

1 **SENATE FLOOR VERSION**

2 March 1, 2012

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1439

By: Nichols of the Senate

and

Kirby of the House

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9 [insurance fraud - penalties - seizure of certain
10 property - codification - effective date -
emergency]

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

14 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1451, is
15 amended to read as follows:

16 Section 1451. A. Embezzlement is the fraudulent appropriation
17 of property of any person or legal entity, legally obtained, to any
18 use or purpose not intended or authorized by its owner, or the
19 secretion of the property with the fraudulent intent to appropriate
20 it to such use or purpose, under any of the following circumstances:

21 1. Where the property was obtained by being entrusted to that
22 person for a specific purpose, use, or disposition and shall
23 include, but not be limited to, any funds "held in trust" for any
24 purpose;

1 2. Where the property was obtained by virtue of a power of
2 attorney being granted for the sale or transfer of the property;

3 3. Where the property is possessed or controlled for the use of
4 another person;

5 4. Where the property is to be used for a public or benevolent
6 purpose;

7 5. Where any person diverts any money appropriated by law from
8 the purpose and object of the appropriation;

9 6. Where any person fails or refuses to pay over to the state,
10 or appropriate authority, any tax or other monies collected in
11 accordance with state law, and who appropriates the tax or monies to
12 the use of that person, or to the use of any other person not
13 entitled to the tax or monies;

14 7. Where the property is possessed for the purpose of
15 transportation, without regard to whether packages containing the
16 property have been broken;

17 8. Where any person removes crops from any leased or rented
18 premises with the intent to deprive the owner or landlord interested
19 in the land of any of the rent due from that land, or who
20 fraudulently appropriates the rent to that person or any other
21 person; or

22 9. Where the property is possessed or controlled by virtue of a
23 lease or rental agreement, and the property is willfully or
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1 intentionally not returned within ten (10) days after the expiration
2 of the agreement.

3 Embezzlement does not require a distinct act of taking, but only
4 a fraudulent appropriation, conversion or use of property.

5 B. Except as provided in subsection C of this section,
6 embezzlement shall be punished as follows:

7 1. If the value of the property embezzled is less than Five
8 Hundred Dollars (\$500.00), any person convicted shall be punished by
9 a fine not exceeding One Thousand Dollars (\$1,000.00), or by
10 imprisonment in the county jail for a term not more than one (1)
11 year, or by both such fine and imprisonment;

12 2. If the value of the property embezzled is Five Hundred
13 Dollars (\$500.00), or more but less than One Thousand Dollars
14 (\$1,000.00), any person convicted shall be guilty of a felony and
15 shall be punished by imprisonment in the county jail for not more
16 than one (1) year or by imprisonment in the county jail for one or
17 more nights or weekends pursuant to Section 991a-2 of Title 22 of
18 the Oklahoma Statutes, at the discretion of the court, and shall be
19 subject to a fine not exceeding Five Thousand Dollars (\$5,000.00),
20 and ordered to pay restitution to the victim as provided in Section
21 991f of Title 22 of the Oklahoma Statutes;

22 3. If the value of the property embezzled is One Thousand
23 Dollars (\$1,000.00) or more but less than Twenty-five Thousand
24 Dollars (\$25,000.00), any person convicted shall be guilty of a

1 felony and shall be punished by imprisonment in the custody of the
2 Department of Corrections for a term of not more than five (5)
3 years, and a fine of not exceeding Five Thousand Dollars
4 (\$5,000.00), and ordered to pay restitution to the victim as
5 provided in Section 991f of Title 22 of the Oklahoma Statutes; or

6 4. If the value of the property embezzled is Twenty-five
7 Thousand Dollars (\$25,000.00) or more, any person convicted shall be
8 guilty of a felony and shall be punished by imprisonment in the
9 custody of the Department of Corrections for a term of not more than
10 ten (10) years, and a fine not exceeding Ten Thousand Dollars
11 (\$10,000.00), and ordered to pay restitution to the victim as
12 provided in Section 991f of Title 22 of the Oklahoma Statutes.

13 For purposes of this subsection, a series of offenses may be
14 aggregated into one offense when they are the result of the
15 formulation of a plan or scheme or the setting up of a mechanism
16 which, when put into operation, results in the taking or diversion
17 of money or property on a recurring basis. When all acts result
18 from a continuing course of conduct, they may be aggregated into one
19 crime. Acts forming an integral part of the first taking which
20 facilitate subsequent takings, or acts taken in preparation of
21 several takings which facilitate subsequent takings, are relevant to
22 determine the party's intent to commit a continuing crime.

23 C. Any county or state officer, deputy or employee of such
24 officer, who shall divert any money appropriated by law from the

1 purpose and object of the appropriation, shall, upon conviction, be
2 guilty of a felony punishable by imprisonment in the custody of the
3 Department of Corrections for a term not less than one (1) year nor
4 more than ten (10) years, and a fine equal to triple the amount of
5 money so embezzled and ordered to pay restitution to the victim as
6 provided in Section 991f of Title 22 of the Oklahoma Statutes. The
7 fine shall operate as a judgment lien at law on all estate of the
8 party so convicted and sentenced, and shall be enforced by execution
9 or other process for the use of the person whose money or other
10 funds or property were embezzled. In all cases the fine, so
11 operating as a judgment lien, shall be released or entered as
12 satisfied only by the person in interest.

13 D. Any executor, administrator, trustee, beneficiary or other
14 person benefiting from, acting in a fiduciary capacity for, or
15 otherwise administering a probate, intestate, or trust estate,
16 whether the trust is inter vivos or testamentary, upon conviction of
17 embezzlement from the estate shall not receive any portion, share,
18 gift or otherwise benefit from the estate.

19 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1639, is
20 amended to read as follows:

21 Section 1639. A. In every case of a fraudulent insolvency of a
22 moneyed corporation not licensed to conduct insurance business in
23 the State of Oklahoma, every director thereof who participated in
24 such fraud ~~if another punishment is prescribed therefor by this~~

1 ~~code, or any of the acts which are specified as continuing in force,~~
2 is guilty of a misdemeanor.

3 B. In every case of a fraudulent insolvency of a moneyed
4 corporation licensed to conduct the business of insurance in the
5 State of Oklahoma, every director thereof who participated in such
6 fraud is guilty of a felony punishable by up to five (5) years of
7 incarceration and a fine of up to Fifty Thousand Dollars
8 (\$50,000.00).

9 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1662, is
10 amended to read as follows:

11 Section 1662. Any person who presents or causes to be presented
12 any false or fraudulent claim, or any proof in support of any such
13 claim, upon any contract of insurance, for the payment of any loss,
14 or who prepares, makes or subscribes any account, certificate,
15 survey affidavit, proof of loss, or other book, paper or writing,
16 with intent to present or use the same, or to allow it to be
17 presented or used in support of any such claim, shall be guilty of a
18 felony punishable by imprisonment in the State Penitentiary not
19 exceeding three (3) years, or by a fine not exceeding ~~One Thousand~~
20 ~~Dollars (\$1,000.00)~~ twice the amount of the aggregated loss sum, or
21 both.

22 SECTION 4. AMENDATORY 36 O.S. 2011, Section 361, is
23 amended to read as follows:

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1 Section 361. A. There is hereby created within the Insurance
2 Department, under the control and direction of the Insurance
3 Commissioner, an "Anti-Fraud Unit" within the Legal and
4 Investigation Division of the Insurance Department.

5 B. ~~The Anti-Fraud Unit, upon inquiry, complaint, or referral~~
6 ~~shall investigate the extent, if any, to which a violation has~~
7 ~~occurred~~ Violations of any statute or administrative rule of this
8 state pertaining to insurance fraud ~~and may initiate any necessary~~
9 ~~investigation~~ or pertaining to any insurance product or insurance
10 organization that has been used as an instrument of criminal
11 activity may be investigated by the Anti-Fraud Unit. Whenever the
12 Unit determines that a violation of any criminal law of this state
13 may have occurred, it may refer the matter to the Oklahoma State
14 Bureau of Investigation for further investigation pursuant to
15 Section 150.5 of Title 74 of the Oklahoma Statutes or the Attorney
16 General pursuant to Section 18b of Title 74 of the Oklahoma
17 Statutes. The Insurance Department shall retain the authority to
18 initiate and prosecute any civil action it deems necessary or
19 advisable.

20 C. The Anti-Fraud Unit may employ investigators who ~~are~~ may be
21 commissioned by the Insurance Commissioner to serve as peace
22 officers, as defined by and pursuant to the guidelines and
23 requirements of Section 3311 of Title 70 of the Oklahoma Statutes
24 and Sections 99 and 99a of Title 21 of the Oklahoma Statutes.

1 D. Records, documents, reports and evidence obtained or created
2 by the Anti-Fraud Unit as a result of an inquiry or investigation of
3 any suspected insurance ~~fraud~~ related crime shall be confidential
4 and shall not be subject to the Oklahoma Open Records Act or to
5 outside review or release by any individual. Information and
6 records shall be disclosed upon request to officers and agents of
7 federal, state, county, or municipal law enforcement agencies, to
8 the Oklahoma State Bureau of Investigation, to the Attorney
9 General's office and to district attorneys, in the furtherance of
10 criminal investigations.

11 SECTION 5. AMENDATORY 36 O.S. 2011, Section 363, is
12 amended to read as follows:

13 Section 363. A. Any insurer, employee or agent of any insurer
14 who has reason to believe that a person or entity has engaged in or
15 is engaging in an act or practice that violates any statute or
16 administrative rule of this state related to insurance fraud shall
17 immediately notify the Anti-Fraud Unit of the Insurance Department.

18 B. ~~In the absence of fraud, bad faith, reckless disregard for~~
19 ~~the truth, or actual malice, no person, No insurer, employee or~~
20 ~~agent of an insurer, or any other person acting in the absence of~~
21 ~~fraud, bad faith, reckless disregard for the truth, or actual malice~~
22 ~~shall be liable for damages in a civil action or subject to criminal~~
23 ~~prosecution for supplying information about suspected insurance~~
24 ~~fraud subject to civil liability for libel, slander or any other~~

1 relevant tort or subject to criminal prosecution by virtue of filing
2 of reports or furnishing other information either orally or in
3 writing, concerning suspected, anticipated or completed fraudulent
4 insurance acts to the Anti-Fraud Division of the Insurance
5 Department pursuant to subsection A of this section or to any other
6 agency involved in the investigation or prosecution of suspected
7 insurance fraud.

8 C. No civil or criminal cause of action of any nature shall
9 exist against the person or entity by virtue of filing of reports or
10 furnishing other information, either orally or in writing,
11 concerning suspected, anticipated or completed fraudulent insurance
12 acts to the Anti-Fraud Division of the Insurance Department pursuant
13 to subsection A of this section or to any other agency involved in
14 the investigation or prosecution of suspected insurance fraud. The
15 immunity provided in this subsection shall ~~not~~ extend to the act of
16 providing or receiving information or reports to or from:

- 17 1. Law enforcement officials, their agents and employees;
- 18 2. The National Association of Insurance Commissioners, any
19 state department of insurance, any federal or state agency or bureau
20 established to detect and prevent fraudulent insurance activities,
21 as well as any other organization established for the same purpose,
22 their agents, employees or designees; and

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1 3. Any organization or person involved in the prevention and
2 detection of fraudulent insurance activities or that organization or
3 person's employees, agents, or representatives.

4 The immunity provided in this subsection shall not extend to any
5 person, insurer, or agent of an insurer for communications or
6 publications about suspected insurance fraud to any other person or
7 entity.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 364 of Title 36, unless there is
10 created a duplication in numbering, reads as follows:

11 A. Any tool, implement or instrumentality used or possessed in
12 connection with any violation of an insurance related crime or that
13 is the fruit of an insurance related crime, may be seized by a
14 member of a state or local law enforcement agency upon process
15 issued by any court of competent jurisdiction.

16 B. Seizure of property described in subsection A of this
17 section may be made by a member of a state or local law enforcement
18 agency without process if:

19 1. The seizure occurs in accordance with any applicable law or
20 rule;

21 2. The seizure is incident to inspection under an
22 administrative inspection warrant;

23 3. The seizure is incident to search made under a search
24 warrant;

1 4. The seizure is incident to a lawful arrest;

2 5. The seizure is made pursuant to a valid consent to search;

3 6. The property seized has been the subject of a prior judgment
4 in favor of the state in a criminal proceeding, or in an injunction
5 or forfeiture proceeding under this act; or

6 7. There are reasonable grounds to believe that the property is
7 directly or indirectly dangerous to health or safety.

8 C. When property is seized under this section, the seizing
9 agency may:

10 1. Place the property under seal; or

11 2. Remove the property to a place selected and designated by
12 the seizing agency.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 365 of Title 36, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The following are subject to forfeiture:

17 1. Any tool used to commit an insurance related crime;

18 2. Any implement of an insurance related crime;

19 3. Any instrumentality of an insurance related crime; and

20 4. Any fruit of an insurance related crime.

21 B. A forfeiture of an item or other conveyance encumbered by a
22 bona fide security interest is subject to the interest of the
23 secured party where the secured party neither had knowledge of nor
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1 consented to the act or omission forming the ground for the
2 forfeiture.

3 C. Property, described in subsection A of this section, seized
4 and held for forfeiture shall not be subject to replevin and is
5 subject only to the order and judgments of a court of competent
6 jurisdiction hearing the forfeiture proceedings.

7 D. 1. The district attorney in the county where the seizure
8 occurs or the Attorney General or the Insurance Department shall
9 bring an action for forfeiture in a court of competent jurisdiction.
10 The forfeiture action shall be brought within sixty (60) days from
11 the date of seizure except where the attorney prosecuting the
12 forfeiture in the sound exercise of discretion determines that no
13 forfeiture action should be brought because of the rights of
14 property owners, lienholders or secured creditors or because of
15 exculpatory, exonerating or mitigating facts and circumstances.

16 2. The attorney prosecuting the forfeiture shall give notice of
17 the forfeiture proceeding by mailing a copy of the complaint in the
18 forfeiture proceeding to each person whose right, title, or interest
19 of record in the Oklahoma Tax Commission, the Department of Public
20 Safety, the Federal Aviation Agency, or any other department of the
21 state or any other state or territory of the United States, or of
22 the federal government, if the property is required to be registered
23 in any such department.

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1 3. Notice of the proceeding shall be given to any other person
2 as may appear, from the facts and circumstances, to have any right,
3 title or interest in or to the property.

4 4. The owner of the property or any person having or claiming
5 right, title or interest in the property may, within sixty (60) days
6 after the mailing of the notice, file a verified answer to the
7 complaint and may appear at the hearing on the action for
8 forfeiture.

9 5. The attorney prosecuting the forfeiture shall show at a
10 forfeiture hearing, by a preponderance of the evidence, that the
11 property was used in the commission of a violation of an insurance
12 related crime, or was the fruit of an insurance related crime.

13 6. The owner of property may show by a preponderance of the
14 evidence that the owner did not know and did not have reason to know
15 that the property was to be used or possessed in the commission of
16 an violation or that any of the exceptions to forfeiture are
17 applicable.

18 7. Unless the attorney prosecuting the forfeiture shall make
19 the showing required of it, the court shall order the property
20 released to the owner. Where the attorney prosecuting the
21 forfeiture has made such a showing, the court may order:

22 a. the property to be destroyed by the agency which
23 seized it or some other agency designated by the
24 court,

1 b. the property be delivered and retained for use by the
2 Insurance Department, or

3 c. the property be sold at public sale.

4 E. A copy of a forfeiture order shall be filed with the sheriff
5 of the county in which the forfeiture occurs and with each federal
6 or state department with which the property is required to be
7 registered. The order, when filed, constitutes authority for the
8 issuance to the Insurance Department of a title certificate,
9 registration certificate or other special certificate as may be
10 required by law considering the condition of the property.

11 F. Proceeds from sale at public auction, after payment of all
12 reasonable charges and expenses incurred by the agency designated by
13 the court to conduct the sale in storing and selling the property,
14 shall be paid to the Insurance Department Anti-Fraud Revolving Fund.

15 G. Seizing agencies shall utilize their best efforts to arrange
16 for the towing and storing of motor vehicles in the most economical
17 manner possible. The owner of a motor vehicle or a motor vehicle
18 part shall not be required to pay more than the minimum reasonable
19 costs of towing and storage.

20 H. A seized item that is neither forfeited nor unidentifiable
21 shall be held subject to the order of the court in which the
22 criminal action is pending or, if a request for its release from the
23 custody is made until the district attorney has notified the
24 defendant or the defendant's attorney of the request and both the

1 prosecution and defense have been afforded a reasonable opportunity
2 for an examination of the property to determine its true value and
3 to produce or reproduce, by photographs or other identifying
4 techniques, legally sufficient evidence for introduction at trial or
5 other criminal proceedings. Upon expiration of a reasonable time
6 for the completion of the examination which shall not exceed
7 fourteen (14) days from the date of service upon the defense of the
8 notice of request for return of property as provided, the property
9 shall be released to the person making the request after
10 satisfactory proof of the person's entitlement to the possession
11 thereof. Upon application by either party with notice to the other,
12 the court may order retention of the property if it determines that
13 retention is necessary in the furtherance of justice.

14 I. When a seized item is forfeited, restored to its owner or
15 disposed of as unidentifiable, the seizing agency shall retain a
16 report of the transaction for a period of at least one (1) year from
17 the date of the transaction.

18 J. When an applicant for a certificate of title or salvage
19 certificate presents to the Oklahoma Tax Commission proof that the
20 applicant purchased or acquired an item at a public sale conducted
21 pursuant to this section and the fact is attested to by the seizing
22 agency, the Oklahoma Tax Commission shall issue the appropriate
23 certificate of title upon receipt of the statutory fee and properly
24 executed application for a certificate of title.

1 SECTION 8. This act shall become effective July 1, 2012.

2 SECTION 9. It being immediately necessary for the preservation
3 of the public peace, health and safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-29-12 - DO
7 PASS, As Amended and Coauthored.