

**EHB 1502**

**THE STATE SENATE**  
**Monday, March 29, 1999**

**ENGROSSED**

**House Bill No. 1502**

**As Amended**

ENGROSSED HOUSE BILL NO. 1502 - By: COX of the House and FISHER of the Senate.

**[ insurance - Insurance Fraud Unit - duties - Attorney General's Insurance Fraud Unit Revolving Fund - Anti-Fraud Division - Insurance Department Anti-Fraud Revolving Fund - noncodification - codification - effective date - 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

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

3 C. In the absence of fraud, bad faith, reckless disregard for  
4 the truth, or actual malice, no person, insurer, or agent of an  
5 insurer shall be liable for damages in a civil action or subject to  
6 criminal prosecution for communication **or documentation** to supply  
7 information about suspected insurance fraud to the Insurance Fraud  
8 Unit of the Office of the Attorney General or any other agency  
9 involved in the investigation or prosecution of suspected insurance  
10 fraud. **The immunity provided in this subsection shall not extend to**  
11 **any person, insurer, or agent of an insurer for communications or**  
12 **publications about suspected insurance fraud to any other person or**  
13 **entity.**

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

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

22 A. If the Attorney General or a designee has reason to believe  
23 as a result of inquiry, complaint, or referral from the Insurance

1 Department that a person has engaged in or is engaging in an act or  
2 practice that violates any administrative rule or statute pertaining  
3 to insurance fraud, the Attorney General or a designee shall have  
4 all the powers of a district attorney.

5 B. In addition to having the powers of a district attorney to  
6 prosecute cases involving insurance fraud and prior to the filing of  
7 criminal charges, the Attorney General or designee may use subpoenas  
8 or other process in the aid of investigations authorized by Section  
9 1 of this act. The Attorney General or designee may take possession  
10 of records in an investigation and shall supply copies of any  
11 records obtained which are necessary to the continuation of normal  
12 business operations by the person maintaining the records.

13 C. Subpoenas ad testificandum or duces tecum requested by the  
14 Attorney General or designee pursuant to subsection B of this  
15 section may be requested at any time during the course of an  
16 investigation and shall be issued by the **clerk of the** district court  
17 in the county of the residence of the person to whom the subpoena is  
18 directed, in the county where the records are located or in the  
19 county where a person is to produce records or appear and be sworn.  
20 Subpoenas issued pursuant to this section may be served by the  
21 Attorney General, any peace officer or any competent person over  
22 eighteen (18) years of age, and may require attendance or production  
23 at any place in this state. Service may be made by mail and may be

1 accomplished by mailing a copy by certified mail with return receipt  
2 requested and delivery restricted to the person named in the  
3 subpoena. Proof of service shall be made upon affidavit, and if  
4 made by mail, a copy of the return receipt shall be attached. A  
5 refusal to obey a subpoena issued pursuant to this section, or  
6 willful failure to appear, be sworn, testify or produce records at  
7 the place and time specified shall constitute contempt and shall be  
8 enforced by the district court of the county where issued.

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

11 E. Records, documents, reports, and evidence obtained or  
12 created by the Office of the Attorney General as a result of  
13 investigation or prosecution of insurance fraud shall be  
14 confidential and shall not be subject to the Oklahoma Open Records  
15 Act or to outside review or release by any individual, **but shall be**  
16 **subject to subpoena or court order.** An employee of the Attorney  
17 General's office may disclose, at the discretion of the Attorney  
18 General, investigative information to officers and agents of  
19 federal, state, county or municipal law enforcement agencies, to the  
20 Insurance Commissioner or the Insurance Department, and to district  
21 attorneys in the furtherance of criminal investigations within their  
22 respective jurisdictions.

1 F. As used in this section, "records" shall include, but are  
2 not limited to, anything for which a request to produce may be  
3 served pursuant to Section 3234 of Title 12 of the Oklahoma  
4 Statutes.

5 SECTION 3. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 19.3 of Title 74, unless there  
7 is created a duplication in numbering, reads as follows:

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

20 SECTION 4. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1231.1 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:

1       A. There is hereby created within the Insurance Department,  
2 under the control and direction of the Insurance Commissioner, a  
3 division designated as the "Anti-Fraud Division".

4       B. The Anti-Fraud Division, upon inquiry, complaint, or  
5 referral shall determine the extent, if any, to which a violation  
6 has occurred of any statute or administrative rule of this state  
7 pertaining to insurance fraud and may initiate any necessary  
8 investigation, civil action, or referral to the Attorney General, a  
9 district attorney, any appropriate official of this or any other  
10 state or of the federal government.

11       C. Records, documents, reports and evidence obtained or created  
12 by the Anti-Fraud Division as a result of an inquiry or  
13 investigation of suspected insurance fraud shall be confidential and  
14 shall not be subject to the Oklahoma Open Records Act or to outside  
15 review or release by any individual, **but shall be subject to**  
16 **subpoena or court order.** At the discretion of the Insurance  
17 Commissioner, information and records may be disclosed to officers  
18 and agents of federal, state, county, or municipal law enforcement  
19 agencies, to the Attorney General's office and to district  
20 attorneys, in the furtherance of criminal investigations within the  
21 respective jurisdiction.

1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1231.2 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. There is hereby created in the State Treasury a revolving  
5 fund for the Insurance Commissioner to be designated the "Insurance  
6 Department Anti-Fraud Revolving Fund". The fund shall be a  
7 continuing fund, not subject to fiscal year limitations and shall  
8 consist of all monies received and collected by the Insurance  
9 Department pursuant to subsection B of this section and all other  
10 monies designated to the fund by law. All monies accruing to the  
11 credit of said fund are hereby appropriated and may be budgeted and  
12 expended by the Insurance Commissioner for the purposes of  
13 investigation, civil action, or referral to the Attorney General or  
14 a district attorney in cases involving suspected insurance fraud.  
15 Expenditures from said fund shall be made upon warrants issued by  
16 the State Treasurer against claims filed as prescribed by law with  
17 the Director of State Finance for approval and payment.

18 B. Each insurer licensed to do business in this state shall pay  
19 annually to the Insurance Department a fee of Five Hundred Dollars  
20 (\$500.00). The fee shall be payable quarterly in the amount of One  
21 Hundred Twenty-five Dollars (\$125.00) per quarter. The first  
22 payment shall be made not later than July 30, 1999.

1 C. Forty percent (40%) of all monies collected by the Insurance  
2 Department pursuant to this section shall quarterly be transferred  
3 to the Attorney General's Insurance Fraud Unit Revolving Fund  
4 created in Section 3 of this act, for use by the Attorney General or  
5 designee in the investigation and prosecution of insurance fraud.  
6 The first transfer shall be made not later than August 31, 1999.

7 SECTION 6. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1231.3 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

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

15 B. In the absence of fraud, bad faith, reckless disregard for  
16 the truth, or actual malice, no persons, insurer, or agent of an  
17 insurer shall be liable for damages in a civil action or subject to  
18 criminal prosecution for communication **or documentation** supply  
19 information about suspected insurance fraud to the Anti-Fraud  
20 Division of the Insurance Department or any other agency involved in  
21 the investigation or prosecution of suspected insurance fraud. **The**  
22 **immunity provided in this subsection shall not extend to any person,**

1 **insurer, or agent of an insurer for communications or publications**  
2 **about suspected insurance fraud to any other person or entity.**

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

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

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

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

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-99 - DO  
13 PASS, As Amended.