An Act

ENROLLED SENATE
BILL NO. 1439

By: Nichols of the Senate

and

Kirby of the House

An Act relating to insurance fraud; amending 21 O.S. 2011, Section 1451, which relates to embezzlement; allowing a series of offenses to be aggregated into one offense under certain conditions; amending 21 O.S. 2011, Section 1639, which relates to fraudulent insolvency; providing penalty for a case of fraudulent insolvency relating to the conduct of the business of insurance; amending 21 O.S. 2011, Section 1662, which relates to false or fraudulent claims; modifying penalty; amending 36 O.S. 2011, Sections 361 and 363, as amended by Section 1 of Enrolled Senate Bill No. 1060 of the 2nd Session of the 53rd Oklahoma Legislature, which relate to the Anti-Fraud Unit of the Insurance Department; expanding scope of activities that may be investigated by the Unit; 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; specifying entities immune to civil or criminal actions; 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 procedures for forfeiture of the seized property;

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

SUBJECT: Insurance fraud

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;

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

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

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

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

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

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

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

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

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

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

2. If the value of the property embezzled is Five Hundred Dollars ($500.00), or more but less than One Thousand Dollars ($1,000.00), any person convicted shall be guilty of a felony and shall be punished by imprisonment in the county jail for not more than one (1) year or by imprisonment in the county jail for one or

more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the discretion of the court, and shall be subject to a fine not exceeding Five Thousand Dollars ($5,000.00), and ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes;

3. If the value of the property embezzled is One Thousand Dollars ($1,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), any person convicted shall be guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for a term of not more than five (5) years, and a fine of not exceeding Five Thousand Dollars ($5,000.00), and ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes; or

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

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

C. Any county or state officer, deputy or employee of such officer, who shall divert any money appropriated by law from the purpose and object of the appropriation, shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not less than one (1) year nor more than ten (10) years, and a fine equal to triple the amount of money so embezzled and ordered to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes. The

fine shall operate as a judgment lien at law on all estate of the party so convicted and sentenced, and shall be enforced by execution or other process for the use of the person whose money or other funds or property were embezzled. In all cases the fine, so operating as a judgment lien, shall be released or entered as satisfied only by the person in interest.

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

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

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

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

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

Section 1662. Any person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not

exceeding three (3) years, or by a fine not exceeding ~~One Thousand Dollars ($1,000.00)~~ twice the amount of the aggregated loss sum, or both.

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

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

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

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

D. Records, documents, reports and evidence obtained or created by the Anti-Fraud Unit as a result of an inquiry or investigation of any suspected insurance ~~fraud~~ related crime shall be confidential and shall not be subject to the Oklahoma Open Records Act or to outside review or release by any individual. Information and records shall be disclosed upon request to officers and agents of federal, state, county, or municipal law enforcement agencies, to the Oklahoma State Bureau of Investigation, to the Attorney

General's office and to district attorneys, in the furtherance of criminal investigations.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 363, as amended by Section 1 of Enrolled Senate Bill No. 1060 of the 2nd Session of the 53rd Oklahoma Legislature, is amended to read as follows:

Section 363. A. Any insurer, employee or agent of any insurer who has reason to believe that a person or entity has engaged in or is engaging in an act or practice that violates any statute or administrative rule of this state related to insurance fraud shall immediately notify the Anti-Fraud Unit of the Insurance Department and, in the case of an allegation of claimant fraud, the Workers' Compensation and Insurance Fraud Unit of the Office of the Attorney General.

B. ~~In the absence of fraud, bad faith, reckless disregard for the truth, or actual malice, no person,~~ No insurer, employee or agent of an insurer, or any other person acting in the absence of fraud, bad faith, reckless disregard for the truth, or actual malice shall be ~~liable for damages in a civil action or subject to criminal prosecution for supplying information about suspected insurance fraud~~ subject to civil liability for libel, slander or any other relevant tort or subject to criminal prosecution by virtue of filing of reports or furnishing other information either orally or in writing, concerning suspected, anticipated or completed fraudulent insurance acts to the Anti-Fraud Division of the Insurance Department~~,~~ or the Workers' Compensation and Insurance Fraud Unit of the Office of the Attorney General pursuant to subsection A of this section or to any other agency involved in the investigation or prosecution of suspected insurance fraud.

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

1. Law enforcement officials, their agents and employees;

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

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

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

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

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

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

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

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

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

4. The seizure is incident to a lawful arrest;

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

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

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

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

1. Place the property under seal; or

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

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

A. The following are subject to forfeiture:

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

2. Any implement of an insurance-related crime;

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

4. Any fruit of an insurance-related crime.

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

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

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

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

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

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

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

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

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

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

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

c. the property be sold at public sale.

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

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

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

H. A seized item that is neither forfeited nor unidentifiable shall be held subject to the order of the court in which the criminal action is pending or, if a request for its release from the custody is made until the district attorney has notified the defendant or the defendant's attorney of the request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or

other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which shall not exceed fourteen (14) days from the date of service upon the defense of the notice of request for return of property as provided, the property shall be released to the person making the request after satisfactory proof of the person's entitlement to the possession thereof. Upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

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

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

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

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

Passed the Senate the 3rd day of May, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 7th

day of May, 2012,

at 3:00 o'clock PM.

By: Jessica R. Byron

Approved by the Governor of the State of Oklahoma the 10th day of

May, 2012, at 9:53 o'clock AM.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

10th day of May, 2012,

at 10:22 o'clock A M.

By: Chelsy L. McCabe