

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2236

By: May

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to workers' compensation; amending
11 Section 6, Chapter 208, O.S.L. 2013, as last amended
12 by Section 4, Chapter 476, O.S.L. 2019 (85A O.S.
13 Supp. 2020, Section 6), which relates to fraud;
14 providing that failure to report material change in
15 income is a felony; prescribing punishment; modifying
16 provisions related to certain law enforcement
17 officers; and providing an effective date.

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

19 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
20 2013, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A
21 O.S. Supp. 2020, Section 6), is amended to read as follows:

22 Section 6.

23 A. 1. a. Any person or entity who makes any material false
24 statement or representation, who willfully and
 knowingly omits or conceals any material information,

1 or who employs any device, scheme, or artifice, or who
2 aids and abets any person for the purpose of:

- 3 (1) obtaining any benefit or payment,
4 (2) increasing any claim for benefit or payment, or
5 (3) obtaining workers' compensation coverage under
6 ~~this act~~ the Administrative Workers' Compensation
7 Act,

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

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

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

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

22 B. Except for forms submitted through the Electronic Data
23 Interchange system employed by the Workers' Compensation Commission
24 pursuant to Section 101 of this title, a copy of division (1) of

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

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

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

16 ~~D.~~

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

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

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

22 2. The Attorney General and his or her deputies and assistants
23 and the Director of the Workers' Compensation Fraud Investigation
24

1 Unit and his or her deputies and assistants shall be vested with the
2 power of enforcing the requirements of this section.

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

11 4. a. In the course of any investigation being conducted by
12 the Unit, the Attorney General and his or her deputies
13 and assistants and the Director and his or her
14 deputies and assistants shall have the power of
15 subpoena and may:

- 16 (1) subpoena witnesses,
17 (2) administer oaths or affirmations and examine any
18 individual under oath, and
19 (3) require and compel the production of records,
20 books, papers, contracts, and other documents.

21 b. The issuance of subpoenas for witnesses shall be
22 served in the same manner as if issued by a district
23 court.
24

- 1 c. (1) Upon application by the commissioner or the
2 Director of the Unit, the district court located
3 in the county where a subpoena was served may
4 issue an order compelling an individual to comply
5 with the subpoena to testify.
- 6 (2) Any failure to obey the order of the court may be
7 punished as contempt.
- 8 d. If any person has refused in connection with an
9 investigation by the Director to be examined under
10 oath concerning his or her affairs, then the Director
11 is authorized to conduct and enforce by all
12 appropriate and available means any examination under
13 oath in any state or territory of the United States in
14 which any officer, director, or manager may then
15 presently be to the full extent permitted by the laws
16 of the state or territory.
- 17 e. In addition to the punishments described in paragraph
18 1 of subsection A of this section, any person
19 providing false testimony under oath or affirmation in
20 this state as to any matter material to any
21 investigation or hearing conducted under this
22 subparagraph, or any workers' compensation hearing,
23 shall upon conviction be guilty of perjury.
24

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

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

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

14 c. (1) Any carrier or employer who willfully and
15 knowingly fails to report a violation under
16 division (1) of subparagraph a of paragraph 1 of
17 subsection A of this section shall be guilty of a
18 misdemeanor and on conviction shall be punished
19 by a fine not to exceed One Thousand Dollars
20 (\$1,000.00).

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

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

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

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

22 ~~F.~~ G. Notwithstanding any other provision of law, investigatory
23 files as maintained by the Attorney General's office and by the Unit
24 shall be deemed confidential and privileged. The files may be made

1 open to the public once the investigation is closed by the Director
2 of the Workers' Compensation Fraud Investigation Unit with the
3 consent of the Attorney General.

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

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

9 ~~I.~~ J. Except for forms submitted through the Electronic Data
10 Interchange system employed by the Commission pursuant to Section
11 101 of this title, the Commission shall include a statement on all
12 forms for notices and instructions to employees, employers, carriers
13 and third-party administrators that any person who commits workers'
14 compensation fraud, upon conviction, shall be guilty of a felony
15 punishable by imprisonment, a fine or both.

16 ~~J.~~ K. If an injured employee is charged with workers'
17 compensation fraud, any pending workers' compensation proceeding,
18 including benefits, shall be stayed after the preliminary hearing is
19 concluded and the claimant is bound over and shall remain stayed
20 until the final disposition of the criminal case. All notice
21 requirements shall continue during the stay.

22 ~~K.~~ L. If the Attorney General's Office is in compliance with
23 the discovery provisions of Section 258 of Title 22 of the Oklahoma
24 Statutes, medical records created for the purpose of treatment and

1 medical opinions obtained during the investigation shall be
2 admissible at the preliminary hearing without the appearance of the
3 medical professional creating such records or opinions. However,
4 when material evidence dispositive to the issues of whether there
5 was probable cause the crime was committed and whether the defendant
6 committed the crime, was not included in a report or opinion
7 admitted at preliminary hearing, but might be presented at a
8 pretrial hearing by a medical professional who created such report
9 or opinion, the judge may, upon the motion of either party, order
10 the appearance of the medical professional creating such report or
11 opinion. Questions of fact regarding the conduct of the defendant
12 that conflict with the findings of the medical professional
13 evaluating the defendant shall not constitute material evidence. In
14 the event of such motion, notice shall be given to the Attorney
15 General's Workers' Compensation Fraud and Investigation and
16 Prosecution Unit. A hearing shall be held and, if the motion is
17 granted, the evidence shall not be presented fewer than five (5)
18 days later.

19 ~~1.~~ M. Any person or entity who, in good faith and exercising
20 due care, reports suspected workers' compensation fraud or insurance
21 fraud, or who allows access to medical records or other information
22 pertaining to suspected workers' compensation or insurance fraud, by
23 persons authorized to investigate a report concerning the workers'
24 compensation and insurance fraud, shall have immunity from any civil

1 or criminal liability for such report or access. Any such person or
2 entity shall have the same immunity with respect to participation in
3 any judicial proceeding resulting from such reports. For purposes
4 of any civil or criminal proceeding, there shall be a presumption of
5 good faith of any person making a report, providing medical records
6 or providing information pertaining to a workers' compensation or
7 insurance fraud investigation by the Attorney General, and
8 participating in a judicial proceeding resulting from a subpoena or
9 a report.

10 SECTION 2. This act shall become effective November 1, 2021.

11
12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
13 02/10/2021 - DO PASS, As Amended.
14
15
16
17
18
19
20
21
22
23
24