

1 **SENATE FLOOR VERSION**

2 April 7, 2021

3 ENGROSSED HOUSE  
4 BILL NO. 2236

By: May of the House

5 and

6 Weaver of the Senate

7  
8 An Act relating to workers' compensation; amending  
9 Section 6, Chapter 208, O.S.L. 2013, as last amended  
10 by Section 4, Chapter 476, O.S.L. 2019 (85A O.S.  
11 Supp. 2020, Section 6), which relates to fraud;  
12 providing that failure to report material change in  
13 income is a felony; prescribing punishment; modifying  
14 provisions related to certain law enforcement  
15 officers; and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.  
18 2013, as last amended by Section 4, Chapter 476, O.S.L. 2019 (85A  
19 O.S. Supp. 2020, Section 6), is amended to read as follows:

20 Section 6.

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

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

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

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

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

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

20 B. Except for forms submitted through the Electronic Data  
21 Interchange system employed by the Workers' Compensation Commission  
22 pursuant to Section 101 of this title, a copy of division (1) of  
23 subparagraph a of paragraph 1 of subsection A of this section shall  
24 be included on all forms prescribed by the Commission for the use of

1 injured employees claiming benefits and for the use of employers in  
2 responding to employees' claims under this act.

3 C. While receiving temporary total disability benefits, failing  
4 to report **any earned** income to an employer, insurance carrier or  
5 third-party administrator shall be a felony punishable pursuant to  
6 Section 1663 of Title 21 of the Oklahoma Statutes.

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

14 ~~D.~~

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

23 b. (1) The Unit shall investigate workers' compensation  
24 fraud, any additional criminal violations that

1                   may be related to workers' compensation fraud,  
2                   and any other insurance fraud matters as may be  
3                   assigned at the discretion of the Attorney  
4                   General.

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

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

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

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

14            (1) subpoena witnesses,

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

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

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

22        c. (1) Upon application by the commissioner or the  
23 Director of the Unit, the district court located  
24 in the county where a subpoena was served may

1                   issue an order compelling an individual to comply  
2                   with the subpoena to testify.

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

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

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

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

23          6.   a.   Every carrier or employer who has reason to suspect  
24                that a violation of division (1) of subparagraph a of

1 paragraph 1 of subsection A of this section has  
2 occurred shall be required to report all pertinent  
3 matters to the Unit.

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

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

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

21 d. Any employee may report suspected violations of  
22 division (1) of subparagraph a of paragraph 1 of  
23 subsection A of this section. No employee who makes a  
24

1 report shall be liable to the employee whose suspected  
2 violations have been reported.

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

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

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



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

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

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

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

19       ~~K.~~ L. If the Attorney General's Office is in compliance with  
20 the discovery provisions of Section 258 of Title 22 of the Oklahoma  
21 Statutes, medical records created for the purpose of treatment and  
22 medical opinions obtained during the investigation shall be  
23 admissible at the preliminary hearing without the appearance of the  
24 medical professional creating such records or opinions. However,

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

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

1 of any civil or criminal proceeding, there shall be a presumption of  
2 good faith of any person making a report, providing medical records  
3 or providing information pertaining to a workers' compensation or  
4 insurance fraud investigation by the Attorney General, and  
5 participating in a judicial proceeding resulting from a subpoena or  
6 a report.

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

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
9 April 7, 2021 - DO PASS  
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