STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 244 By: Yen

AS INTRODUCED

An Act relating to admissibility of medical reports; amending Section 6, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 6), which relates to workers' compensation fraud; providing for admissibility of certain reports; establishing procedures for requiring certain testimony; establishing immunity from certain liability; creating certain presumption; and providing an effective date.

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

SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014, Section 6), is amended to read as follows:

Section 6.

A. 1. a. Any person or entity who makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who employs any device, scheme, or artifice, or who aids and abets any person for the purpose of:

(1) obtaining any benefit or payment,

(2) increasing any claim for benefit or payment, or

(3) obtaining workers' compensation coverage under this act,

shall be guilty of a felony.

b. A material false statement or representation includes, but is not limited to, attempting to obtain treatment or compensation for body parts that were not injured in the course and scope of employment.

c. Fifty percent (50%) of any criminal fine imposed and collected under this section shall be paid and allocated in accordance with applicable law to the Workers' Compensation Fund administered by the Commission.

2. Any person or entity with whom any person identified in division (1) of subparagraph a of paragraph 1 of this subsection has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a felony.

B. A copy of division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be included on all forms prescribed by the Commission for the use of injured employees claiming benefits and for the use of employers in responding to employees' claims under this act.

C. Where the Commission or the Attorney General finds that a violation of division (1) of subparagraph a of paragraph 1 of

subsection A of this section has been committed, or that any other criminal violations in furtherance of this act were committed, the chair of the Commission or the Attorney General shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction over the matter.

D. 1. a. There shall be established within the Office of the Attorney General a Workers' Compensation Fraud Investigation Unit, funded by the Commission. The Attorney General shall appoint a Director of the Workers' Compensation Fraud Investigation Unit, who may also serve as the director of any other designated insurance fraud investigation division within the Attorney General's office.

b. (1) The Unit shall investigate workers' compensation fraud, any additional criminal violations that may be related to workers' compensation fraud, and any other insurance fraud matters as may be assigned at the discretion of the Attorney General.

(2) The Attorney General shall designate the personnel assigned to the Unit, who, on meeting the qualifications established by the Oklahoma Council on Law Enforcement Education and Training, shall have the powers of specialized

law enforcement officers of the State of Oklahoma for the purpose of conducting investigations under this subparagraph. Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the Oklahoma Council on Law Enforcement Education and Training.

2. The Attorney General and his or her deputies and assistants and the Director of the Workers' Compensation Fraud Investigation Unit and his or her deputies and assistants shall be vested with the power of enforcing the requirements of this section.

3. It shall be the duty of the Unit to assist the Attorney General in the performance of his or her duties. The Unit shall determine the identity of employees in this state who have violated division (1) of subparagraph a of paragraph 1 of subsection A of this section and report the violation to the Office of the Attorney General and the Commission. The Attorney General shall report the violation to the prosecuting attorney having jurisdiction over the matter.

4. a. In the course of any investigation being conducted by the Unit, the Attorney General and his or her deputies and assistants and the Director and his or her

deputies and assistants shall have the power of subpoena and may:

(1) subpoena witnesses,

(2) administer oaths or affirmations and examine any individual under oath, and

(3) require and compel the production of records, books, papers, contracts, and other documents.

b. The issuance of subpoenas for witnesses shall be served in the same manner as if issued by a district court.

c. (1) Upon application by the commissioner or the Director of the Unit, the district court located in the county where a subpoena was served may issue an order compelling an individual to comply with the subpoena to testify.

(2) Any failure to obey the order of the court may be punished as contempt.

d. If any person has refused in connection with an investigation by the Director to be examined under oath concerning his or her affairs, then the Director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then

presently be to the full extent permitted by the laws of the state or territory.

e. In addition to the punishments described in paragraph 1 of subsection A of this section, any person providing false testimony under oath or affirmation in this state as to any matter material to any investigation or hearing conducted under this subparagraph, or any workers' compensation hearing, shall upon conviction be guilty of perjury.

5. Fees and mileage of the officers serving the subpoenas and of the witnesses in answer to subpoenas shall be as provided by law.

6. a. Every carrier or employer who has reason to suspect that a violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section has occurred shall be required to report all pertinent matters to the unit.

b. No carrier or employer who makes a report for a suspected violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section by an employee shall be liable to the employee unless the carrier or employer knowingly and intentionally included false information in the report.

c. (1) Any carrier or employer who willfully and knowingly fails to report a violation under

division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00).

(2) Fifty percent (50%) of any criminal fine imposed and collected under this subparagraph shall be paid and allocated in accordance with applicable law to the fund administered by the Commission.

d. Any employee may report suspected violations of division (1) of subparagraph a of paragraph 1 of subsection A of this section. No employee who makes a report shall be liable to the employee whose suspected violations have been reported.

E. 1. For the purpose of imposing criminal sanctions or a fine for violation of the duties of this act, the prosecuting attorney shall have the right and discretion to proceed against any person or organization responsible for such violations, both corporate and individual liability being intended by this act.

2. The prosecuting attorney of the district to whom a suspected violation of subsection A of this section, or any other criminal violations that may be related thereto, have been referred shall, for the purpose of assisting him or her in such prosecutions, have the authority to appoint as special deputy prosecuting attorneys

licensed attorneys-at-law in the employment of the Unit or any other designated insurance fraud investigation division within the Attorney General's office. Such special deputy prosecuting attorneys shall, for the purpose of the prosecutions to which they are assigned, be responsible to and report to the prosecuting attorney.

F. Notwithstanding any other provision of law, investigatory files as maintained by the Attorney General's office and by the Unit shall be deemed confidential and privileged. The files may be made open to the public once the investigation is closed by the Director of the Workers' Compensation Fraud Investigation Unit with the consent of the Attorney General.

G. The Attorney General, with the cooperation and assistance of the Commission, is authorized to establish rules as may be necessary to carry out the provisions of this section.

H. Nothing in this section shall be deemed to create a civil cause of action.

I. The Commission shall include a statement on all forms for notices and instructions to employees, employers, carriers and third-party administrators that any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment, a fine or both.

J. If an injured employee is charged with workers' compensation fraud, any pending workers' compensation proceeding, including

benefits, shall be stayed after the preliminary hearing is concluded and the claimant is bound over and shall remain stayed until the final disposition of the criminal case. All notice requirements shall continue during the stay.

K. If the Attorney General's Office is in compliance with the discovery provisions of Section 258 of Title 22 of the Oklahoma Statutes, medical records created for the purpose of treatment and medical opinions obtained during the investigation shall be admissible at the preliminary hearing without the appearance of the medical professional creating such records or opinions. However, when material evidence dispositive to the issues of whether there was probable cause the crime was committed and whether the defendant committed the crime, was not included in a report or opinion admitted at preliminary hearing, but might be presented at a pretrial hearing by a medical professional who created such report or opinion, the judge may, upon the motion of either party, order the appearance of the medical professional creating such report or opinion. Questions of fact regarding the conduct of the defendant that conflict with the findings of the medical professional evaluating the defendant shall not constitute material evidence. In the event of such motion, notice shall be given to the Attorney General's Workers Compensation Fraud and Investigation and Prosecution Unit. A hearing shall be held and, if the motion is

granted, the evidence shall not be presented fewer than five (5) days later.

L. Any person or entity who, in good faith and exercising due care, reports suspected workers' compensation fraud or insurance fraud, or who allows access to medical records or other information pertaining to suspected workers' compensation or insurance fraud, by persons authorized to investigate a report concerning the workers' compensation and insurance fraud, shall have immunity from any civil or criminal liability for such report or access. Any such person or entity shall have the same immunity with respect to participation in any judicial proceeding resulting from such reports. For purposes of any civil or criminal proceeding, there shall be a presumption of good faith of any person making a report, providing medical records or providing information pertaining to a workers' compensation or insurance fraud investigation by the Attorney General, and participating in a judicial proceeding resulting from a subpoena or a report.

SECTION 2. This act shall become effective November 1, 2015.

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