

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1846

By: Pruitt

AS INTRODUCED

An Act relating to workers' compensation; amending 21 O.S. 2001, Section 1663, as amended by Section 1, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (21 O.S. Supp. 2005, Section 1663) and 85 O.S. 2001, Section 30, as amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2005, Section 30), which relate to workers' compensation fraud and claims for services; deleting certain definition; modifying circumstances under which certain claims can be made; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1663, as amended by Section 1, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (21 O.S. Supp. 2005, Section 1663), is amended to read as follows:

Section 1663. A. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not exceeding seven (7) years or by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or by both such fine and imprisonment. Any person who commits workers' compensation fraud and who has a prior felony conviction of workers' compensation fraud shall receive a two-year penalty enhancement for each prior conviction in addition to the sentence provided above.

B. For the purposes of this section, workers' compensation fraud shall include, but not be limited to, any act or omission prohibited by subsection C of this section and committed by a person

with the intent to injure, defraud or deceive another with respect to any of the following:

1. A claim for payment or other benefit pursuant to a contract of insurance;
2. An application for the issuance of a contract of insurance;
3. The rating of a contract of insurance or any risk associated with the contract;
4. Premiums paid on any contract of insurance whether or not the contract was actually issued;
5. Payments made in accordance with the terms of a contract of insurance;
6. An application for any license which is required by the Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;
7. An application for a license which is required for the organization, operation or maintenance of a health maintenance organization pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes;
8. A request for any approval, license, permit or permission required by the Workers' Compensation Act, by the rules of the Workers' Compensation Court or by the rules of the Workers' Compensation Court Administrator necessary to secure compensation as required by Section 61 of Title 85 of the Oklahoma Statutes;
9. The financial condition of an insurer or purported insurer;
10. The acquisition of any insurer; or
11. A contract of insurance or a Certification of Non-Coverage Under the Workers' Compensation Act.

C. A person is guilty of workers' compensation fraud who:

1. Presents, causes to be presented or intends to present to another, any statement as part of or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading

information concerning any fact or thing material to the purpose for the statement;

2. Assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to, used by or relied upon by another in connection with or in support of any of the purposes described in subsection B of this section knowing that such statement contains any false, fraudulent, incomplete or misleading information concerning any fact or thing material to the purpose of the statement;

3. Conceals, attempts to conceal or conspires to conceal any information concerning any fact material to any of the purposes described in subsection B of this section;

4. Solicits, accepts or conspires to solicit or accept new or renewal insurance risks by or for an insolvent insurer;

5. Removes, attempts to remove or conspires to remove the assets or records of the insurer or a material part thereof, from the place of business of the insurer or from a place of safekeeping of the insurer;

6. Conceals, attempts to conceal or conspires to conceal the assets or records of the insurer or a material part thereof;

7. Diverts, attempts to divert, or conspires to divert funds of an insurer or other person in connection with:

- a. a contract of insurance,
- b. the business of an insurer, or
- c. the formation, acquisition or dissolution of an insurer;

8. Solicits, accepts or conspires to solicit or accept any benefit in exchange for violating any provision of this section;

9. Conceals, attempts to conceal, conspires to conceal or fails to disclose any change in any material fact, circumstance or thing for which there is a duty to disclose to another; or

10. Alters, falsifies, forges, distorts, counterfeits or otherwise changes any material statement, form, document, contract, application, certificate, or other writing with the intent to defraud, deceive, or mislead another.

D. It shall not be a defense to an allegation of a violation of this section that the person accused did not have a contractual relationship with the insurer.

E. For the purposes of this section:

1. "Contract of insurance" includes, but is not limited to, workers' compensation insurance or any other means of securing compensation permitted by the Workers' Compensation Act or reinsurance for such insurance or other means of securing compensation;

2. "Insurer" includes, but is not limited to, any person who is engaged in the business of making contracts of insurance;

3. "Person" means any individual or entity, whether incorporated or not, and in the case of an entity, includes those persons directly responsible for the fraudulent actions of the entity; and

4. "Statement" includes, but is not limited to, any oral, written, computer-generated or otherwise produced notice, proof of loss, bill of lading, receipt for payment, invoice, account, certificate, survey affidavit, book, paper, writing, estimate of property damage, bill for services, diagnosis, prescription, medical record, x-ray, test result or other evidence of loss, injury or expense; ~~and~~

~~5. "Work" does not include activities that result in nominal economic gain.~~

SECTION 2. AMENDATORY 85 O.S. 2001, Section 30, as amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2005, Section 30), is amended to read as follows:

Section 30. A. 1. If the Workers' Compensation Court before which any proceedings for compensation or concerning an award of compensation have been brought, under the Workers' Compensation Act, determines that such proceedings have not been brought on a reasonable ground, or that denial of benefits has not been based on a reasonable ground, the Court shall assess the total cost of the proceedings on the party, who has brought them or the party who has unreasonably denied payment of benefits.

2. In the event a respondent fails to pay travel expenses as required by an order of the Court within twenty-five (25) business days of such order, the Court shall assess a Five Hundred Dollar (\$500.00) penalty against the respondent and payable to the claimant.

B. Claims for services or treatment rendered or supplies furnished pursuant to Section 14 of this title shall not be enforceable unless approved by the Court. If approved, such claim shall become a lien upon the compensation awarded, but shall be paid therefore only in the manner fixed by the Court.

C. A claim for legal services shall be determined by the Court pursuant to the provisions of this subsection.

1. A claim for legal services in contested temporary disability cases shall not exceed ten percent (10%) of the amount of the award for temporary disability. Legal service fees paid in uncontested cases for temporary total disability shall not exceed ten percent (10%) as ordered by the Court.

2. A claim for legal services shall not exceed twenty percent (20%) of the amount of the award for permanent disability or death benefits.

D. Claims for legal services for temporary disability awards shall be paid periodically. Claims for legal fees for permanent total disability awards shall be paid periodically at the rate of twenty percent (20%) of each weekly check to the claimant until the

attorney fee is satisfied, based upon a maximum of four hundred (400) weeks of compensation. The right to any such attorney fee shall be vested at the time the award therefor becomes final. Claims for legal services for permanent partial disability awards may be paid in a lump sum the same to be deducted from the end of the award. Claims for legal services for death awards may be paid in a lump sum which shall be deducted from the periodic compensation payments at a rate of ten percent (10%) per payment until the attorney fee is satisfied.

E. In any claim in which the respondent has ~~admitted~~ ~~compensability of an accidental injury within twenty (20) days of the filing of an Employee's First Notice of Accidental Injury and Claim for Compensation,~~ has not disputed medical treatment, and has made a settlement offer in writing within ~~fifteen (15)~~ twenty (20) days after the date on which the treating physician reports in writing that the claimant reaches has reached maximum medical improvement, the attorney fee shall be limited to thirty-five percent (35%) of the amount of any award or settlement of permanent partial disability which is greater than the amount of the offer. In addition, an attorney fee shall be awarded for other contested benefits obtained on behalf of the claimant at any time during the pendency of the claim and shall be based upon a reasonable hourly rate. In no event shall the total attorney fee be in excess of twenty percent (20%) of the total permanent partial disability award or settlement. All attorney fees shall be deducted from the award or settlement to the claimant.

SECTION 3. This act shall become effective November 1, 2006.

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