

SENATE BILL No. 33

By Legislative Post Audit Committee

1-12

AN ACT concerning law enforcement; relating to allocation and uses of certain forfeited property proceeds and certain tax assessment and penalty collection proceeds; prescribing accounting and reporting requirements; amending K.S.A. 79-5211 and K.S.A. 2000 Supp. 60-4117 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 2000 Supp. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

1 (4) salvage the property, subject to any lien preserved by the court.

2 (b) When firearms are forfeited under this act, the firearms in the
3 discretion of the seizing agency, shall be destroyed, used within the seiz-
4 ing agency for official purposes, traded to another law enforcement
5 agency for use within such agency or given to the Kansas bureau of in-
6 vestigation for law enforcement, testing, comparison or destruction by
7 the Kansas bureau of investigation forensic laboratory.

8 (c) The proceeds of any sale shall be distributed in the following order
9 of priority:

10 (1) For satisfaction of any court preserved security interest or lien;

11 (2) thereafter, for payment of all proper expenses of the proceedings
12 for forfeiture and disposition, including expenses of seizure, inventory,
13 appraisal, maintenance of custody, preservation of availability, advertising,
14 service of process, sale and court costs;

15 (3) reasonable attorney fees:

16 (A) If the plaintiff's attorney is a county or district attorney, an assis-
17 tant, or another governmental agency's attorney, fees shall not exceed
18 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),
19 in an uncontested forfeiture nor 20% of the total proceeds, less the
20 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees
21 shall be deposited in the county or city treasury and credited to the special
22 prosecutor's trust fund. Moneys in such fund shall not be considered a
23 source of revenue to meet normal operating expenditures, including sal-
24 ary enhancement. Such fund shall be expended by the county or district
25 attorney, or other governmental agency's attorney through the normal
26 county or city appropriation system and shall be used for such additional
27 law enforcement and prosecutorial purposes as the county or district at-
28 torney or other governmental agency's attorney deems appropriate, in-
29 cluding educational purposes. All moneys derived from past or pending
30 forfeitures shall be expended pursuant to this act. The board of county
31 commissioners shall provide adequate funding to the county or district
32 attorney's office to enable such office to enforce this act. Neither future
33 forfeitures nor the proceeds therefrom shall be used in planning or adopt-
34 ing a county or district attorney's budget; or

35 (B) if the plaintiff's attorney is a private attorney, such reasonable
36 fees shall be negotiated by the employing law enforcement agency;

37 (4) repayment of law enforcement funds expended in purchasing of
38 contraband or controlled substances, subject to any interagency
39 agreement.

40 (d) Any proceeds remaining shall be credited as follows, subject to
41 any interagency agreement:

42 (1) If the law enforcement agency is a state agency, the entire amount
43 shall be deposited in the state treasury and credited to such agency's state

1 forfeiture fund *and shall be accounted for separately from all moneys from*
2 *other sources.* There is hereby established in the state treasury the fol-
3 lowing state funds: Kansas bureau of investigation state forfeiture fund,
4 Kansas highway patrol state forfeiture fund, Kansas department of cor-
5 rections state forfeiture fund and Kansas national guard counter drug
6 state forfeiture fund. Expenditures from the Kansas bureau of investi-
7 gation state forfeiture fund shall be made upon warrants of the director
8 of accounts and reports issued pursuant to vouchers approved by the
9 attorney general or by a person or persons designated by the attorney
10 general. Expenditures from the Kansas highway patrol state forfeiture
11 fund shall be made upon warrants of the director of accounts and reports
12 issued pursuant to vouchers approved by the superintendent of the high-
13 way patrol or by a person or persons designated by the superintendent.
14 Expenditures from the Kansas department of corrections state forfeiture
15 fund shall be made upon warrants of the director of accounts and reports
16 issued pursuant to vouchers approved by the secretary of the department
17 of corrections or by a person or persons designated by the secretary.
18 Expenditures from the Kansas national guard counter drug state forfei-
19 ture fund shall be made upon warrants of the director of accounts and
20 reports issued pursuant to vouchers approved by the adjutant general of
21 Kansas or by a person or persons designated by the adjutant general. ~~Each~~
22 ~~agency shall compile and submit a forfeiture fund report to the legislature~~
23 ~~on or before February 1 of each year. Such report shall include, but not~~
24 ~~be limited to: (A) The fund balance on December 1; (B) the deposits and~~
25 ~~expenditures for the previous 12 month period ending December 1.~~
26 ~~Upon the effective date of this act, the director of accounts and reports~~
27 ~~is directed to transfer each agency's balance in the state special asset~~
28 ~~forfeiture fund to the agency's new, state forfeiture fund. All liabilities of~~
29 ~~the state special asset forfeiture fund existing prior to such date are hereby~~
30 ~~imposed on the Kansas bureau of investigation state forfeiture fund, Kan-~~
31 ~~sas highway patrol state forfeiture fund and the Kansas department of~~
32 ~~corrections state forfeiture fund. The state special asset forfeiture fund is~~
33 ~~hereby abolished.~~

34 (2) If the law enforcement agency is a city or county agency, the
35 entire amount shall be deposited in such city or county treasury ~~and, shall~~
36 ~~be credited to a special law enforcement trust fund and shall be accounted~~
37 ~~for separately from all moneys from other sources. Each agency shall~~
38 ~~compile and submit annually a special law enforcement trust fund report~~
39 ~~to the entity which has budgetary authority over such agency and such~~
40 ~~report shall specify, for such period, the type and approximate value of~~
41 ~~the forfeited property received, the amount of any forfeiture proceeds~~
42 ~~received, and how any of those proceeds were expended.~~

43 ~~(3) (e) Moneys in the Kansas bureau of investigation state forfeiture~~

1 fund, Kansas highway patrol state forfeiture fund, Kansas department of
2 corrections state forfeiture fund, the special law enforcement trust funds
3 and the Kansas national guard counter drug state forfeiture fund shall not
4 be considered a source of revenue to meet normal operating expenses.
5 *Except as provided in subsection (f), the moneys in such funds shall be*
6 *expended by the agencies or departments through the normal city, county*
7 *or state appropriation system and shall be used for such special, additional*
8 *law enforcement purposes as the law enforcement agency head deems*
9 *appropriate. Neither future forfeitures nor the proceeds from such for-*
10 *feitures shall be used in planning or adopting a law enforcement agency's*
11 *budget.*

12 *(f) If the aggregate amount of moneys received during a fiscal year*
13 *by a law enforcement agency under the Kansas standard asset seizure and*
14 *forfeiture act and credited to a state forfeiture fund or to a special law*
15 *enforcement trust fund of a county or city law enforcement agency, as the*
16 *case may be, exceeds the authorized budget of the law enforcement agency*
17 *for such fiscal year by more than the amount equal to 25% of such law*
18 *enforcement agency's budget for such fiscal year, then the amount that is*
19 *in excess of the amount equal to 25% of such law enforcement agency's*
20 *budget may be reallocated and used for support of drug abuse treatment*
21 *programs, drug and crime prevention and education programs, housing*
22 *programs, jobs skills programs or other community-based programs, in-*
23 *cluding grants to not-for-profit community organizations for such pur-*
24 *poses. In any such case of a state law enforcement agency, such reallo-*
25 *cation and use shall be in accordance with the provisions of appropriation*
26 *acts or as otherwise prescribed by law. In any such case of a county or*
27 *city law enforcement agency, such reallocation and use shall be deter-*
28 *mined by the entity which has budgetary authority over such agency.*

29 *(g) Each state law enforcement agency shall compile and submit a*
30 *state forfeiture fund report to the director of the Kansas bureau of inves-*
31 *tigation on or before February 1 of each year. The annual forfeiture fund*
32 *report shall include, but not be limited to: (1) The fund balance on De-*
33 *cember 1; (2) the deposits and expenditures for the previous twelve-month*
34 *period ending December 1 that are credited to the state forfeiture fund*
35 *in a form approved by the director of the Kansas bureau of investigation;*
36 *and (3) a copy of the most recent federal annual certification report sub-*
37 *mitted by the state agency regarding moneys received by the state agency*
38 *under federal forfeiture programs. The director of the Kansas bureau of*
39 *investigation shall prepare annually a combined state forfeiture funds re-*
40 *port from the individual state forfeiture fund reports and shall submit the*
41 *combined report to the legislature as soon after February 1 as practicable.*

42 *(h) Each county or city law enforcement agency which receives mon-*
43 *eys or other property under the Kansas standard asset seizure and for-*

1 *feiture act shall compile and submit annually a special law enforcement*
2 *trust fund report to the entity which has budgetary authority over such*
3 *agency. The annual special law enforcement trust fund report shall spec-*
4 *ify: (1) The type and approximate value of the forfeited property re-*
5 *ceived under the Kansas standard asset seizure and forfeiture act; (2) the*
6 *amount of any forfeiture proceeds received under such act; and (3) how*
7 *such proceeds were expended.*

8 Sec. 2. K.S.A. 79-5211 is hereby amended to read as follows: 79-
9 5211. All moneys received from the collection of taxes imposed under the
10 provisions of K.S.A. 79-5201 *et seq.*, and amendments thereto, and 25%
11 of all moneys collected from assessments of delinquent taxes and penalties
12 imposed thereunder, shall be remitted to the state treasurer who shall
13 deposit the entire amount thereof in the state treasury and credit the
14 same to the state general fund. The director of taxation shall remit 75%
15 of all moneys received from the collection of assessments of delinquent
16 taxes and penalties imposed pursuant to the provisions of K.S.A. 79-5201
17 *et seq.*, and amendments thereto, as follows: (a) If the law enforcement
18 agency which conducted the investigation is a county agency, the entire
19 amount shall be deposited in the county treasury and credited to a special
20 law enforcement trust fund ~~for use~~, *shall be accounted for separately from*
21 *all moneys from other sources and shall be used solely for law enforcement*
22 *and criminal prosecution purposes; (b) if the law enforcement agency*
23 *which conducted the investigation is a city agency, the entire amount shall*
24 *be deposited in the city treasury and credited to a special law enforcement*
25 *trust fund ~~for use~~, shall be accounted for separately from all moneys from*
26 *other sources and shall be used solely for law enforcement and criminal*
27 *prosecution purposes; and (c) if more than one law enforcement agency*
28 *is substantially involved in the investigative process, the amount shall be*
29 *distributed equally among the city, county and state law enforcement*
30 *agencies involved and credited to the appropriate county and city special*
31 *law enforcement trust funds and state law enforcement agency funds*
32 *unless an alternate distribution is mutually agreed upon by the law en-*
33 *forcement agencies involved and submitted in writing to the director of*
34 *taxation. Funds received by city and county treasurers shall not be con-*
35 *sidered to be a source of revenue to meet normal operating expenses of*
36 *law enforcement agencies.*

37 Sec. 3. K.S.A. 79-5211 and K.S.A. 2000 Supp. 60-4117 is hereby
38 repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.

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