

## CHAPTER 183

HOUSE BILL No. 2893

(Amends Chapter 149)

AN ACT concerning health care costs; relating to offenders in custody; declaring certain acts to be crimes and providing penalties for violations; state medicaid plan; medicaid fraud; obstruction of a medicaid fraud investigation; amending K.S.A. 21-3910, 60-4107, 60-4117 and 60-4119 and K.S.A. 2005 Supp. 21-3847 and 39-7,121d and K.S.A. 60-4104 as amended by section 9 of 2006 House Substitute for Senate Bill No. 196 and 60-4105 as amended by section 10 of 2006 House Substitute for Senate Bill No. 196 and repealing the existing sections.

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

New Section 1. (a) Except as otherwise provided in this section, a county, a city, a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol shall be liable to pay a health care provider for health care services rendered to persons in the custody of such agencies the lesser of the actual amount billed by such health care provider or the medicaid rate. The provisions of this section shall not apply if a person in the custody of a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract.

(b) Nothing in this section shall prevent a county or city law enforcement agency, a county department of corrections, the Kansas highway patrol or such agencies authorized vendors from entering into agreements with health care providers for the provision of health care services at terms, conditions and amounts which are different than the medicaid rate.

(c) It shall be the responsibility of the custodial county or city law enforcement agency, county department of corrections or the Kansas highway patrol or such agencies' agents, to determine, under agreement with the Kansas health policy authority, the amount payable for the services provided and to communicate that determination along with the remittance advice and payment for the services provided.

(d) Nothing in this section shall be construed to create a duty on the part of a health care provider to render health care services to a person in the custody of a county or city law enforcement agency, a county department of corrections or the Kansas highway patrol.

(e) As used in this section:

(1) "County or city law enforcement agency" means a city police department, a county sheriff's department, a county law enforcement department as defined in K.S.A. 19-4401, and amendments thereto, or a law enforcement agency established pursuant to the consolidated city-county powers in K.S.A. 12-345, and amendments thereto.

(2) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed physician assistant, a person licensed by the behavioral sciences regulatory board, a medical care facility licensed by the department of health and environment, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a registered nurse, and advanced nurse practitioner, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed practical nurse, a licensed physical therapist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899, and amendments thereto,

a psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto, a licensed social worker or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services and any health care provider licensed by the appropriate regulatory body in another state that has a current approved provider agreement with the Kansas health policy authority.

(3) "Medicaid rate" means the terms, conditions and amounts a health care provider would be paid for health care services rendered pursuant to a contract or provider agreement with the Kansas health policy authority.

New Sec. 2. (a) A law enforcement officer having custody of a person shall not release such person from custody merely to avoid the cost of necessary medical treatment while the person is receiving treatment from a health care provider unless the health care provider consents to such release, or unless the release is ordered by a court of competent jurisdiction. When the law enforcement officer is satisfied that probable cause no longer exists to believe the suspect committed a crime based upon the ongoing investigation, or the prosecuting attorney gives notice that no prosecution will be forthcoming at this time, the law enforcement officer may release such person from custody. Upon the date of notification to the health care provider that the person is being released from custody because the ongoing investigation indicates that probable cause no longer exists or a decision by the prosecuting attorney that no charges will be filed, the law enforcement agency shall no longer be responsible for the cost of such person's medical treatment.

(b) As used in this section:

(1) "Law enforcement officer" has the meaning ascribed thereto in K.S.A. 22-2202, and amendments thereto.

(2) "Health care provider" has the meaning ascribed thereto in section 1, and amendments thereto.

New Sec. 3. (a) Obstruction of a medicaid fraud investigation is knowingly and intentionally engaging in one or more of the following during an investigation of any matter pursuant to K.S.A. 21-3844 *et seq.*, and amendments thereto:

(1) Falsifying, concealing or covering up a material fact by any trick, misstatement, scheme or device; or

(2) making or causing to be made any materially false writing or document knowing that such writing or document contains any false, fictitious or fraudulent statement or entry.

(b) Obstruction of a medicaid fraud investigation is a severity level 9, nonperson felony.

(c) This section shall be part of and supplemental to the Kansas medicaid fraud control act.

Sec. 4. K.S.A. 2005 Supp. 21-3847 is hereby amended to read as follows: 21-3847. (a) No ~~person nor recipient of medicaid benefits~~, family member of such ~~person recipient or provider of medicaid services~~ shall:

(1) Knowingly and intentionally solicit or receive any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(2) Knowingly and intentionally offer or pay any remuneration, including, but not limited to, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(A) To refer or refrain from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(3) *Knowingly divide or share any funds illegally obtained from the medicaid program.*

(b) *No medicaid recipient shall knowingly and intentionally trade a medicaid number for money or other remuneration, sign for services that are not received by the medicaid recipient or sell or exchange for value goods purchased or provided under the medicaid program.*

~~(c)~~ (c) *A violation of this section is a severity level 7, nonperson felony.*

~~(d)~~ (d) *This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent, nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.*

Sec. 5. K.S.A. 21-3910 is hereby amended to read as follows: 21-3910. (a) *Misuse of public funds is knowingly using, lending or permitting another to use, public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position.*

(b) *As used in this section, "public money," means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.*

~~(c) *Misuse of public funds is a severity level 8, nonperson felony.*~~

(1) *Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is \$100,000 or more is a severity level 5, nonperson felony.*

(2) *Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony.*

(3) *Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.*

(4) *Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is less than \$1,000 is a class A nonperson misdemeanor.* Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

Sec. 6. K.S.A. 2005 Supp. 39-7,121d is hereby amended to read as follows: 39-7,121d. (a) *The state medicaid plan shall include provisions for a program of differential dispensing fees for pharmacies that provide prescriptions for adult care homes under a unit dose system in accordance with rules and regulations of the state board of pharmacy and that participate in the return of unused medications program under the state medicaid plan.*

(b) *The state medicaid plan shall include provisions for differential ingredient cost reimbursement of generic and brand name pharmaceuticals. The director of health policy and finance shall set the rates for differential cost reimbursement of generic and brand name pharmaceuticals by rules and regulations.*

(c) *On and after May 23, 2007, the state medicaid plan shall require that every pharmacy claim form under the plan include the prescriber's unique identification number.*

Sec. 7. K.S.A. 60-4104 as amended by section 9 of 2006 House Substitute for Senate Bill No. 196 is hereby amended to read as follows: 60-4104. *Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:*

(a) *All offenses which statutorily and specifically authorize forfeiture;*

(b) *violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto;*

(c) *theft which is classified as a felony violation pursuant to K.S.A. 21-3701, and amendments thereto, in which the property taken was live-stock;*

(d) *unlawful discharge of a firearm, K.S.A. 21-4219, and amendments thereto;*

(e) *money laundering, K.S.A. 65-4142, and amendments thereto;*

(f) *gambling, K.S.A. 21-4303, and amendments thereto, and commercial gambling, K.S.A. 21-4304, and amendments thereto;*

(g) *counterfeiting, K.S.A. 2005 Supp. 21-3763, and amendments*

thereto;

(h) violations of section 1 of 2006 House Substitute for Senate Bill No. 196, and amendments thereto;

(i) *medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;*

~~(j)~~ (j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

~~(k)~~ (k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

~~(l)~~ (l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(m) *furtherance of terrorism or illegal use of weapons of mass destruction, section 3 of 2006 Senate Bill No. 25, and amendments thereto.*

Sec. 8. K.S.A. 60-4105 as amended by section 10 of 2006 House Substitute for Senate Bill No. 196 is hereby amended to read as follows: 60-4105. The following property is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) *except as otherwise provided by law, all property, including of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:*

(1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or

(2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including, but not limited to, any computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a violation of section 1, and amendments thereto;

(c) all proceeds of any conduct giving rise to forfeiture;

(d) ~~any~~ *all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;*

(e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;

(f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

(g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;

(h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and

(i) any items bearing a counterfeit mark.

Sec. 9. K.S.A. 60-4107 is hereby amended to read as follows: 60-4107. (a) Property may be seized for forfeiture by a law enforcement officer upon process issued by the district court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for the property's forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant. All real property is to be seized constructively or pursuant to a pre-seizure adversarial judicial determination of probable cause, except that this determination may be done ex parte when the attorney for the state has demonstrated exigent circumstances to the court.

(b) Property may be seized for forfeiture by a law enforcement officer without process on probable cause to believe the property is subject to forfeiture under this act.

(c) Property may be seized constructively by:

(1) Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

(2) Giving notice pursuant to K.S.A. 60-4109, and amendments

thereto.

(3) Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to this act are not subject to a filing fee or other charge.

(d) The seizing agency shall make reasonable effort to provide notice of the seizure to the person from whose possession or control the property was seized and any interest holder of record within 30 days of seizing the property. If no person is in possession or control, the seizing agency may attach the notice to the property or to the place of the property's seizure or may make a reasonable effort to deliver the notice to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

(e) A person who acts in good faith and in a reasonable manner to comply with an order of the court or a request of a law enforcement officer is not liable to any person on account of acts done in reasonable compliance with the order or request. No liability may attach from the fact that a person declines a law enforcement officer's request to deliver property.

(f) A possessory lien of a person from whose possession property is seized is not affected by the seizure.

(g) When property is seized for forfeiture under this act, the seizing agency shall, within 45 days of such seizure, forward to the county or district attorney in whose jurisdiction the seizure occurred, a written request for forfeiture which shall include a statement of facts and circumstances of the seizure, the estimated value of the property, the owner and lienholder of the property, the amount of any lien, and a summary of the facts relied on for forfeiture.

(h) Upon receipt of a written request for forfeiture from a local law enforcement agency, the county or district attorney shall have 15 days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may:

(1) Request a state law enforcement agency which enforces this act to adopt the forfeiture; or

(2) engage an attorney, approved by the county or district attorney, to represent the agency in the forfeiture proceeding.

(i) Upon receipt of a written request for forfeiture from a state law enforcement agency, the county or district attorney shall have 15 days to accept the request. Should such county or district attorney decline such request, or fail to answer, the seizing agency may engage an assistant attorney general or other attorney approved by the attorney general's office to represent the agency in the forfeiture proceeding.

(j) *Nothing in this act shall prevent the attorney general, an employee of the attorney general or an authorized representative of the attorney general from conducting forfeiture proceedings under this act.*

(k) Nothing in this act shall prevent a seizing agency from requesting federal adoption of a seizure. It shall not be necessary to obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized property to a federal agency should the county or district attorney approve of such transfer.

~~(l)~~ (l) Nothing in this act shall prevent a seizing agency, or the plaintiff's attorney on behalf of the seizing agency, from settling any alleged forfeiture claim against property before or during forfeiture proceedings. Such settlement shall be in writing and shall be approved, if a local agency, by the county or district attorney or, if a state agency, by the attorney general's office and a district court judge. No hearing or other proceeding shall be necessary. The records of settlements occurring prior to commencement of judicial forfeiture proceedings in the district court shall be retained by the county or district attorney for not less than five years.

~~(m)~~ (m) Settlements under this act shall not be conditioned upon any disposition of criminal charges.

Sec. 10. K.S.A. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 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 pre-

served 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

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

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

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

(1) For satisfaction of any court preserved security interest or lien, *or in the case of a violation, as defined by subsection (h) of K.S.A. 60-4104, and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;*

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

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget; ~~or~~

(B) *if the plaintiff's attorney is the attorney general and the conduct and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and*

*amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund. Moneys paid into the medicaid fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the attorney general for use by the attorney general in the investigation and prosecution of medicaid fraud and abuse; or*

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

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

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

(1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, *Kansas attorney general's state medicaid fraud forfeiture fund*, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. *Expenditures from the Kansas attorney general's state medicaid fraud forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general.* Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a

law enforcement agency's budget.

(4) *Moneys in the Kansas attorney general's medicaid fraud forfeiture fund shall defray costs of the attorney general in connection with the duties of investigating and prosecuting medicaid fraud and abuse.*

Sec. 11. K.S.A. 60-4119 is hereby amended to read as follows: 60-4119. (a) If a person is or may be called to produce evidence at a deposition, hearing or trial under this act or at an investigation brought by the attorney under K.S.A. 60-4118, *and amendments thereto*, the district court for the county in which the deposition, hearing, trial, or investigation is or may be held, upon certification in writing of a request of the county or district attorney for the county, *or the attorney general*, shall issue an order, ex parte or after a hearing, requiring the person to produce evidence, notwithstanding that person's refusal to do so on the basis of the privilege against self-incrimination.

(b) The county or district attorney, *or the attorney general*, may certify in writing a request for an ex parte order under this section if in such ~~county or district~~ attorney's judgment:

(1) The production of the evidence may be necessary to the public interest; and

(2) the person has refused or is likely to refuse to produce evidence on the basis of such person's privilege against self-incrimination.

(c) If a person refuses, on the basis of such person's privilege against self-incrimination, to produce evidence in any proceeding described in this act, and the presiding officer informs the person of an order issued under this section, the person may not refuse to comply with the order. The person may be compelled or punished by the district court issuing an order for civil or criminal contempt.

(d) The production of evidence compelled by order issued under this section, and any information directly or indirectly derived from such evidence, may not be used against the person in a subsequent criminal case, except in a prosecution for perjury, K.S.A. 21-3805, and amendments thereto, making false writing, K.S.A. 21-3711, and amendments thereto, or an offense otherwise involving a failure to comply with the order. Nothing in this subsection shall be interpreted as preventing the use in a criminal action any evidence lawfully obtained independently of these procedures.

Sec. 12. K.S.A. 21-3910, 60-4107, 60-4117 and 60-4119 and K.S.A. 2005 Supp. 21-3847 and 39-7,121d and K.S.A. 60-4104 as amended by section 9 of 2006 House Substitute for Senate Bill No. 196 and 60-4105 as amended by section 10 of 2006 House Substitute for Senate Bill No. 196 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 16, 2006.

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