraud Revolving Fund; stating purpose of the fund; providing for expenditures; requiring insurers to pay certain fee; providing for quarterly payments; establishing payment date; providing for payment of certain amount to the Attorney General's Insurance Fraud Unit Revolving Fund; requiring insurers to notify the Anti-Fraud Division of certain violations; prohibiting certain actions against person providing information about insurance fraud; limiting application of act; providing for noncodification; providing for codification; providing an effective date; 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 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 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 communication, publication, or any other action taken to supply 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 2. 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, complaint, or 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. In addition to having the powers of a district attorney to prosecute cases involving insurance fraud and prior to the filing of criminal charges, the Attorney General or designee may use subpoenas or other process in the aid of investigations authorized by Section 1 of this act. The Attorney General or designee may take possession of records in an investigation and shall supply copies of any records obtained which are necessary to the continuation of normal business operations by the person maintaining the records.

C. Subpoenas ad testificandum or duces tecum requested by the Attorney General or designee pursuant to subsection B of this section may be requested at any time during the course of an investigation and shall be issued by the district court in the county of the residence of the person to whom the subpoena is directed, in the county where the records are located or in the county where a person is to produce records or appear and be sworn. Subpoenas issued pursuant to this section 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. Service may be made by mail and may be accomplished by mailing a copy by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. Proof of service shall be made upon affidavit, and if made by mail, a copy of the return receipt shall be attached. A refusal to obey a subpoena issued pursuant to this section, 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.

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

E. Records, documents, reports, and evidence obtained or created by the Office of the Attorney General as a result of investigation or prosecution of 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, investigative information to officers and agents of federal, state, county or municipal law enforcement agencies, to the Insurance Commissioner or the Insurance Department, and to district attorneys in the furtherance of criminal investigations within their respective jurisdictions.

F. As used in this section, “records” shall 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.

SECTION 3. 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 year limitations, and shall consist of all 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 purpose 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 4. 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:

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”.

B. The Anti-Fraud Division, upon inquiry, complaint, or referral 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, or referral to the Attorney General, a district attorney, any appropriate official of this or any other state or of the federal government.

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. At the discretion of the Insurance Commissioner, information and records may be disclosed to officers and agents of federal, state, county, or municipal law enforcement agencies, to the

Attorney General's office and to district attorneys, in the furtherance of criminal investigations within the respective jurisdiction.

SECTION 5. 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 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, civil action, or referral to the Attorney General or a 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.

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). The fee shall be payable quarterly in the amount of One Hundred Twenty-five Dollars (\$125.00) per quarter. The first payment shall be made not later than July 30, 1999.

C. Forty percent (40%) of all monies collected by the Insurance Department pursuant to this section shall annually be transferred to the Attorney General's Insurance Fraud Unit Revolving Fund created in Section 3 of this act, for use by the Attorney General or designee in the investigation and prosecution of insurance fraud.

SECTION 6. 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. Any insurer who has reason to believe that a person 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 Division of the Insurance Department.

B. In the absence of fraud, bad faith, reckless disregard for the truth, or actual malice, no persons, insurer, or agent of an insurer shall be liable for damages in a civil action or subject to criminal prosecution for communication, publication, or any other action taken to supply 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.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The provisions of this act shall not apply to workers' compensation insurance or benefits.

SECTION 8. This act shall become effective July 1, 1999.

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.

COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 2-18-99 -- DO PASS, As Coauthored.