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**Testimony in Support of House Bill 2105
Creating the Kansas comprehensive money laundering act**

**Presented to the House Committee on Judiciary
By Assistant Solicitor General Natalie Chalmers**

February 16, 2015

Chairman Barker and Members of the Committee:

The Office of the Attorney General supports this bill's goal of permitting the prosecution of persons engaging in financial transactions or the conversion of cash into a negotiable instrument while knowing the property involved in the transaction or conversion was unlawfully obtained during the commission of a felony.

However, after discussion with and agreement by the Office the Kansas Securities Commission, this office and the Securities Commission Office are jointly proposing the attached amendment. The amendment fixes any potential identical offense doctrine¹ and specific offense doctrine² concerns with the Kansas racketeer influenced and corrupt organization act³ (commonly referred to as the RICO act), as well the crimes of unlawful acts involving proceeds derived from certain drug crimes⁴ and furtherance of terrorism or illegal issue of weapons of mass destruction.⁵

This amendment is necessary to ensure the deservedly more severe felony provisions as currently provided by law would continue to apply to the specific crimes encompassed by RICO, the crimes targeting proceeds and property derived from drug crimes, and the furtherance of terrorism.

The Attorney General believes this bill, with the attached amendment, will further the goal of ending the profitable nature of felonies in this state.

Thank you for your consideration. I will stand for questions.

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¹ *State v. Snellings*, 294 Kan. 149, 151, 273 P.3d 739 (2012) (discussing the identical offenses sentencing doctrine).

² *State v. Williams*, 299 Kan. ___, 329 P.3d 400, 414 (2014) (discussing the specific offense doctrine).

³ K.S.A. 2014 Supp. 21-6327 et. seq.

⁴ K.S.A. 2014 Supp. 21-5716.

⁵ K.S.A. 2014 Supp. 21-5422.

HOUSE BILL No. 2105

By Committee on Corrections and Juvenile Justice

1-23

1 AN ACT concerning money laundering; enacting the Kansas
2 comprehensive money laundering act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 3, and amendments thereto, shall be
6 known and may be cited as the Kansas comprehensive money laundering
7 act.

8 (b) As used in the Kansas comprehensive money laundering act:

9 (1) "Conduct" or "conducts" includes, but is not limited to, initiating,
10 concluding, participating in or assisting in a financial transaction;

11 (2) "financial transaction" means any purchase, sale, trade, loan,
12 pledge, investment, gift, transfer, transmission, transportation, delivery,
13 deposit, withdrawal, payment, transfer between accounts, exchange of
14 currency, extension of credit, purchase or sale of monetary instruments,
15 use of a safe-deposit box or any other acquisition or disposition of
16 monetary instruments by any means including the movement of funds by
17 wire or other electronic means, which is knowingly designed in whole or
18 in part to conceal or disguise the nature, location, source, ownership or
19 control of the property involved in the transaction;

20 (3) "monetary instrument" means:

21 (A) Coin or currency of the United States or of any other country,
22 travelers' checks, personal checks, bank checks, cashier's checks, credit
23 cards, debit cards and money orders; and

24 (B) securities or other negotiable instruments in bearer form or
25 otherwise;

26 (4) "person" includes an individual, trust, partnership, association,
27 corporation, firm, joint venture or other business entity;

28 (5) "proceeds" means property acquired or derived, directly or
29 indirectly, from, produced through, realized through or caused by an act or
30 omission and includes property, real or personal, of any kind; and

31 (6) "property" means anything of value and includes any interest
32 therein, including any benefit, privilege, claim or right with respect to
33 anything of value, whether real or personal, tangible or intangible.

34 Sec. 2. (a) It shall be unlawful for any person to knowingly conduct a
35 financial transaction where the person knows the property involved in the
36 transaction represents the proceeds of an activity which is punishable as a

Insert new paragraph: "(2) 'felony' means any felony under the laws of the State of Kansas, another state or territory of the United States, the District of Columbia or the United States, but does not include K.S.A. 21-5421 or 21-5422, and amendments thereto, or K.S.A. 21-5701 through 21-5717, and amendments thereto."

Strike

1 felony under the laws of the state of Kansas, another state or territory of
2 the United States, the District of Columbia or the United States. A
3 violation of this section shall be a severity level 5, nonperson felony.

4 (b) Any person who, for compensation, converts cash into negotiable
5 instruments or electronic funds for another, knowing the cash is proceeds
6 of some form of activity that is a felony under the laws of the state of
7 Kansas, another state or territory of the United States, the District of
8 Columbia or the United States shall be guilty of:

Strike

9 (1) A class A nonperson misdemeanor except as provided in
10 subsection (b)(2); and

11 (2) a severity level 6, nonperson felony upon a second or subsequent
12 conviction.

13 (c) An employee of a depository institution, as defined in K.S.A. 9-
14 701(w), and amendments thereto, shall not be prosecuted pursuant to the
15 Kansas comprehensive money laundering act for participating in a good
16 faith transaction in the depository institution's normal course of business,
17 so long as the property involved in the transaction is the proceeds of an
18 activity that is legal in the state where it occurs.

19 Sec. 3. Any person holding a license or registration to operate any
20 business as required by state or local law shall forfeit such license or
21 registration upon conviction of a violation of the Kansas comprehensive
22 money laundering act. Upon conviction, the prosecuting agency shall
23 notify any appropriate agency of the forfeiture.

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

Insert New Section 4 (See attached)

Insert Section 4: 21-6328. Same; definitions. As used in the Kansas racketeer influenced and corrupt organization act:

(a) "Beneficial interest" means:

(1) The interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(2) the interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stock holder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(b) "Covered person" means any person who:

(1) is a criminal street gang member or criminal street gang associate, as defined in K.S.A. 2014 Supp. 21-6313, and amendments thereto;

(2) has engaged in or is engaging in any conduct prohibited by K.S.A. 2014 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; or

(3) has engaged in or is engaging in any conduct prohibited by K.S.A. 2014 Supp. 21-5703, and amendments thereto, unlawful manufacturing of controlled substances, or K.S.A. 2014 Supp. 21-5705, and amendments thereto, unlawful cultivation or distribution of controlled substances.

(c) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(d) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in K.S.A. 2014 Supp. 21-6313, and amendments thereto, constitutes an enterprise.

(e) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity.

(f) "Racketeering activity" means to commit, attempt to commit, conspire to commit or to solicit, coerce or intimidate another person to commit:

(1) Any felony or misdemeanor violation of: The felony provisions of K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas money transmitter act; article 12a of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, Kansas uniform securities act; K.S.A. 2014 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 2014 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 2014 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 2014 Supp. 21-5408, and amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 2014 Supp. 21-5412, and amendments thereto; K.S.A. 2014 Supp. 21-5413, and amendments thereto; K.S.A. 2014 Supp. 21-5414, and amendments thereto, domestic battery; K.S.A. 2014 Supp. 21-5415, and amendments thereto, criminal threat or aggravated criminal threat; K.S.A. 2014 Supp. 21-5420, and amendments thereto, robbery or aggravated robbery; K.S.A. 2014 Supp. 21-5421, and amendments thereto, terrorism; K.S.A. 2014 Supp. 21-5422, and amendments thereto, illegal use of weapons of mass destruction; K.S.A. 2014 Supp. 21-5423, and amendments thereto; K.S.A. 2014 Supp. 21-5426, and

amendments thereto, human trafficking or aggravated human trafficking; K.S.A. 2014 Supp. 21-5428, and amendments thereto, blackmail; K.S.A. 2014 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 2014 Supp. 21-5601, and amendments thereto, endangering a child or aggravated endangering a child; K.S.A. 2014 Supp. 21-5602, and amendments thereto, abuse of a child; K.S.A. 2014 Supp. 21-5603, and amendments thereto, contributing to a child's misconduct or deprivation; subsection (b) of K.S.A. 2014 Supp. 21-5607, and amendments thereto, furnishing alcoholic beverages to a minor for illicit purposes; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, crimes involving controlled substances; K.S.A. 2014 Supp. 21-5801, and amendments thereto, theft; K.S.A. 2014 Supp. 21-5803, and amendments thereto, criminal deprivation of property; K.S.A. 2014 Supp. 21-5805, and amendments thereto; K.S.A. 2014 Supp. 21-5807, and amendments thereto, burglary or aggravated burglary; K.S.A. 2014 Supp. 21-5812, and amendments thereto, arson or aggravated arson; K.S.A. 2014 Supp. 21-5813, and amendments thereto, criminal damage to property; K.S.A. 2014 Supp. 21-5814, and amendments thereto, criminal use of an explosive; K.S.A. 2014 Supp. 21-5818, and amendments thereto, tampering with a pipeline; K.S.A. 2014 Supp. 21-5821, and amendments thereto, giving a worthless check; K.S.A. 2014 Supp. 21-5823, and amendments thereto, forgery; K.S.A. 2014 Supp. 21-5824, and amendments thereto, making false information; K.S.A. 2014 Supp. 21-5825, and amendments thereto, counterfeiting; K.S.A. 2014 Supp. 21-5826, and amendments thereto, destroying written instrument; K.S.A. 2014 Supp. 21-5828, and amendments thereto, criminal use of a financial card; K.S.A. 2014 Supp. 21-5838, and amendments thereto, conducting a pyramid promotional scheme; K.S.A. 2014 Supp. 21-5839, and amendments thereto; K.S.A. 2014 Supp. 21-5903, and amendments thereto, perjury; K.S.A. 2014 Supp. 21-5904, and amendments thereto, interference with law enforcement; K.S.A. 2014 Supp. 21-5905, and amendments thereto, interference with the judicial process; K.S.A. 2014 Supp. 21-5909, and amendments thereto, intimidation of a witness or victim or aggravated intimidation of a witness or victim; K.S.A. 2014 Supp. 21-5912, and amendments thereto, aiding escape; K.S.A. 2014 Supp. 21-5913, and amendments thereto, obstructing apprehension or prosecution; K.S.A. 2014 Supp. 21-5918, and amendments thereto; K.S.A. 2014 Supp. 21-6001, and amendments thereto, bribery; K.S.A. 2014 Supp. 21-6002, and amendments thereto, official misconduct; K.S.A. 2014 Supp. 21-6301, and amendments thereto, criminal use of weapons; K.S.A. 2014 Supp. 21-6302, and amendments thereto, criminal carrying of a weapon; K.S.A. 2014 Supp. 21-6303, and amendments thereto, criminal distribution of firearms to a felon; K.S.A. 2014 Supp. 21-6304, and amendments thereto, criminal possession of a firearm by a convicted felon; K.S.A. 2014 Supp. 21-6305, and amendments thereto, aggravated weapons violation by a convicted felon; K.S.A. 2014 Supp. 21-6306, and amendments thereto, defacing identification marks of a firearm; K.S.A. 2014 Supp. 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A. 2014 Supp. 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 2014 Supp. 21-6312, and amendments thereto; K.S.A. 2014 Supp. 21-6313 through 21-6316, and amendments thereto; K.S.A. 2014 Supp. 21-6401, and amendments thereto; K.S.A. 2014 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2014 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2014 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2014 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2014 Supp. 21-6408, and amendments thereto; K.S.A. 2014 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; subsections (a) or (b) of K.S.A. 2014 Supp. 21-6414, and amendments thereto, unlawful conduct of dog fighting or unlawful possession of dog fighting paraphernalia; subsections (a) or (b) of K.S.A. 2014 Supp. 21-6417, and amendments thereto, unlawful conduct of cockfighting or unlawful possession of cockfighting paraphernalia; K.S.A. 2014 Supp. 21-6419, and amendments thereto, selling sexual relations; K.S.A. 2014 Supp. 21-6420, and amendments thereto, promoting the sale of sexual relations; K.S.A. 2014 Supp. 21-6422, and amendments thereto, commercial sexual exploitation of a child; K.S.A. 2014 Supp. 21-6501, and amendments thereto, extortion; K.S.A. 2014 Supp. 21-6502, and amendments thereto, debt

Comment [RK1]: Insert: "Section 1 through 3, and amendments thereto, The Kansas Comprehensive Money Laundering Act;"

adjusting; K.S.A. 2014 Supp. 21-6504, and amendments thereto, equity skimming; K.S.A. 2014 Supp. 21-6506, and amendments thereto, commercial bribery; K.S.A. 2014 Supp. 21-6507, and amendments thereto, sports bribery; K.S.A. 2014 Supp. 21-6508, and amendments thereto, tampering with a sports contest; K.S.A. 39-720, and amendments thereto, social welfare service fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto, workers' compensation act; K.S.A. 65-1657, and amendments thereto, nonresident pharmacy registration; K.S.A. 65-3441, and amendments thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco products act; or (2) any conduct defined as "racketeering activity" under 18 U.S.C. § 1961(1).

(g) "Real property" means any real property or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(h) "Trustee" means:

(1) Any person acting as trustee pursuant to a trust in which the trustee holds legal or record title to real property;

(2) any person who holds legal or record title to real property in which any other person has a beneficial interest; or

(3) any successor trustee or trustees to any or all of the foregoing persons.

The term "trustee" does not include any person appointed or acting as a personal representative as defined in K.S.A. 59-102, and amendments thereto, or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(i) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(1) In violation of any of the following provisions of law: Article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; K.S.A. 2014 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2014 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2014 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2014 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2014 Supp. 21-6408, and amendments thereto; or K.S.A. 2014 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; or

(2) in gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.