

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3841

By: Kannady

AS INTRODUCED

An Act relating to workers' compensation; amending Section 6, Chapter 208, O.S.L. 2013, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 6), which relates to fraud; providing that failure to report material change in income is a felony; prescribing punishment; 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, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, 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~~ the Administrative Workers' Compensation
Act,

shall be guilty of a felony punishable pursuant to
Section 1663 of Title 21 of the Oklahoma Statutes.

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 Commission Revolving Fund.

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. Except for forms submitted through the Electronic Data
Interchange system employed by the Workers' Compensation Commission
pursuant to Section 101 of this title, 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.

1 C. While receiving temporary total disability benefits, failing
2 to report a material change in income to an employer, insurance
3 carrier, or third-party administrator shall be a felony punishable
4 pursuant to Section 1663 of Title 21 of the Oklahoma Statutes.

5 D. If the Workers' Compensation Commission or the Attorney
6 General finds that a violation of division (1) of subparagraph a of
7 paragraph 1 of subsection A of this section has been committed, or
8 that any other criminal violations in furtherance of this act were
9 committed, the chair of the Commission or the Attorney General shall
10 refer the matter for appropriate action to the prosecuting attorney
11 having criminal jurisdiction over the matter.

12 ~~D.~~

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

21 b. (1) The Unit shall investigate workers' compensation
22 fraud, any additional criminal violations that
23 may be related to workers' compensation fraud,
24 and any other insurance fraud matters as may be

1 assigned at the discretion of the Attorney
2 General.

3 (2) The Attorney General shall designate the
4 personnel assigned to the Unit, who, on meeting
5 the qualifications established by the Oklahoma
6 Council on Law Enforcement Education and
7 Training, shall have the powers of specialized
8 law enforcement officers of the State of Oklahoma
9 for the purpose of conducting investigations
10 under this subparagraph. Personnel hired as
11 specialized law enforcement officers shall have a
12 minimum of three (3) years of certified law
13 enforcement experience or its equivalent in
14 national or military law enforcement experience
15 as approved by the Oklahoma Council on Law
16 Enforcement Education and Training.

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

21 3. It shall be the duty of the Unit to assist the Attorney
22 General in the performance of his or her duties. The Unit shall
23 determine the identity of employees in this state who have violated
24 division (1) of subparagraph a of paragraph 1 of subsection A of

1 this section and report the violation to the Office of the Attorney
2 General and the Commission. The Attorney General shall report the
3 violation to the prosecuting attorney having jurisdiction over the
4 matter.

5 4. a. In the course of any investigation being conducted by
6 the Unit, the Attorney General and his or her deputies
7 and assistants and the Director and his or her
8 deputies and assistants shall have the power of
9 subpoena and may:

10 (1) subpoena witnesses,

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

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

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

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

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

1 d. If any person has refused in connection with an
2 investigation by the Director to be examined under
3 oath concerning his or her affairs, then the Director
4 is authorized to conduct and enforce by all
5 appropriate and available means any examination under
6 oath in any state or territory of the United States in
7 which any officer, director, or manager may then
8 presently be to the full extent permitted by the laws
9 of the state or territory.

10 e. In addition to the punishments described in paragraph
11 1 of subsection A of this section, any person
12 providing false testimony under oath or affirmation in
13 this state as to any matter material to any
14 investigation or hearing conducted under this
15 subparagraph, or any workers' compensation hearing,
16 shall upon conviction be guilty of perjury.

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

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

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

7 c. (1) Any carrier or employer who willfully and
8 knowingly fails to report a violation under
9 division (1) of subparagraph a of paragraph 1 of
10 subsection A of this section shall be guilty of a
11 misdemeanor and on conviction shall be punished
12 by a fine not to exceed One Thousand Dollars
13 (\$1,000.00).

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

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

23 ~~E.~~ F. 1. For the purpose of imposing criminal sanctions or a
24 fine for violation of the duties of this act, the prosecuting

1 attorney shall have the right and discretion to proceed against any
2 person or organization responsible for such violations, both
3 corporate and individual liability being intended by this act.

4 2. The prosecuting attorney of the district to whom a suspected
5 violation of subsection A of this section, or any other criminal
6 violations that may be related thereto, have been referred shall,
7 for the purpose of assisting him or her in such prosecutions, have
8 the authority to appoint as special deputy prosecuting attorneys
9 licensed attorneys-at-law in the employment of the Unit or any other
10 designated insurance fraud investigation division within the
11 Attorney General's office. Such special deputy prosecuting
12 attorneys shall, for the purpose of the prosecutions to which they
13 are assigned, be responsible to and report to the prosecuting
14 attorney.

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

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

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

3 ~~I.~~ J. Except for forms submitted through the Electronic Data
4 Interchange system employed by the Commission pursuant to Section
5 101 of this title, the Commission shall include a statement on all
6 forms for notices and instructions to employees, employers, carriers
7 and third-party administrators that any person who commits workers'
8 compensation fraud, upon conviction, shall be guilty of a felony
9 punishable by imprisonment, a fine or both.

10 ~~J.~~ K. If an injured employee is charged with workers'
11 compensation fraud, any pending workers' compensation proceeding,
12 including benefits, shall be stayed after the preliminary hearing is
13 concluded and the claimant is bound over and shall remain stayed
14 until the final disposition of the criminal case. All notice
15 requirements shall continue during the stay.

16 ~~K.~~ L. If the Attorney General's Office is in compliance with
17 the discovery provisions of Section 258 of Title 22 of the Oklahoma
18 Statutes, medical records created for the purpose of treatment and
19 medical opinions obtained during the investigation shall be
20 admissible at the preliminary hearing without the appearance of the
21 medical professional creating such records or opinions. However,
22 when material evidence dispositive to the issues of whether there
23 was probable cause the crime was committed and whether the defendant
24 committed the crime, was not included in a report or opinion

1 admitted at preliminary hearing, but might be presented at a
2 pretrial hearing by a medical professional who created such report
3 or opinion, the judge may, upon the motion of either party, order
4 the appearance of the medical professional creating such report or
5 opinion. Questions of fact regarding the conduct of the defendant
6 that conflict with the findings of the medical professional
7 evaluating the defendant shall not constitute material evidence. In
8 the event of such motion, notice shall be given to the Attorney
9 General's Workers' Compensation Fraud and Investigation and
10 Prosecution Unit. A hearing shall be held and, if the motion is
11 granted, the evidence shall not be presented fewer than five (5)
12 days later.

13 ~~Fr.~~ M. Any person or entity who, in good faith and exercising
14 due care, reports suspected workers' compensation fraud or insurance
15 fraud, or who allows access to medical records or other information
16 pertaining to suspected workers' compensation or insurance fraud, by
17 persons authorized to investigate a report concerning the workers'
18 compensation and insurance fraud, shall have immunity from any civil
19 or criminal liability for such report or access. Any such person or
20 entity shall have the same immunity with respect to participation in
21 any judicial proceeding resulting from such reports. For purposes
22 of any civil or criminal proceeding, there shall be a presumption of
23 good faith of any person making a report, providing medical records
24 or providing information pertaining to a workers' compensation or

1 insurance fraud investigation by the Attorney General, and
2 participating in a judicial proceeding resulting from a subpoena or
3 a report.

4 SECTION 2. This act shall become effective November 1, 2020.

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