

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1439

By: Aldridge

4
5
6 AS INTRODUCED

7 An Act relating to insurance fraud; amending 21 O.S.
8 2011, Section 1451, which relates to embezzlement;
9 allowing a series of offenses to be aggregated into
10 one offense under certain conditions; amending 21
11 O.S. 2011, Section 1639, which relates to fraudulent
12 insolvency; providing penalty for a case of
13 fraudulent insolvency relating to the conduct of the
14 business of insurance; amending 21 O.S. 2011, Section
15 1662, which relates to false or fraudulent claims;
16 modifying penalty; amending 36 O.S. 2011, Sections
17 307.3 and 307.5, which relate to funds of the
18 Insurance Department; specifying that certain fees
19 shall not be deposited in the State Insurance
20 Commissioner Revolving Fund; specifying that certain
21 fees shall be deposited into the Insurance Department
22 Anti-Fraud Revolving Fund; amending 36 O.S. 2011,
23 Sections 361, 362 and 363, which relate to the Anti-
24 Fraud Unit of the Insurance Department; expanding
scope of activities that may be investigated by the
Unit; specifying that certain fee shall be paid to
the Insurance Department Anti-Fraud Revolving Fund;
providing that certain persons shall not be subject
to civil liability or criminal prosecution for the
furnishing of certain information related to
suspected insurance fraud; specifying that no civil
or criminal cause of action shall exist against the
person or entity for the furnishing of certain
information; limiting the applicability of immunity;
authorizing the seizure of certain property used in
the connection of an insurance related crime;
allowing the seizure without process under certain
conditions; allowing seizing authority to take
certain actions related to the seized property;
specifying items subject to forfeiture; specifying
treatment of certain seized property; providing

1 procedures for forfeiture of the seized property;
2 requiring copy of forfeiture order to be filed with
3 proper authorities; directing proceeds from sale of
4 seized property to be paid to the Insurance
5 Department Anti-Fraud Revolving Fund; providing
6 procedures related to the towing and storing of
7 seized motor vehicles; providing procedures related
8 to seized items that are neither forfeited nor
9 unidentifiable; requiring the seizing agency to
10 retain certain report for certain time period;
11 providing procedures related to obtaining a
12 certificate of title or salvage certificate of a
13 seized vehicle; providing for codification; providing
14 an effective date; and declaring an emergency.

15
16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

20 3. If the value of the property embezzled is One Thousand
21 Dollars (\$1,000.00) or more but less than Twenty-five Thousand
22 Dollars (\$25,000.00), any person convicted shall be guilty of a
23 felony and shall be punished by imprisonment in the custody of the
24 Department of Corrections for a term of not more than five (5)

1 years, and a fine of not exceeding Five Thousand Dollars
2 (\$5,000.00), and ordered to pay restitution to the victim as
3 provided in Section 991f of Title 22 of the Oklahoma Statutes; or

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

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

21 C. Any county or state officer, deputy or employee of such
22 officer, who shall divert any money appropriated by law from the
23 purpose and object of the appropriation, shall, upon conviction, be
24 guilty of a felony punishable by imprisonment in the custody of the

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

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

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

19 Section 1639. A. In every case of a fraudulent insolvency of a
20 moneyed corporation not licensed to conduct insurance business in
21 the State of Oklahoma, every director thereof who participated in
22 such fraud ~~if another punishment is prescribed therefor by this~~
23 ~~code, or any of the acts which are specified as continuing in force,~~
24 is guilty of a misdemeanor.

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

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

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

20 SECTION 4. AMENDATORY 36 O.S. 2011, Section 307.3, is
21 amended to read as follows:

22 Section 307.3. A. Effective July 1, 2009, there is hereby
23 created in the State Treasury a revolving fund for the Insurance
24 Commissioner called the State Insurance Commissioner Revolving Fund.

1 The revolving fund shall be used to fund the operations of the
2 Office of the Insurance Commissioner.

3 1. Notwithstanding any other law to the contrary, the revolving
4 fund shall consist of and consolidate all funds that are or have
5 been paid or collected by the Insurance Commissioner pursuant to the
6 laws of this state and the rules of the Insurance Department except
7 that the revolving fund shall not include:

8 a. premium taxes,

9 b. fees paid to the Insurance Department Anti-Fraud

10 Revolving Fund for the purposes of investigation of

11 suspected insurance fraud and monies transferred to

12 the Attorney General's Insurance Fraud Unit Revolving

13 Fund pursuant to Section 362 of this title,

14 c. funds paid to and collected pursuant to the Oklahoma

15 Certified Real Estate Appraisers Act, ~~Sections 858-700~~

16 ~~through 858-732 of Title 59 of the Oklahoma Statutes,~~

17 d. health carrier access payments paid to and collected

18 by the Insurance Commissioner and deposited into the

19 Health Carrier Access Payment Revolving Fund, and

20 e. recoveries obtained as a result of insurance-related

21 crimes, and other fines, late fees, and penalties

22 assessed and collected.

23 2. The revolving fund shall be a continuing fund, not subject

24 to fiscal year limitations. Expenditures from the revolving fund

1 shall be made pursuant to the laws of this state and the statutes
2 relating to the Insurance Department. Warrants for expenditures
3 from the revolving fund shall be drawn by the State Treasurer, based
4 on claims signed by an authorized employee or employees of the
5 Insurance Department and filed with the Director of the Office of
6 State Finance.

7 B. All funds collected by the Insurance Commissioner shall be
8 paid weekly into the State Treasury ~~weekly~~.

9 C. After ~~the effective date of this act~~ November 1, 2010, the
10 State Treasury is authorized and directed to deduct from the funds
11 paid or collected by the State Insurance Commissioner Revolving Fund
12 a sum equal to seventy-six and one-half percent (76.5%) of the
13 payment and place the same to the credit of the General Revenue Fund
14 of the state. The State Treasurer shall place to the credit of the
15 State Insurance Commissioner Revolving Fund the remainder of the
16 funds so paid and collected by the Insurance Commissioner.

17 SECTION 5. AMENDATORY 36 O.S. 2011, Section 307.5, is
18 amended to read as follows:

19 Section 307.5. A. There is hereby created in the State
20 Treasury a revolving fund for the ~~Oklahoma~~ Insurance Department, to
21 be designated the "Insurance Department Anti-Fraud Revolving Fund".
22 The fund shall be a continuing fund, not subject to fiscal year
23 limitation, and shall consist of any monies designated to the fund
24 as provided in subsections B and C of this section. Warrants for

1 expenditures from the revolving fund shall be drawn by the State
2 Treasurer, based on claims signed by an authorized employee or
3 employees of the Insurance Department and filed with the Director of
4 the Office of State Finance. The fund shall be used for the purpose
5 of administering investigations of abuse, negligence or criminal
6 conduct regarding insurance laws or regulations.

7 B. The Department shall deposit all of the monies obtained as a
8 result of insurance-related crimes, and other fines, late fees, and
9 penalties assessed and collected into the Insurance Department Anti-
10 Fraud Revolving Fund.

11 C. ~~Each~~ Except as provided in subsection D of this section,
12 each year, the Department shall transfer to the General Revenue Fund
13 the first Four Hundred Eighty-two Thousand Five Hundred Dollars
14 (\$482,500.00) collected by the Department and deposited in the
15 Insurance Department Anti-Fraud Revolving Fund. The next Five
16 Hundred Thousand Dollars (\$500,000.00) collected by the Department
17 each year shall be divided evenly between the Department and the
18 ~~Oklahoma~~ Attorney General. All collections to be submitted to the
19 Attorney General shall be deposited in the Attorney General's
20 Insurance Fraud Unit Revolving Fund. Any collections above Nine
21 Hundred Eighty-two Thousand Five Hundred Dollars (\$982,500.00) shall
22 be deposited each year into the Insurance Department Anti-Fraud
23 Revolving Fund and shall be retained for use by the Department for
24

1 the purposes of administering investigations of abuse, negligence or
2 criminal conduct regarding insurance laws or regulations.

3 D. Fees collected pursuant to Section 362 of this title and
4 that are not subject to transfer to the Attorney General's Insurance
5 Fraud Unit Revolving Fund shall be deposited into the Insurance
6 Department Anti-Fraud Revolving Fund. These monies are not subject
7 to the calculations or transfers required in subsection C of this
8 section.

9 SECTION 6. AMENDATORY 36 O.S. 2011, Section 361, is
10 amended to read as follows:

11 Section 361. A. There is hereby created within the Insurance
12 Department, under the control and direction of the Insurance
13 Commissioner, an "Anti-Fraud Unit" within the Legal and
14 Investigation Division of the Insurance Department.

15 ~~B. The Anti-Fraud Unit, upon inquiry, complaint, or referral~~
16 ~~shall investigate the extent, if any, to which a violation has~~
17 ~~occurred~~ Violations of any statute or administrative rule of this
18 state pertaining to insurance fraud ~~and may initiate any necessary~~
19 ~~investigation~~ or pertaining to any insurance product or insurance
20 organization that has been used as an instrument of criminal
21 activity may be investigated by the Anti-Fraud Unit. Whenever the
22 Unit determines that a violation of any criminal law of this state
23 may have occurred, it may refer the matter to the Oklahoma State
24 Bureau of Investigation for further investigation pursuant to

1 Section 150.5 of Title 74 of the Oklahoma Statutes or the Attorney
2 General pursuant to Section 18b of Title 74 of the Oklahoma
3 Statutes. The Insurance Department shall retain the authority to
4 initiate and prosecute any civil action it deems necessary or
5 advisable.

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

11 D. Records, documents, reports and evidence obtained or created
12 by the Anti-Fraud Unit as a result of an inquiry or investigation of
13 any suspected insurance fraud related crime shall be confidential
14 and shall not be subject to the Oklahoma Open Records Act or to
15 outside review or release by any individual. Information and
16 records shall be disclosed upon request to officers and agents of
17 federal, state, county, or municipal law enforcement agencies, to
18 the Oklahoma State Bureau of Investigation, to the Attorney
19 General's office and to district attorneys, in the furtherance of
20 criminal investigations.

21 SECTION 7. AMENDATORY 36 O.S. 2011, Section 362, is
22 amended to read as follows:

23 Section 362. An annual fee of Seven Hundred Fifty Dollars
24 (\$750.00) shall be paid to the "Insurance Commissioner Department

1 Anti-Fraud Revolving Fund", to be expended by the Insurance
2 Commissioner for the purposes of investigation and prevention of
3 suspected insurance fraud and civil or administrative action in
4 cases involving suspected insurance fraud. The following shall pay
5 an annual fee of Seven Hundred Fifty Dollars (\$750.00) to the
6 Insurance Department, which shall be payable quarterly in the amount
7 of One Hundred Eighty-seven Dollars and fifty cents (\$187.50):
8 Life, accident and health insurers; property and casualty insurers;
9 county mutual fire insurers; mutual benefit associations; fraternal
10 benefit societies; reciprocal insurers; motor service clubs; title
11 insurers; nonprofit insurers; health maintenance organizations
12 (HMOs); service warranty associations; surplus lines carriers;
13 multiple employer welfare arrangements (MEWAs); trusts which write
14 surety policies; prepaid dental plan organizations; and accredited
15 reinsurers. The payments shall be due on or before the last day of
16 the month following each calendar quarter. Beginning in the
17 calendar year 2010, payment of the annual fee shall be made as one
18 payment of Seven Hundred Fifty Dollars (\$750.00) which shall be paid
19 on or before July 1. Within sixty (60) days after each calendar
20 quarter in which monies are collected, the Commissioner shall
21 transfer twenty-five percent (25%) of all monies collected by the
22 Insurance Department pursuant to this section to the Attorney
23 General's Insurance Fraud Unit Revolving Fund created in Section
24

1 19.3 of Title 74 of the Oklahoma Statutes, for use by the Attorney
2 General in the investigation and prosecution of insurance fraud.

3 SECTION 8. AMENDATORY 36 O.S. 2011, Section 363, is
4 amended to read as follows:

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

10 B. ~~In the absence of fraud, bad faith, reckless disregard for~~
11 ~~the truth, or actual malice, no~~ No person, insurer, employee or
12 agent of an insurer, or any other person acting in the absence of
13 fraud, bad faith, reckless disregard for the truth, or actual malice
14 ~~shall be liable for damages in a civil action or subject to criminal~~
15 ~~prosecution for supplying information about suspected insurance~~
16 ~~fraud~~ subject to civil liability for libel, slander or any other
17 relevant tort or subject to criminal prosecution by virtue of filing
18 of reports or furnishing other information either orally or in
19 writing, concerning suspected, anticipated or completed fraudulent
20 insurance acts to the Anti-Fraud Division of the Insurance
21 Department pursuant to subsection A of this section or to any other
22 agency involved in the investigation or prosecution of suspected
23 insurance fraud.

24

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

10 1. Law enforcement officials, their agents and employees;

11 2. The National Association of Insurance Commissioners, any
12 state department of insurance, any federal or state agency or bureau
13 established to detect and prevent fraudulent insurance activities,
14 as well as any other organization established for the same purpose,
15 their agents, employees or designees; and

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

19 The immunity provided in this subsection shall not extend to any
20 person, insurer, or agent of an insurer for communications or
21 publications about suspected insurance fraud to any other person or
22 entity.

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

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

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

12 1. The seizure occurs in accordance with any applicable law or
13 rule;

14 2. The seizure is incident to inspection under an
15 administrative inspection warrant;

16 3. The seizure is incident to search made under a search
17 warrant;

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

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

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

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

1 C. When property is seized under this section, the seizing
2 agency may:

- 3 1. Place the property under seal; or
- 4 2. Remove the property to a place selected and designated by
5 the seizing agency.

6 SECTION 10. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 365 of Title 36, unless there is
8 created a duplication in numbering, reads as follows:

9 A. The following are subject to forfeiture:

- 10 1. Any tool used to commit an insurance related crime;
- 11 2. Any implement of an insurance related crime;
- 12 3. Any instrumentality of an insurance related crime; and
- 13 4. Any fruit of an insurance related crime.

14 B. A forfeiture of an item or other conveyance encumbered by a
15 bona fide security interest is subject to the interest of the
16 secured party where the secured party neither had knowledge of nor
17 consented to the act or omission forming the ground for the
18 forfeiture.

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

23 D. 1. The district attorney in the county where the seizure
24 occurs or the Attorney General or the Insurance Department shall

1 bring an action for forfeiture in a court of competent jurisdiction.
2 The forfeiture action shall be brought within sixty (60) days from
3 the date of seizure except where the attorney prosecuting the
4 forfeiture in the sound exercise of discretion determines that no
5 forfeiture action should be brought because of the rights of
6 property owners, lienholders or secured creditors or because of
7 exculpatory, exonerating or mitigating facts and circumstances.

8 2. The attorney prosecuting the forfeiture shall give notice of
9 the forfeiture proceeding by mailing a copy of the complaint in the
10 forfeiture proceeding to each person whose right, title, or interest
11 of record in the Oklahoma Tax Commission, the Department of Public
12 Safety, the Federal Aviation Agency, or any other department of the
13 state or any other state or territory of the United States, or of
14 the federal government, if the property is required to be registered
15 in any such department.

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

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

24

1 5. The attorney prosecuting the forfeiture shall show at a
2 forfeiture hearing, by a preponderance of the evidence, that the
3 property was used in the commission of a violation of an insurance
4 related crime, or was the fruit of an insurance related crime.

5 6. The owner of property may show by a preponderance of the
6 evidence that the owner did not know and did not have reason to know
7 that the property was to be used or possessed in the commission of
8 an violation or that any of the exceptions to forfeiture are
9 applicable.

10 7. Unless the attorney prosecuting the forfeiture shall make
11 the showing required of it, the court shall order the property
12 released to the owner. Where the attorney prosecuting the
13 forfeiture has made such a showing, the court may order:

14 a. the property to be destroyed by the agency which
15 seized it or some other agency designated by the
16 court,

17 b. the property be delivered and retained for use by the
18 Insurance Department, or

19 c. the property be sold at public sale.

20 E. A copy of a forfeiture order shall be filed with the sheriff
21 of the county in which the forfeiture occurs and with each federal
22 or state department with which the property is required to be
23 registered. The order, when filed, constitutes authority for the
24 issuance to the Insurance Department of a title certificate,

1 registration certificate or other special certificate as may be
2 required by law considering the condition of the property.

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

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

12 H. A seized item that is neither forfeited nor unidentifiable
13 shall be held subject to the order of the court in which the
14 criminal action is pending or, if a request for its release from the
15 custody is made until the district attorney has notified the
16 defendant or the defendant's attorney of the request and both the
17 prosecution and defense have been afforded a reasonable opportunity
18 for an examination of the property to determine its true value and
19 to produce or reproduce, by photographs or other identifying
20 techniques, legally sufficient evidence for introduction at trial or
21 other criminal proceedings. Upon expiration of a reasonable time
22 for the completion of the examination which shall not exceed
23 fourteen (14) days from the date of service upon the defense of the
24 notice of request for return of property as provided, the property

1 shall be released to the person making the request after
2 satisfactory proof of the person's entitlement to the possession
3 thereof. Upon application by either party with notice to the other,
4 the court may order retention of the property if it determines that
5 retention is necessary in the furtherance of justice.

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

10 J. When an applicant for a certificate of title or salvage
11 certificate presents to the Oklahoma Tax Commission proof that the
12 applicant purchased or acquired an item at a public sale conducted
13 pursuant to this section and the fact is attested to by the seizing
14 agency, the Oklahoma Tax Commission shall issue a certificate of
15 title, salvage certificate for the motor vehicle upon receipt of the
16 statutory fee, properly executed application for a certificate of
17 title or other certificate of ownership and the affidavit of the
18 seizing agency that a state-assigned number was applied for an
19 affixed to the motor vehicle prior to the time that the motor
20 vehicle was released by the seizing agency to the purchaser.

21 SECTION 11. This act shall become effective July 1, 2012.

22 SECTION 12. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3

4 53-2-3076 ARE 1/18/2012 1:54:57 PM

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24