

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H2/27/97 H2/28/97

A Bill

HOUSE BILL 1725

4
5 By: Representative Thomas
6
7

For An Act To Be Entitled

8
9 "AN ACT TO AMEND THE FRAUD PROVISION OF THE WORKERS'
10 COMPENSATION LAW TO CLARIFY THE TYPES OF FRAUDULENT
11 ACTIVITY; TO AMEND THE JURISDICTIONAL SECTIONS TO COMPORT
12 WITH THE ARKANSAS CRIMINAL CODE; THE SAME BEING ARK. CODE
13 ANN. 11-9-106; AND FOR OTHER PURPOSES."
14

Subtitle

15
16 "AMENDING THE FRAUD PROVISION OF THE
17 WORKERS' COMPENSATION LAW"
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code 11-9-106(a)(1) is hereby amended to read as
22 follows:

23 "*(a)(1) Any person or entity who willfully and knowingly makes any*
24 *material false statement or representation, or who willfully and knowingly*
25 *omits or conceals any material information, or who willfully and knowingly*
26 *employs any device, scheme or artifice, for the purpose of obtaining any*
27 *benefit or payment, or for the purpose of defeating or wrongfully increasing*
28 *or wrongfully decreasing any claim for benefit or payment or obtaining or*
29 *avoiding workers' compensation coverage or avoiding payment of the proper*
30 *insurance premium, or who aids and abets for ~~either~~ any of said purposes,*
31 *under this chapter shall be guilty of a Class D felony. Fifty per cent (50%)*
32 *of any criminal fine imposed and collected under this subdivision or*
33 *subdivision (a)(2) of this section shall be paid and allocated, in accordance*
34 *with applicable law, to the Death and Permanent Total Disability Trust Fund*
35 *administered by the Workers' Compensation Commission."*
36

1 SECTION 2. Arkansas Code 11-9-106(c) is hereby amended to read as
2 follows:

3 "(c) Where the commission or the Insurance Commissioner finds that
4 false ~~or misleading~~ statements or representations were made *willfully and*
5 *knowingly, or material information was willfully and knowingly omitted or*
6 *concealed, or any device, scheme or artifice was willfully and knowingly*
7 *employed for the purpose of obtaining* benefits or payments, or for the purpose
8 of obtaining, wrongfully increasing, wrongfully decreasing, or defeating any
9 claim for benefit or payment or obtaining or avoiding workers'
10 compensation coverage or avoiding payment of the proper insurance premium,
11 under this chapter, or that any other criminal violations related thereto were
12 committed, the chairman of the commission or the Insurance Commissioner shall
13 refer the matter for appropriate action to the prosecuting attorney ~~of the~~
14 ~~district where the original hearing was held~~ having criminal jurisdiction in
15 the matter."

16

17 SECTION 3. Arkansas Code 11-9-106(d)(1)(A) is hereby amended to read as
18 follows:

19 "(1)(A) There shall be established within the ~~State~~ Arkansas Insurance
20 Department a Workers' Compensation Fraud Investigation Unit, funded by the
21 Workers' Compensation Commission, which will be headed and supervised by a
22 director who ~~shall have no less than three (3) years experience in law~~
23 ~~enforcement or, alternatively, a law degree, he shall in turn report and be~~
24 ~~subject to the supervision of the Insurance Commissioner~~ may also serve as the
25 director of any other designated insurance fraud investigation division within
26 the Arkansas Insurance Department, in which event the director's compensation
27 shall be paid solely from the funds of such insurance fraud investigation
28 division."

29

30 SECTION 4. Arkansas Code 11-9-106(d)(1)(B) is hereby amended to read as
31 follows:

32 "(B) The Workers' Compensation Fraud Investigation Unit herein
33 designated will ~~specifically~~ deal only with workers' compensation
34 fraud and other criminal violations that may be related thereto. Employees
35 hired to pursue the purposes of the unit will be utilized solely ~~for workers~~
36 ~~compensation investigation and no other purposes~~ to investigate workers'

1 compensation fraud and those criminal violations that may be related thereto."

2

3 SECTION 5. Arkansas Code 11-9-106(d)(2) is hereby amended to read as
4 follows:

5 "(2) The Insurance Commissioner, his deputies and assistants, and the
6 fraud director and his ~~deputy~~ deputies and assistants shall be vested with the
7 power of enforcing this section and to render more effective the disclosure
8 and apprehension of persons or entities who abuse the workers' compensation
9 system as established by the General Assembly by making false or misleading
10 statements for the purpose of either obtaining, wrongfully increasing,
11 wrongfully decreasing or defeating the payment of benefits or obtaining or
12 avoiding workers' compensation coverage or avoiding payment of the proper
13 insurance premium."

14

15 SECTION 6. Arkansas Code 11-9-106(d)(3) is hereby amended to read as
16 follows:

17 "(3) It shall be the duty of the ~~unit~~ Workers' Compensation Fraud
18 Investigation Unit to assist the Insurance Commissioner and the department in
19 the performance of their duties, and further, to determine the identity of
20 carriers, employers, or employees who within the State of Arkansas have
21 violated ~~the provisions of § 11-9-409 and subdivisions~~ subsection (a)(1), (b),
22 ~~or (c)~~ of this section, and report same to the Workers' Compensation
23 Commission and to the Insurance Commissioner, who shall in turn, be
24 responsible for reporting same to the prosecuting attorney ~~of the district in~~
25 which the offender resides having criminal jurisdiction in the matter."

26

27 SECTION 7. Arkansas Code 11-9-106(d)(4)(A) is hereby amended to read as
28 follows:

29 "(4)(A) With respect to the subject of any investigation ~~or hearing~~
30 being conducted by the ~~Workers Compensation Commission~~ Workers' Compensation
31 Fraud Investigation Unit, the Insurance Commissioner, his deputies and
32 assistants, and the fraud director and his deputies and assistants shall have
33 the power of subpoena and may subpoena witnesses and administer oaths or
34 affirmations and examine any individual under oath and may require and compel
35 the production of records, books, papers, contracts, and other documents."

36

1 SECTION 8. Arkansas Code 11-9-106(d)(4)(C)(i) is hereby amended to read
2 as follows:

3 "(C)(i) If any individual fails to obey a subpoena issued and served
4 pursuant to this section with respect to any matter concerning which he may be
5 lawfully interrogated, upon application of the Insurance Commissioner or fraud
6 director, ~~the circuit court of the county in which is pending the proceeding~~
7 ~~at which the individual was required to appear~~ the Pulaski County Circuit
8 Court or the circuit court of the county where the subpoena was served, may
9 issue an order requiring the individual to comply with the subpoena and to
10 testify."

11

12 SECTION 9. Arkansas Code 11-9-106(d)(5) is hereby amended to read as
13 follows:

14 "~~(5)(A) Witness fees, mileage, and the actual expense necessarily~~
15 ~~incurred in securing attendance of witnesses and their testimony shall be~~
16 ~~itemized and shall be paid:~~

17 ~~_____ (i) By the person being examined or investigated, if, in the~~
18 ~~proceedings in which the witness is called, the person is found to have been~~
19 ~~in violation of the law; or~~

20 ~~_____ (ii) By the person, if other than the Workers Compensation~~
21 ~~Commission, Insurance Commissioner, or fraud director, at whose request the~~
22 ~~hearing is held.~~

23 ~~_____ (B) In addition, the prevailing party shall be entitled to recover~~
24 ~~costs and a reasonable attorneys fee payable from the fine; provided,~~
25 ~~however, if the employee is the nonprevailing party, the attorneys fee and~~
26 ~~costs shall, at the election of the employer, be paid by the employee or~~
27 ~~deducted from future workers compensation benefits~~ Fees and mileage of the
28 officers serving the subpoenas and witnesses in answer to subpoenas shall be
29 as provided by law."

30

31 SECTION 10. Arkansas Code 11-9-106(d)(6)(C) is hereby amended to read
32 as follows:

33 "(C) Any such carrier or employer who willfully and knowingly ~~and~~
34 ~~intentionally~~ fails to report any such violation shall be guilty of a
35 misdemeanor and upon conviction shall be punished by a fine not to exceed one
36 thousand dollars (\$1,000) or by imprisonment for a period not to exceed one

1 (1) year, or by both fine and imprisonment. Fifty per cent (50%) of any
2 criminal fine imposed and collected under this subdivision shall be paid and
3 allocated, in accordance with applicable law, to the Death and Permanent Total
4 Disability Trust Fund administered by the Workers' Compensation Commission."

5
6 SECTION 11. Arkansas Code 11-9-106(d)(6) is hereby amended by adding
7 new paragraph (E) immediately following current paragraph (D) to read as
8 follows:

9 "(E) In addition, any immunity from liability provisions of the
10 Arkansas Insurance Code applicable to the reporting of suspected fraudulent
11 insurance acts shall also be applicable to the reporting of information under
12 this subdivision."

13
14 SECTION 12. Arkansas Code 11-9-106(e)(2) is hereby amended to read as
15 follows:

16 "(2) The prosecuting attorney of the district ~~where the original~~
17 ~~hearing is held and~~ to whom a suspected violation of ~~subdivision~~ subsection
18 (a)(1) of this section, ~~§11-9-402(c), and §11-9-406,~~ or any other criminal
19 violations that may be related thereto, has been referred shall, for the
20 purpose of assisting him in such prosecutions, have the authority to appoint
21 as special ~~assistant~~ deputy prosecuting attorneys licensed attorneys at law in
22 the employment of the unit or any other designated insurance fraud
23 investigation division within the Arkansas Insurance Department. Such special
24 ~~assistant~~ deputy prosecuting attorneys shall, for the purpose of the
25 prosecutions to which they are assigned, be responsible to and report to the
26 prosecuting attorney."

27
28 SECTION 13. Arkansas Code 11-9-106(f) is hereby amended to read as
29 follows:

30 "(f) Notwithstanding any other provision of law, it is the specific
31 intent of this section that active investigatory files as maintained by the
32 ~~State~~ Arkansas Insurance Department and by the unit be deemed confidential and
33 privileged and not be made open to the public until the matter under
34 investigation is closed by the fraud director with the consent of the
35 Insurance Commissioner, except such active investigatory files shall also be
36 subject to any confidentiality provisions of the Arkansas Insurance Code that

1 are applicable to the investigation of fraudulent insurance acts."
2

3 SECTION 14. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same in the Code.
6

7 SECTION 15. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.
12

13 SECTION 16. All laws and parts of laws in conflict with this act are
14 hereby repealed.
15

16 SECTION 17. Emergency. It is hereby found and determined by the
17 General Assembly that the Workers' Compensation Law is in immediate need of
18 revision; that this act accomplishes immediate revision; and that this act
19 shall go into effect as soon as is practical which is determined to be July 1,
20 1997; and that unless this emergency clause is adopted, this act will not go
21 into effect until after July 1, 1997. Therefore, an emergency is hereby
22 declared to exist, and this act being immediately necessary for the
23 preservation of the public peace, health and safety shall be in full force and
24 effect from and after July 1, 1997.
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26 /s/Rep. Thomas
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