

HOUSE BILL No. 2638

By Committee on Corrections and Juvenile Justice

2-8

1 AN ACT concerning asset seizure and forfeiture; relating to notification;
2 disposition of property; proceeds of sale; amending K.S.A. 65-7014
3 and K.S.A. 2015 Supp. 60-4107 and 60-4117 and repealing the existing
4 sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 60-4107 is hereby amended to read as
8 follows: 60-4107. (a) Property may be seized for forfeiture by a law
9 enforcement officer upon process issued by the district court. The court
10 may issue a seizure warrant on an affidavit under oath demonstrating that
11 probable cause exists for the property's forfeiture or that the property has
12 been the subject of a previous final judgment of forfeiture in the courts of
13 any state or of the United States. The court may order that the property be
14 seized on such terms and conditions as are reasonable in the discretion of
15 the court. The order may be made on or in connection with a search
16 warrant. All real property is to be seized constructively or pursuant to a
17 pre-seizure adversarial judicial determination of probable cause, except that
18 this determination may be done ex parte when the attorney for the state has
19 demonstrated exigent circumstances to the court.

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

23 (c) Property may be seized constructively by:

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

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

28 (3) Filing or recording in the public records relating to that type of
29 property notice of seizure for forfeiture, notice of pending forfeiture, a
30 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
31 act are not subject to a filing fee or other charge, except that court costs
32 may be assessed and, if assessed, shall include the amount of the docket
33 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
34 additional court costs accrued in the action.

35 (d) The seizing agency shall make reasonable effort to provide notice
36 of the seizure to the person from whose possession or control the property

1 was seized and any interest holder of record within 30 days of seizing the
2 property. If no person is in possession or control, the seizing agency may
3 attach the notice to the property or to the place of the property's seizure or
4 may make a reasonable effort to deliver the notice to the owner of the
5 property. The notice shall contain a general description of the property
6 seized, *the condition of the property seized*, the date and place of seizure,
7 the name of the seizing agency and the address and telephone number of
8 the seizing officer or other person or agency from whom information about
9 the seizure may be obtained.

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

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

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

25 (h) Upon receipt of a written request for forfeiture from a local law
26 enforcement agency, the county or district attorney shall have 14 days to
27 accept the request. Should such county or district attorney decline such
28 request, or fail to answer, the seizing agency may:

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

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

33 (i) Upon receipt of a written request for forfeiture from a state law
34 enforcement agency, the county or district attorney shall have 14 days to
35 accept the request. Should such county or district attorney decline such
36 request, or fail to answer, the seizing agency may engage an assistant
37 attorney general or other attorney approved by the attorney general's office
38 to represent the agency in the forfeiture proceeding.

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

42 (k) Nothing in this act shall prevent a seizing agency from requesting
43 federal adoption of a seizure. It shall not be necessary to obtain any order

1 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
2 property to a federal agency should the county or district attorney approve
3 of such transfer.

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

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

16 Sec. 2. K.S.A. 2015 Supp. 60-4117 is hereby amended to read as
17 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
18 thereto: (a) *When a person from whose possession or control property was*
19 *seized under this act has not been convicted of the conduct or offense*
20 *giving rise to forfeiture under this act, the item seized shall be returned to*
21 *such person in the same condition the item was in when seized according*
22 *to the notice given pursuant to K.S.A. 2015 Supp. 60-4107, and*
23 *amendments thereto.*

24 (b) ~~When property is forfeited under this act the person from whose~~
25 ~~possession or control the property was seized has been convicted of the~~
26 ~~conduct or offense giving rise to forfeiture under this act and the property~~
27 ~~is forfeited under this act,~~ the law enforcement agency may:

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

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

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

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

1 shall be sufficient to meet the requirements of this subsection.

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

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

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

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

16 ~~(e)~~ (d) The proceeds of any sale shall be ~~distributed in the following~~
17 ~~order of priority:~~

18 ~~(1) For satisfaction of any court preserved security interest or lien, or~~
19 ~~in the case of a violation, as defined by subsection (h) [(i)] of K.S.A. 60-~~
20 ~~4104, and amendments thereto, the proceeds shall be remitted to the state~~
21 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
22 ~~amendments thereto. Upon receipt of such remittance, the state treasurer~~
23 ~~shall deposit the entire amount into the state treasury to the credit of the~~
24 ~~medicaid fraud reimbursement fund;~~

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

29 ~~(3) reasonable attorney fees:~~

30 ~~(A) If the plaintiff's attorney is a county or district attorney, an~~
31 ~~assistant, or another governmental agency's attorney, fees shall not exceed~~
32 ~~15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in~~
33 ~~an uncontested forfeiture nor 20% of the total proceeds, less the amounts~~
34 ~~of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be~~
35 ~~deposited in the county or city treasury and credited to the special~~
36 ~~prosecutor's trust fund. Moneys in such fund shall not be considered a~~
37 ~~source of revenue to meet normal operating expenditures, including salary~~
38 ~~enhancement. Such fund shall be expended by the county or district~~
39 ~~attorney, or other governmental agency's attorney through the normal~~
40 ~~county or city appropriation system and shall be used for such additional~~
41 ~~law enforcement and prosecutorial purposes as the county or district~~
42 ~~attorney or other governmental agency's attorney deems appropriate,~~
43 ~~including educational purposes. All moneys derived from past or pending~~

1 forfeitures shall be expended pursuant to this act. The board of county
2 commissioners shall provide adequate funding to the county or district
3 attorney's office to enable such office to enforce this act. Neither future
4 forfeitures nor the proceeds therefrom shall be used in planning or
5 adopting a county or district attorney's budget;

6 (B) if the plaintiff's attorney is the attorney general and the conduct
7 and offense giving rise to forfeiture is pursuant to subsection (h) [(i)] of
8 K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the
9 total proceeds, less the amounts of subsection (c)(1) and (2) in an
10 uncontested forfeiture nor 20% of the total proceeds, less the amounts of
11 subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be
12 remitted to the state treasurer in accordance with the provisions of K.S.A.
13 75-4215, and amendments thereto. Upon receipt of each such remittance,
14 the state treasurer shall deposit the entire amount in the state treasury to
15 the credit of the medicaid fraud prosecution revolving fund. Moneys paid
16 into the medicaid fraud prosecution revolving fund pursuant to this
17 subsection shall be appropriated to the attorney general for use by the
18 attorney general in the investigation and prosecution of medicaid fraud and
19 abuse; or

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

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

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

26 (1) If the law enforcement agency is a state agency, the entire amount
27 shall be deposited in the state treasury and credited to such agency's state
28 forfeiture fund. There is hereby established in the state treasury the
29 following state funds: Kansas bureau of investigation state forfeiture fund,
30 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
31 highway patrol state forfeiture fund, Kansas department of corrections
32 state forfeiture fund and Kansas national guard counter drug state
33 forfeiture fund. Expenditures from the Kansas bureau of investigation state
34 forfeiture fund shall be made upon warrants of the director of accounts and
35 reports issued pursuant to vouchers approved by the attorney general or by
36 a person or persons designated by the attorney general. Expenditures from
37 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
38 made upon warrants of the director of accounts and reports issued pursuant
39 to vouchers approved by the attorney general or by a person or persons
40 designated by the attorney general. Expenditures from the Kansas highway
41 patrol state forfeiture fund shall be made upon warrants of the director of
42 accounts and reports issued pursuant to vouchers approved by the
43 superintendent of the highway patrol or by a person or persons designated

1 by the superintendent. Expenditures from the Kansas department of
2 corrections state forfeiture fund shall be made upon warrants of the
3 director of accounts and reports issued pursuant to vouchers approved by
4 the secretary of the department of corrections or by a person or persons
5 designated by the secretary. Expenditures from the Kansas national guard
6 counter drug state forfeiture fund shall be made upon warrants of the
7 director of accounts and reports issued pursuant to vouchers approved by
8 the adjutant general of Kansas or by a person or persons designated by the
9 adjutant general. Each agency shall compile and submit a forfeiture fund
10 report to the legislature on or before February 1 of each year. Such report
11 shall include, but not be limited to: (A) The fund balance on December 1;
12 (B) the deposits and expenditures for the previous 12-month period ending
13 December 1. Upon the effective date of this act, the director of accounts
14 and reports is directed to transfer each agency's balance in the state special
15 asset forfeiture fund to the agency's new, state forfeiture fund. All
16 liabilities of the state special asset forfeiture fund existing prior to such
17 date are hereby imposed on the Kansas bureau of investigation state
18 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
19 department of corrections state forfeiture fund. The state special asset
20 forfeiture fund is hereby abolished.

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

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

40 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture
41 fund shall defray costs of the attorney general in connection with the
42 duties of investigating and prosecuting medicaid fraud and abuse. *remitted*
43 *to the state treasurer in accordance with the provisions of K.S.A. 75-4215,*

1 *and amendments thereto. Upon receipt of each such remittance, the state*
2 *treasurer shall deposit the entire amount in the state treasury to the credit*
3 *of the state general fund.*

4 Sec. 3. K.S.A. 65-7014 is hereby amended to read as follows: 65-
5 7014. (a) All regulated chemicals which have been or are intended to be
6 manufactured, provided, sold, furnished, transferred, delivered, or
7 possessed in violation of this act shall be deemed contraband, and may be
8 seized and summarily forfeited to the state.

9 (b) A violation of this act shall constitute conduct giving rise to
10 forfeiture pursuant to the Kansas standard asset forfeiture act K.S.A. 60-
11 4101 et seq., and amendments thereto. When property is forfeited pursuant
12 to a violation of the Kansas chemical control act, the department shall sell
13 all property not destroyed pursuant to ~~subsection (a)(2) of~~ K.S.A. 60-
14 4117(b)(2), and amendments thereto, at public sale to the highest bidder
15 for cash without appraisal. The proceeds of any sale shall be credited to the
16 cleanup account which is hereby created in the chemical control fund.
17 Moneys in such account can only be expended directly or through
18 contracts for the costs of drug manufacturing site clean ups.

19 Sec. 4. K.S.A. 65-7014 and K.S.A. 2015 Supp. 60-4107 and 60-4117
20 are hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after its
22 publication in the statute book.