

# TITLE 11

## CHAPTER 9 WORKERS' COMPENSATION

### SUBCHAPTER 1--GENERAL PROVISIONS

#### Section.

#### 11-9-106. Penalties for misrepresentation.

(a)(1)(A) Any person or entity who willfully and knowingly makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who willfully and knowingly employs any device, scheme, or artifice for the purpose of

(i) Obtaining any benefit or payment;

(ii) Defeating or wrongfully increasing or wrongfully decreasing any claim for benefit or payment; or

(iii) Obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium, or who aids and abets for any of said purposes, under this chapter shall be guilty of a Class D felony.

(B) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision or subdivision (a)(2) of this section shall be paid and allocated in accordance with applicable law to the Death and Permanent Total Disability Trust Fund administered by the Workers' Compensation Commission.

(2) It is to be understood that any person or entity with whom any person identified in subdivision (a)(1) of this section has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a Class D felony.

(a)(1) of this section has conspired to achieve the proscribed ends shall, by reason of such conspiracy, be guilty as a principal of a Class D felony.

(b) A copy of subdivision (a)(1) of this section shall be placed on all forms prescribed by the commission for the use of injured employees claiming benefits and for the use of employers in responding to such employees' claims under this chapter.

(c) Where the commission or the Insurance Commissioner finds that false statements or representations were made willfully and knowingly, that material information was willfully and knowingly omitted or concealed, or that any device, scheme, or artifice was willfully and knowingly employed for the purpose of:

(1) Obtaining benefits or payments;

(2) Obtaining, wrongfully increasing, wrongfully decreasing, or defeating any claim for benefit or payment; or

(3) Obtaining or avoiding workers' compensation coverage or avoiding payment of the proper insurance premium under this chapter or that any other criminal violations related thereto were committed, the chairman of the commission or the Insurance Commissioner shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction in the matter.

(d)(1)(A) There shall be established within the State Insurance Department a Workers' Compensation Fraud Investigation Unit, funded by the commission, which will be headed and supervised by a director who may also serve as the director of any other designated insurance fraud investigation division within the department, in which event the director's compensation shall be paid solely from the funds of such insurance fraud investigation division.

(B)(i) The unit herein designated will investigate workers' compensation fraud, additional criminal violations that may be related thereto, and other insurance fraud matters as may be assigned at the discretion of the director.

(ii) The Commissioner shall designate the personnel assigned to the unit, who, upon meeting the qualifications established by the Arkansas Commission on Law Enforcement Standards and Training, shall have the powers of specialized law enforcement officers of the State of Arkansas for the purpose of conducting investigations under (d)(1)(B). Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the Arkansas Commission on Law Enforcement Standards and Training.

(2) The commissioner and his deputies and assistants and the fraud director and his deputies and assistants shall be vested with the power of enforcing this section and rendering more effective the disclosure and apprehension of persons or entities who abuse the workers' compensation system as established by the General Assembly by making false or misleading statements for the purpose of either obtaining, wrongfully increasing, wrongfully decreasing or defeating the payment of benefits, obtaining or avoiding workers' compensation coverage, or avoiding payment of the proper insurance premium.

(3) It shall be the duty of the unit to assist the commissioner and the department in the performance of their duties, and, further, to determine the identity of carriers, employers, or employees who within the State of Arkansas have violated subsection (a) of this section and report the violation to the Workers' Compensation Commission and to the Insurance Commissioner, who shall, in turn, be responsible for reporting the violation to the prosecuting attorney having criminal jurisdiction in the matter.

(4)(A) With respect to the subject of any investigation being conducted by the unit, the commissioner and his deputies and assistants and the fraud director and his deputies and assistants shall have the power of subpoena and may:

(i) Subpoena witnesses;

(ii) Administer oaths or affirmations and examine any individual under oath; and

(iii) Require and compel the production of records, books, papers, contracts, and other documents.

(B) Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court.

(C)(i) If any individual fails to obey a subpoena issued and served pursuant to this section with respect to any matter concerning which he may be lawfully interrogated, then upon application of the commissioner or fraud director, the Pulaski County Circuit Court or the circuit court of the county where the subpoena was served may issue an order requiring the individual to comply with the subpoena and to testify.

(ii) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(D) If any person has refused in connection with an investigation by the fraud director to be examined under oath concerning his affairs, then the fraud director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.

(E) Any person testifying falsely under oath or affirmation in this state as to any matter material to any investigation or hearing conducted pursuant to this subdivision (d)(4), or any workers' compensation hearing, shall upon conviction be guilty of perjury and punished accordingly.

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

(6)(A) Every carrier or employer who has reason to suspect that a violation of subdivision (a)(1) of this section has occurred shall be required to report all pertinent matters relating thereto to the unit.

(B) No such carrier shall be liable to any employer or employee for any such report, and no employer shall be liable to any employee for such a report unless it knowingly and intentionally includes false information.

(C)(i) Any such carrier or employer who willfully and knowingly fails to report any such violation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period not to exceed one (1) year or by both fine and imprisonment.

(ii) Fifty percent (50%) of any criminal fine imposed and collected under this subdivision (d)(6)(C) shall be paid and allocated in accordance with applicable law to the fund administered by the commission.

(D) Although not mandated to report suspected violations of subdivision (a)(1) of this section by an employer or employee, any employee who does make such a report shall not be liable to the employer or employee whose suspected violations he has reported.

(E) In addition, any immunity from liability provisions of the Arkansas Insurance Code, § 23-60-101 et seq., applicable to the reporting of suspected fraudulent insurance acts shall also be applicable to the reporting of information under this subdivision (d)(6).

(e)(1) For the purpose of imposing criminal sanctions or a fine for violation of the duties of this chapter, the prosecuting attorney shall have the right and discretion to proceed against any person or organization responsible for such violations, both organizational and individual liability being intended by this chapter.

(2) The prosecuting attorney of the district to whom a suspected violation of subsection (a) of this section, § 11-9-402(c), § 11-9-406, or any other criminal violations that may be related thereto, has been referred shall, for the purpose of assisting him in such prosecutions, have the authority to appoint as special deputy prosecuting attorneys licensed attorneys at law in the employment of the unit or any other designated insurance fraud investigation division within the department. Such special deputy prosecuting attorneys shall, for the purpose of the prosecutions to which they are assigned, be responsible to and report to the prosecuting attorney.

(f) Notwithstanding any other provision of law, it is the specific intent of this section that active investigatory files as maintained by the department and by the unit be deemed confidential and privileged and not be made open to the public until the matter under investigation is closed by the fraud director with the consent of the commissioner, except that such active investigatory files shall also be subject to any confidentiality provisions of the Arkansas Insurance Code, § 23-60-106 et seq., that are applicable to the investigation of fraudulent insurance acts.

(g) The Insurance Commissioner, with the cooperation and assistance of the Workers' Compensation Commission, is authorized to establish rules and regulations as may be necessary to carry out the provisions of this section.

(h) Nothing in this section shall be deemed to create a civil cause of action.