

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1732

By: Kern

AS INTRODUCED

An Act relating to motor vehicles; creating the Victims of Uninsured Motorists Compensation Act; providing short title; stating legislative intent; defining terms; providing duties and powers of the Insurance Commissioner relating to claims for compensation; providing rights of parties and hearing procedures; providing for waiver of physician-patient privilege; providing grounds for denial of award; providing grounds for diminishing an award; authorizing the Commissioner to reconsider a determination; providing that prosecution, conviction or adjudication are not required for claim; authorizing suspension of proceedings under certain circumstances; providing for subrogation for recovery from collateral source; providing for payment of award; providing for advancements on awards; providing penalties for false claims; creating the Victims of Uninsured Motorists Compensation Revolving Fund and stating purpose therefor; providing for assessments for victim compensation; providing for codification; and providing an effective date.

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 7-701 of Title 47, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Victims of Uninsured Motorists Compensation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-702 of Title 47, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature to provide a method of compensating and assisting those persons who become victims of uninsured motorists and who suffer physical or psychological injury or death who are either within this state or who are residents of

this state who become victims, as defined in Section 3 of this act. It is the further intent of the Legislature to provide compensation in the amount of expenses actually incurred as a direct result of the acts of persons who violate the provisions of the Compulsory Insurance Law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-703 of Title 47, unless there is created a duplication in numbering, reads as follows:

As used in the Victims of Uninsured Motorists Compensation Act:

1. "Allowable expense" means:

- a. charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training and other remedial treatment and care,
- b. any reasonable funeral or burial expenses, and
- c. reasonable costs for damage to property or property loss;

2. "Claimant" means any of the following persons applying for compensation under the Victims of Uninsured Motorists Compensation Act:

- a. a victim,
- b. a dependent of a victim who has died because of a traffic accident in which the uninsured motorist was at fault, or
- c. a person authorized to act on behalf of any of the persons enumerated in subparagraphs a and b of this paragraph;

3. "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this act, and which the claimant has

received, or which is readily available to the claimant, from any one or more of the following:

- a. the uninsured motorist,
- b. the government of the United States or any agency thereof, in the form of benefits, such as social security, Medicare and Medicaid, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under the Victims of Uninsured Motorists Compensation Act,
- c. state-required temporary nonoccupational disability insurance,
- d. workers' compensation,
- e. wage continuation programs of any employer,
- f. a contract providing prepaid hospital and other health care services or benefits for disability,
- g. a contract providing prepaid burial expenses or benefits, or
- h. proceeds of any contract of insurance payable to the claimant for loss which the victim sustained because of the conduct of the uninsured motorist, except:
 - (1) life insurance proceeds or uninsured motorist proceeds in an amount of Fifty Thousand Dollars (\$50,000.00) or less shall not be considered a collateral source when computing loss of support, and
 - (2) life insurance proceeds and proceeds from personal uninsured motorist coverage of any amount shall not be considered a collateral source for computing burial expenses;

4. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim if the death occurred as a result of the conduct of the uninsured motorist;

5. "Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if the victim had not suffered the fatal injury;

6. "Replacement services loss of dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent;

7. "Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include noneconomic loss;

8. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage;

9. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died;

10. "Work loss for victim" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that the victim was capable of performing but unreasonably failed to undertake, or loss of income

from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of the conduct of the uninsured motorist had not created the need for the caregiver to miss work to care for the injured victim; and

11. "Victim" means a person who suffers personal injury or death as a result of a traffic accident caused by an uninsured motorist.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-704 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall award compensation for economic loss arising from a traffic accident caused by an uninsured motorist if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

B. The Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-705 of Title 47, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may require any claimant to seek or accept any collateral source contribution.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-706 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Every party to the claim shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to the claim, and to examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to the claim.

B. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice pursuant to rules promulgated by the Insurance Commissioner. A record of the proceedings of the hearing in a contested case shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Commissioner.

C. The Commissioner may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-707 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Any person filing a claim under the provisions of the Victims of Uninsured Motorist Compensation Act shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant.

B. If the mental, physical or emotional condition of a claimant is material to a claim, the Insurance Commissioner, upon good cause shown, may order the claimant to submit to a mental or physical examination. The examination report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

C. The Commissioner shall furnish a copy of the examination report to the victim. If the victim is deceased, the Commissioner, on request, shall furnish a copy of the report to the representative of the victim.

D. The Commissioner may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

E. In certain cases wherein mental health expenses are being claimed, the Commissioner may request assistance from a panel of

professionals in the mental health field. The panel of professionals may only act in an advisory capacity to the Commissioner.

F. The Commissioner shall have the authority to set limits of compensation on any medical or mental health treatment, and require that providers of medical or mental health treatments be licensed prior to compensating for said treatment. Awards for all medical services shall not exceed eighty percent (80%) of the total cost of the service less any other reduction for contributory conduct, as determined by the Board. Any medical provider that receives payment from the Victims of Uninsured Motorists Compensation Revolving Fund for medical, dental or psychological services, or any provider that supplies equipment pursuant to an award under the Victims of Uninsured Motorists Compensation Act shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the claimant to pay, reimburse or compensate the provider for medical services, supplies or equipment that have been reimbursed pursuant to the Victims of Uninsured Motorists Compensation Act. In the event the claimant has paid for a medical service, the claimant will be reimbursed for the out-of-pocket loss, less any reductions for contributory conduct, as determined by the Commissioner.

G. All records and information given to the Commissioner to process a claim on behalf of a claimant shall be confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records, and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a claimant shall not be obtainable by any party to any civil or criminal action through any discovery process except:

1. In the event of an appeal under the Administrative Procedures Act from a decision of the Commissioner and then only to the extent narrowly and necessarily to obtain court review; or

2. Upon a strict showing to the court in a separate civil or criminal action that particular information or documents are not obtainable after diligent effort from any independent source, and are known to exist otherwise only in records of the Commissioner, the court may inspect in camera such records to determine whether the specific requested information exists. If the court determines the specific information sought exists in the Commissioner's records, the documents may then be released only by court order if the court finds as part of its order that the documents will not pose any threat to the safety of the claimant or any other person whose identity may appear in the Commissioner's records.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-708 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Compensation shall not be awarded:

1. Unless the claim has been filed with the Insurance Commissioner within one (1) year after the injury or death upon which the claim is based. The Commissioner may waive this requirement, if the Commissioner finds there was good cause for failure to file the claim within one (1) year, but in no event shall the filing of a claim be permitted after two (2) years from the date of the injury or death upon which the claim is based. If the victim is mentally handicapped or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult, when establishing whether or not the claim was timely filed;

2. To a claimant who was the uninsured motorist; or

3. To another person if the award would unjustly benefit the uninsured motorist.

B. Compensation otherwise payable to a claimant shall be diminished to the extent:

1. That the economic loss is recouped from collateral sources;
or

2. Of the degree of responsibility for the cause of the injury or death attributable to the victim as determined by the Commissioner.

C. The Commissioner, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

D. The Commissioner, on sua sponte or on request of the claimant, may reconsider a decision granting or denying an award or determining its amount. The motion or request to reconsider a decision shall be made within six (6) months from the date of the last action by the Commissioner on the claim at issue. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a decision of the Commissioner for the purpose of judicial review. On claims which are denied by the Commissioner, reconsideration may only be granted within six (6) months of the last action on the claim by the Commissioner.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-709 of Title 47, unless there is created a duplication in numbering, reads as follows:

An award may be made whether or not any person is prosecuted or convicted as an adult offender or adjudicated a delinquent child. Proof of conviction of a person whose acts give rise to a claim or a copy of the adjudication order for a delinquent child whose acts give rise to a claim is conclusive evidence that the accident occurred and the uninsured motorist was at fault, unless an application for rehearing, an appeal of the conviction, certiorari

or adjudication is pending, or a rehearing or new trial has been ordered. The Commissioner may suspend the proceedings pending disposition of a criminal prosecution or delinquent child adjudication that has been commenced or is imminent, but may make a tentative award under Section 11 of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-710 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. If compensation is awarded, the state shall be subrogated to all the rights of a claimant to receive or recover from a collateral source to the extent that compensation was awarded.

B. In the event the claimant recovers compensation, other than under the provisions of the Victims of Uninsured Motorists Compensation Act, for injuries or death resulting from criminally injurious conduct, the claimant shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Victims of Uninsured Motorists Compensation Revolving Fund to the extent that compensation was awarded to the claimant from that Fund. The funds retained in trust shall be promptly deposited in the Victims of Uninsured Motorists Compensation Revolving Fund.

C. If a claimant brings an action to recover damages related to the traffic accident upon which compensation is claimed or awarded, the claimant shall give the Insurance Commissioner written notice of the action. After receiving the notice, the Commissioner may join in the action as a party plaintiff to recover the compensation awarded.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-711 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may compensate for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss. Compensation for a caregiver who has out-

of-pocket wage loss as a result of caring for the victim who was injured as a result of a traffic accident caused by an uninsured motorist shall not exceed Two Thousand Dollars (\$2,000.00).

B. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death caused by an uninsured motorist shall not exceed Twenty Thousand Dollars (\$20,000.00) in the aggregate.

C. The Commissioner may provide for the payment to a claimant in a lump sum or in installments. At the request of the claimant, the Commissioner may convert future economic loss, other than allowable expense, to a lump sum.

D. An award payable in a lump sum or installments for loss of support for a dependent of the deceased victim may be computed through a formula which calculates the net loss of support for dependents based upon an estimated date of retirement or an estimated date of adulthood for dependent children, beginning with the date of death of the victim and ending with the least of one of the following time periods for each dependent filing loss of support:

1. The amount of time from the date of death of the victim to the date the victim would have been expected to reach sixty-two (62) years of age; or

2. The amount of time from the date of death of the victim to the date the spouse of the victim is expected to reach sixty-two (62) years of age; or

3. The amount of time from the date of death of the victim to the date a dependent child is expected to reach eighteen (18) years of age or twenty-three (23) years of age if the dependent child is enrolled as a full-time student.

An award payable in installments for future loss of support may be modified by the Commissioner if a dependent child receiving loss of support is between the ages of eighteen (18) and twenty-three (23)

years of age and is no longer enrolled as a full-time student, the dependent dies before all installments are paid, or the dependent receiving installments moves and leaves no forwarding address with the office of the Insurance Commissioner.

E. An award shall not be subject to execution, attachment, garnishment or other process, except for child support and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

F. An assignment by the claimant to any future award under the provisions of this section is unenforceable, except:

1. An assignment of any award for work loss to assure payment of court-ordered alimony, maintenance or child support; or

2. An assignment of any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

G. Reasonable funeral, cremation or burial expenses shall not exceed Five Thousand Dollars (\$5,000.00).

H. Loss of income of a caregiver shall not exceed Two Thousand Dollars (\$2,000.00).

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-712 of Title 47, unless there is created a duplication in numbering, reads as follows:

If the Insurance Commissioner determines that the claimant will suffer financial hardship unless an advance award is made, an amount may be paid to the claimant and shall be deducted from the final award, or shall be repaid by and recoverable from the claimant to the extent that the advance award exceeds the final award.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-713 of Title 47, unless there is created a duplication in numbering, reads as follows:

The filing of a false claim for compensation pursuant to Victims of Uninsured Motorists Compensation Act shall constitute a misdemeanor, and shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-714 of Title 47, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Insurance Department to be designated the "Victims of Uninsured Motorists Compensation Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Insurance Commissioner from any source provided in Section 15 of this act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commissioner for the purpose of implementing the provisions of the Victims of Uninsured Motorists Compensation Act. 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. The fund shall be invested in whatever instruments are authorized by law for investments by the State Treasurer. The interest earned by any investment of monies from the fund shall be credited to the fund for expenditure as provided by law for the fund.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-715 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted of, pleading guilty to or agreeing to a deferred judgment procedure under the provisions set forth in the Oklahoma Statutes for a violation of the Compulsory Insurance Law, operating a motor vehicle while the person's driving privileges are suspended, any misdemeanor or felony violation of Section 11-902 of Title 47 of the Oklahoma Statutes, or for any felony violation of the Motor Vehicle Code shall be ordered to pay a compensation assessment of at least Fifty Dollars (\$50.00), but not to exceed Ten Thousand Dollars (\$10,000.00), for each crime for which the person was convicted or for which the person agreed to a deferred judgment procedure.

B. All monies collected pursuant to this section shall be forwarded monthly by the court clerk to the Victims of Uninsured Motorists Compensation Revolving Fund.

SECTION 16. This act shall become effective November 1, 2005.

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