

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1637

By: Brooks

6 AS INTRODUCED

7 An Act relating to informant database; amending 12
8 O.S. 2011, Section 2510, which relates to identity of
9 informant; updating statutory language; providing
10 exemption; amending 74 O.S. 2011, Section 18b, as
11 last amended by Section 1, Chapter 444, O.S.L. 2019
12 (74 O.S. Supp. 2019, Section 18b), which relates to
13 Duties of Attorney General; requiring the Attorney
14 General to develop, maintain and administer an
15 informant database; requiring law enforcement
16 entities to provide certain information to Attorney
17 General; defining term; creating exception to certain
18 confidential requirements; authorizing access;
19 providing for codification; and providing an
20 effective date.

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

22 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2510, is
23 amended to read as follows:

24 Section 2510. A. The United States, state or subdivision
thereof has a privilege to refuse to disclose the identity of a
person who has furnished information relating to or assisting in an
investigation of a possible violation of a law to a law enforcement
officer or member of a legislative committee or its staff conducting
the investigation.

1 B. The privilege under this section may be claimed by an
2 appropriate representative of the public entity to which the
3 information was furnished.

4 C. The following shall be exceptions to the privilege granted
5 in this section:

6 1. No privilege exists if the identity of the ~~informer~~
7 informant or the ~~informer's~~ informant's interest in the subject
8 matter of the ~~informer's~~ informant's communication has been
9 disclosed to those who would have cause to resent the communication
10 by a holder of the privilege or by the ~~informer's~~ informant's own
11 action, or if the ~~informer~~ informant appears as a witness for the
12 government.;

13 2. If the informant is also a material witness to the criminal
14 conduct with which the defendant is charged, or was a participant in
15 ~~said~~ the criminal conduct conjointly with the defendant, or is shown
16 to be able to give testimony relevant to a material issue in the
17 case.;

18 3. If information from an ~~informer~~ informant is relied upon to
19 establish the legality of the means by which evidence was obtained
20 and the court or the defendant is not satisfied that the information
21 was received from an ~~informer~~ informant reasonably believed to be
22 reliable or credible, the court or defendant may require the
23 identity of the ~~informer~~ informant to be disclosed. The court
24 shall, on request of the government, direct that the disclosure be

1 made in chambers. All counsel and parties concerned with the issue
2 of legality shall be permitted to be present at every stage of a
3 proceeding under this subsection except a disclosure in chambers if
4 the court determines that no counsel or party shall be permitted to
5 be present. If disclosure of the identity of the ~~informer~~ informant
6 is made in chambers, the record thereof shall be sealed and
7 preserved to be made available to the appellate court in the event
8 of an appeal, and the contents shall not otherwise be revealed
9 without consent of the government; and

10 4. No privilege exists if it would prevent compliance with
11 Section 3 of this act.

12 SECTION 2. AMENDATORY 74 O.S. 2011, Section 18b, as last
13 amended by Section 1, Chapter 444, O.S.L. 2019 (74 O.S. Supp. 2019,
14 Section 18b), is amended to read as follows:

15 Section 18b. A. The duties of the Attorney General as the
16 chief law officer of the state shall be:

17 1. To appear for the state and prosecute and defend all actions
18 and proceedings, civil or criminal, in the Supreme Court and Court
19 of Criminal Appeals in which the state is interested as a party;

20 2. To appear for the state and prosecute and defend all actions
21 and proceedings in any of the federal courts in which the state is
22 interested as a party;

23 3. To initiate or appear in any action in which the interests
24 of the state or the people of the state are at issue, or to appear

1 at the request of the Governor, the Legislature, or either branch
2 thereof, and prosecute and defend in any court or before any
3 commission, board or officers any cause or proceeding, civil or
4 criminal, in which the state may be a party or interested; and when
5 so appearing in any such cause or proceeding, the Attorney General
6 may, if the Attorney General deems it advisable and to the best
7 interest of the state, take and assume control of the prosecution or
8 defense of the state's interest therein;

9 4. To consult with and advise district attorneys, when
10 requested by them, in all matters pertaining to the duties of their
11 offices, when the district attorneys shall furnish the Attorney
12 General with a written opinion supported by citation of authorities
13 upon the matter submitted;

14 5. To give an opinion in writing upon all questions of law
15 submitted to the Attorney General by the Legislature or either
16 branch thereof, or by any state officer, board, commission or
17 department, provided, that the Attorney General shall not furnish
18 opinions to any but district attorneys, the Legislature or either
19 branch thereof, or any other state official, board, commission or
20 department, and to them only upon matters in which they are
21 officially interested;

22 6. At the request of the Governor, State Auditor and Inspector,
23 State Treasurer, or either branch of the Legislature, to prosecute
24 any official bond or any contract in which the state is interested,

1 upon a breach thereof, and to prosecute or defend for the state all
2 actions, civil or criminal, relating to any matter connected with
3 either of their Departments;

4 7. Whenever requested by any state officer, board or
5 commission, to prepare proper drafts for contracts, forms and other
6 writing which may be wanted for the use of the state;

7 8. To prepare drafts of bills and resolutions for individual
8 members of the Legislature upon their written request stating the
9 gist of the bill or resolution desired;

10 9. To enforce the proper application of monies appropriated by
11 the Legislature and to prosecute breaches of trust in the
12 administration of such funds;

13 10. To institute actions to recover state monies illegally
14 expended, to recover state property and to prevent the illegal use
15 of any state property, upon the request of the Governor or the
16 Legislature;

17 11. To pay into the State Treasury, immediately upon its
18 receipt, all monies received by the Attorney General belonging to
19 the state;

20 12. To settle, compromise and dispose of an action in which the
21 Attorney General represents the interests of the state, so long as
22 the consideration negotiated for such settlement, compromise or
23 disposition is payable to the state or one of its agencies which is
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1 a named party of the action and any monies, any property or other
2 item of value is paid first to the State Treasury;

3 13. To keep and file copies of all opinions, contracts, forms
4 and letters of the office, and to keep an index of all opinions,
5 contracts and forms according to subject and section of the law
6 construed or applied;

7 14. To keep a register or docket of all actions, demands and
8 investigations prosecuted, defended or conducted by the Attorney
9 General in behalf of the state. The register or docket shall give
10 the style of the case or investigation, where pending, court number,
11 office number, the gist of the matter, result and the names of the
12 assistants who handled the matter;

13 15. To keep a complete office file of all cases and
14 investigations handled by the Attorney General on behalf of the
15 state;

16 16. To report to the Legislature or either branch thereof
17 whenever requested upon any business relating to the duties of the
18 Attorney General's office;

19 17. To institute civil actions against members of any state
20 board or commission for failure of such members to perform their
21 duties as prescribed by the statutes and the Constitution and to
22 prosecute members of any state board or commission for violation of
23 the criminal laws of this state where such violations have occurred
24 in connection with the performance of such members' official duties;

1 18. To respond to any request for an opinion of the Attorney
2 General's office, submitted by a member of the Legislature,
3 regardless of subject matter, by written opinion determinative of
4 the law regarding such subject matter;

5 19. To convene multicounty grand juries in such manner and for
6 such purposes as provided by law; provided, such grand juries are
7 composed of citizens from each of the counties on a pro rata basis
8 by county;

9 20. To investigate any report by the State Auditor and
10 Inspector filed with the Attorney General pursuant to Section 223 of
11 this title and prosecute all actions, civil or criminal, relating to
12 such reports or any irregularities or derelictions in the management
13 of public funds or property which are violations of the laws of this
14 state;

15 21. To represent and protect the collective interests of all
16 utility consumers of this state in rate-related proceedings before
17 the Corporation Commission or in any other state or federal judicial
18 or administrative proceeding;

19 22. To represent and protect the collective interests of
20 insurance consumers of this state in rate-related proceedings before
21 the Insurance Commissioner or in any other state or federal judicial
22 or administrative proceeding; ~~and~~

23 23. To investigate and prosecute any criminal action relating
24 to insurance fraud, if in the opinion of the Attorney General a
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1 criminal prosecution is warranted, or to refer such matters to the
2 appropriate district attorney; and

3 24. To develop, maintain and administer a database pertaining
4 to informants that provide evidence to law enforcement in this state
5 in expectation of receiving any deal, promise, inducement or
6 benefit, as provided for in Section 3 of this act.

7 B. Nothing in this section shall be construed as requiring the
8 Attorney General to appear and defend or prosecute in any court any
9 cause or proceeding for or on behalf of the Oklahoma Tax Commission,
10 the Board of Managers of the State Insurance Fund, or the
11 Commissioners of the Land Office.

12 C. In all appeals from the Corporation Commission to the
13 Supreme Court of Oklahoma in which the state is a party, the
14 Attorney General shall have the right to designate counsel of the
15 Corporation Commission as the Attorney General's legally appointed
16 representative in such appeals, and it shall be the duty of the
17 Corporation Commission counsel to act when so designated and to
18 consult and advise with the Attorney General regarding such appeals
19 prior to taking action therein.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 18q of Title 74, unless there is
22 created a duplication in numbering, reads as follows:

23 A. Pursuant to subparagraph 24 of subsection A of Section 18b
24 of Title 74 of the Oklahoma Statutes, all law enforcement entities
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1 throughout the state shall provide to the Office of the Attorney
2 General the following information concerning informants that provide
3 evidence to the state in expectation of receiving any deal, promise,
4 inducement or benefit, despite whether any deal, promise, inducement
5 or benefit is conveyed:

6 1. The complete criminal history of the informant;

7 2. Any deal, promise, inducement or benefit that the state has
8 made or may make in the future to the informant;

9 3. The specific statements offered by the informant allegedly
10 made by an accused individual for which the offer to the informant
11 was made and shall include the time, place and manner of the accused
12 individual's disclosure;

13 4. All other cases in which the informant testified or offered
14 statements against an individual but was not called, whether the
15 statements were admitted in the case, and whether the informant
16 received any deal, promise, inducement or benefit in exchange for or
17 subsequent to that testimony or statement;

18 5. Information concerning whether the informant recanted the
19 testimony or statement and, if available, a transcript or copy of
20 such recantation; and

21 6. Any other information relevant to the informant's
22 credibility.

23 B. As used in this section, a deal, promise, inducement or
24 benefit that an informant may expect to receive includes, but is not
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1 limited to: pay, immunity from prosecution, leniency in prosecution,
2 personal advantage or vindication.

3 C. The information provided to the Office of the Attorney
4 General pursuant to this section shall be confidential pursuant to
5 the Oklahoma Open Records Act; provided, that access to this
6 information shall be available to district attorneys and to
7 attorneys authorized to practice law in this state when seeking such
8 access for purposes pursuant to Section 2002 of Title 22 of the
9 Oklahoma Statutes.

10 SECTION 4. This act shall become effective November 1, 2020.

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