

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 2424

By: Osborn (Leslie) and Wallace
of the House

4 and

5 David and Fields of the
6 Senate

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10 AS INTRODUCED

11 An Act relating to workers' compensation; amending
12 Section 6, Chapter 208, O.S.L. 2013, as amended by
13 Section 1, Chapter 390, O.S.L. 2015, and Section 165,
14 Chapter 208, O.S.L. 2013, as amended by Section 4,
15 Chapter 344, O.S.L. 2015 (85A O.S. Supp. 2016,
16 Sections 6 and 122), which relate to the
17 Administrative Workers' Compensation Act; updating
18 reference to certain fund; eliminating certain
19 funding to the Workers' Compensation Fraud
20 Investigation Unit; increasing certain distribution
21 to the Workers' Compensation Commission Revolving
22 Fund; repealing Section 15, Chapter 208, O.S.L. 2013
23 (85A O.S. Supp. 2016, Section 15), which relates to a
24 Fraud Investigation funding report; providing an
effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 6, Chapter 208, O.S.L.
2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
Supp. 2016, Section 6), is amended to read as follows:

1 Section 6.

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

7 (1) obtaining any benefit or payment,

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

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

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

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

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

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

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

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

15 D. 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 by the Oklahoma Council on Law
18 Enforcement Education and Training.

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

23 3. It shall be the duty of the Unit to assist the Attorney
24 General in the performance of his or her duties. The Unit shall

1 determine the identity of employees in this state who have violated
2 division (1) of subparagraph a of paragraph 1 of subsection A of
3 this section and report the violation to the Office of the Attorney
4 General and the Commission. The Attorney General shall report the
5 violation to the prosecuting attorney having jurisdiction over the
6 matter.

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

12 (1) subpoena witnesses,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 K. If the Attorney General's Office is in compliance with the
18 discovery provisions of Section 258 of Title 22 of the Oklahoma
19 Statutes, medical records created for the purpose of treatment and
20 medical opinions obtained during the investigation shall be
21 admissible at the preliminary hearing without the appearance of the
22 medical professional creating such records or opinions. However,
23 when material evidence dispositive to the issues of whether there
24 was probable cause the crime was committed and whether the defendant

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

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

1 or providing information pertaining to a workers' compensation or
2 insurance fraud investigation by the Attorney General, and
3 participating in a judicial proceeding resulting from a subpoena or
4 a report.

5 SECTION 2. AMENDATORY Section 165, Chapter 208, O.S.L.
6 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
7 Supp. 2016, Section 122), is amended to read as follows:

8 Section 122. A. The Workers' Compensation Commission Revolving
9 Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used
10 for the costs of administering this act and for other purposes as
11 authorized by law.

12 B. For the purpose of providing funds for the Workers'
13 Compensation Commission Revolving Fund, for the Workers'
14 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
15 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
16 of this title, and to fund other provisions within this title, the
17 following tax rates shall apply:

18 1. Each mutual or interinsurance association, stock company,
19 CompSource Oklahoma or other insurance carrier writing workers'
20 compensation insurance in this state shall pay to the Oklahoma Tax
21 Commission an assessment at a rate of one percent (1%) of all gross
22 direct premiums written during each quarter of the calendar year for
23 workers' compensation insurance on risks located in this state after
24 deducting from such gross direct premiums, return premiums,

1 unabsorbed portions of any deposit premiums, policy dividends,
2 safety refunds, savings and other similar returns paid or credited
3 to policyholders. Such payments to the Tax Commission shall be made
4 not later than the fifteenth day of the month following the close of
5 each quarter of the calendar year in which such gross direct premium
6 is collected or collectible. Contributions made by insurance
7 carriers and CompSource Oklahoma, under the provisions of this
8 section, shall be considered for the purpose of computing workers'
9 compensation rates; and

10 2. When an employer is authorized to become a self-insurer, the
11 Workers' Compensation Commission shall so notify the Tax Commission,
12 giving the effective date of such authorization. The Tax Commission
13 shall then assess and collect from the employers carrying their own
14 risk an assessment at the rate of two percent (2%) of the total
15 compensation for permanent total disability awards, permanent
16 partial disability awards and death benefits paid out during each
17 quarter of the calendar year by the employers. Such assessment
18 shall be payable by the employers and collected by the Tax
19 Commission according to the provisions of this section regarding
20 payment and collection of the assessment created in paragraph 1 of
21 this subsection.

22 C. It shall be the duty of the Tax Commission to collect the
23 payments provided for in this title. The Tax Commission is hereby
24 authorized to bring an action for the recovery of any delinquent or

1 unpaid payments required in this section. The Tax Commission may
2 also enforce payments by proceeding in accordance with the
3 provisions of Section 98 of this title.

4 D. The Tax Commission shall pay monthly to the State Treasurer
5 to the credit of the Multiple Injury Trust Fund all monies collected
6 under the provisions of this section less the annual amounts which
7 shall be apportioned by the Oklahoma Tax Commission as follows:

8 1. Five Million Dollars (\$5,000,000.00) shall be payable in
9 equal monthly installments to the credit of the Workers'
10 Compensation Commission Revolving Fund established in Section ~~2~~ 28.1
11 of this ~~act~~ title for the fiscal year ending June 30, 2016, and
12 Three Million Dollars (\$3,000,000.00) for the fiscal year ending
13 June 30, 2017, and Five Million Dollars (\$5,000,000.00) for the
14 fiscal year ending June 30, 2018, and for all subsequent years to be
15 used to implement the provisions of this title; and

16 2. Four Million Dollars (\$4,000,000.00) shall be payable in
17 equal monthly installments to the credit of the Workers'
18 Compensation Administrative Fund established in Section ~~5 of this~~
19 ~~act~~ 401.1 of this title for the fiscal year ending June 30, 2016,
20 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the
21 fiscal year ending June 30, 2017, Three Million Five Hundred
22 Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30,
23 2018, Three Million Dollars (\$3,000,000.00) for the fiscal year
24 ending June 30, 2019, and Two Million Five Hundred Thousand Dollars

1 (\$2,500,000.00) for the fiscal year ending June 30, 2020. Monies
2 deposited in the Workers' Compensation Administrative Fund shall be
3 used by the Workers' Compensation Court of Existing Claims to
4 implement provisions provided for in this title.

5 E. The refund provisions of Sections 227 through 229 of Title
6 68 of the Oklahoma Statutes shall be applicable to any payments made
7 pursuant to this section.

8 SECTION 3. REPEALER Section 15, Chapter 208, O.S.L. 2013
9 (85A O.S. Supp. 2016, Section 15), is hereby repealed.

10 SECTION 4. This act shall become effective July 1, 2017.

11 SECTION 5. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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