



**TESTIMONY IN SUPPORT OF SENATE BILL 74**  
**Covered Offenses and Conduct Giving Rise to Forfeiture**  
Judiciary Committee      Kansas Senate

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**Office of the Securities Commissioner**  
**Associate General Counsel**  
February 14, 2011

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of Senate Bill 74 which would add electronic solicitation and sexual exploitation of a child to the list of those offenses eligible for forfeiture under K.S.A. 60-4104.

Inclusion of these offenses will provide law enforcement with the necessary tools to better deter these crimes throughout the state. The office supports this bill and further proposes additional amendments to K.S.A. 60-4104 and K.S.A. 60-4117 to include violations of the Kansas Uniform Securities act, such as securities fraud, in the list of covered forfeiture offenses.

Most of the committee is probably aware that the Securities Commissioner's office employs law enforcement officers in its enforcement division and staff attorneys in its legal division to investigate and prosecute securities crimes that occur throughout the state. We are a one-stop shop for securities inquiries, which enables complaints to be efficiently investigated and referred for prosecution by our attorneys. These attorneys then prosecute the offenses by means of administrative, civil, or criminal state and federal court prosecutions. They serve as special assistant attorneys general while prosecuting in state court.

In order to accommodate our office in this legislation, it is further proposed that amendments be made to K.S.A. 60-4117 that would create a securities fraud prosecution revolving fund for our office for investigation and prosecution and provide for the remainder of the forfeiture funds to be distributed to victims of securities violations with the securities enforcement restitution fund. The addition is restrictive in that they would enable this office to prosecute forfeiture cases that involve only securities violations. This amendment has been attached to this written testimony for your review. Attorney General Derek Schmidt and Johnson County District Attorney Steve Howe are supportive of these proposed amendments.

Adoption of these amendments would give the agency an additional legal remedy to combat securities fraud in our communities and enable it to better retrieve ill-gotten gains from the perpetrators, similar to that in the other financial crimes that are proposed today. This office has subpoena authority of business records. We routinely subpoena bank records and are able to

track the flow of funds into a target's account, thereby proving use of proceeds. The attached photo is a luxury home built with investor money. The defendant, Scott Kaye, was prosecuted by this office in Sedgwick County District Court and sent to prison for convictions of securities fraud. The restitution ordered was \$1.67 million. With forfeiture authority this home, worth several hundred thousand dollars, may have been sold and the proceeds used to repay Kaye's victims. Restitution to victims of securities crimes would be our priority in utilizing forfeiture authority.

I will be glad to answer any questions and thank you for your consideration.

Attachments: 1. Proposed Amendments to SB 74; and  
2. Photo of Scott Kaye's home in Wichita

**Proposed Amendments to SB 74  
Requested by the Office of the Securities Commissioner**

AN ACT concerning civil procedure; relating to covered offenses and conduct giving rise to forfeiture; amending K.S.A. 2010 Supp. 60-4104, **K.S.A. 2010 Supp. 60-4117**, and repealing the existing ~~section~~ **sections**.

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

Section 1. K.S.A. 2010 Supp. 60-4104 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 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto;
- (c) ~~theft which is classified as a felony violation pursuant to K.S.A. 21-3701, section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in which the property taken was livestock;~~
- (d) ~~unlawful criminal discharge of a firearm, K.S.A. 21-4219 as defined in subsections (a)(1) and (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~
- (e) violations of K.S.A. 2010 Supp. 21-36a16, and amendments thereto;
- (f) ~~gambling, K.S.A. 21-4303 section 215 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and commercial gambling, K.S.A. 21-4304 as defined in subsection (a)(1) of section 217 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~
- (g) ~~counterfeiting, K.S.A. 21-3763 section 111 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~
- (h) ~~violations of K.S.A. 21-4019 section 178 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~
- (i) ~~medicaid fraud, K.S.A. 21-3844 et seq. sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~
- (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) 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) 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, K.S.A. 21-3451~~ *violations of section 58 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(n) ~~unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, K.S.A. 21-4315 as defined in subsections (a) and (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto;

(o) ~~unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, K.S.A. 21-4319 as defined in subsections (a) and (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto;

(p) ~~prostitution, K.S.A. 21-3512 section 229 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, promoting prostitution, ~~K.S.A. 21-3513 section 230 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto, and patronizing a prostitute, ~~K.S.A. 21-3515 section 231 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto; and

(q) ~~human trafficking, K.S.A. 21-3446, and amendments thereto, and aggravated human trafficking, K.S.A. 21-3447 section 61 of chapter 136 of the 2010 Session Laws of Kansas~~, and amendments thereto; ;

(r) ~~electronic solicitation, section 73 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

(s) ~~sexual exploitation of a child, section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~ **and**

**(t) violations of the Kansas uniform securities act, K.S.A. 17-12a101 et. seq.**

**Sec. 2. K.S.A. 2010 Supp. 60-4117 is hereby amended to read as follows: 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 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

(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;

(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 conduct and offense giving rise to forfeiture is pursuant to subsection (t) 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 securities fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys paid into the securities fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the office of the securities commissioner for use by the commissioner in the investigation and prosecution of violations of the Kansas uniform securities act. Expenditures from the securities fraud prosecution revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the securities commissioner or by a person or persons designated by the securities commissioner; or**

**(D) 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 Except as provided in paragraph (d)(5), 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**

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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.

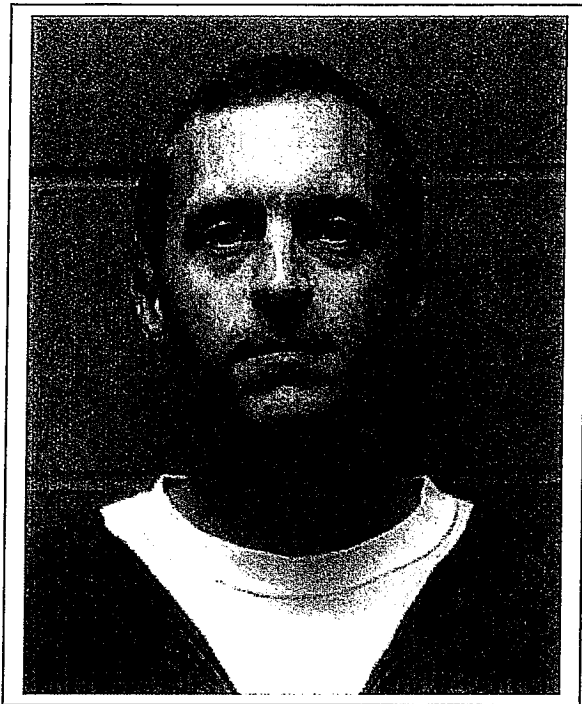
(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered 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.

(5) If the conduct and offense giving rise to forfeiture is pursuant to subsection (t) of K.S.A. 60-4104, and amendments thereto, the entire amount shall be deposited into the securities enforcement restitution fund and shall be used by the securities commissioner to pay restitution to victims as approved by the court.

Sec. 3. K.S.A. 2010 Supp. 60-4104 is and K.S.A. 2010 Supp. 60-4117 are hereby repealed.

Sec. 3 4. This act shall take effect and be in force from and after its publication in the statute book.



## Scott Kaye

- Hedge Fund Ponzi Scheme
- Used proceeds to build house
- Restitution: \$1,676,414.38

