

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2459

By Committee on Judiciary

1-11

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 establishing the Kansas asset seizure and forfeiture repository; relating
3 to reporting of seizures for forfeiture; forfeiture fund reports; open
4 records; seizure and forfeiture procedure; amending K.S.A. 60-4101,
5 60-4106, 60-4110 and 60-4114 and K.S.A. 2017 Supp. 45-220, 60-
6 4107, 60-4109, 60-4111, 60-4112, 60-4113 and 60-4117 and repealing
7 the existing sections.
8

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

10 New Section 1. (a) On or before July 1, 2019, the Kansas bureau of
11 investigation shall establish the Kansas asset seizure and forfeiture
12 repository. The repository shall gather information concerning each seizure
13 for forfeiture made by a seizing agency pursuant to the Kansas standard
14 asset seizure and forfeiture act including, but not limited to, the following:

15 (1) The name of the seizing agency or the name of the lead agency if
16 part of a multi-jurisdictional task force;

17 (2) the county where the seizure occurred;

18 (3) the date and time the seizure occurred;

19 (4) any applicable agency or district court case numbers for the
20 seizure;

21 (5) a description of the initiating law enforcement activity leading to
22 the seizure;

23 (6) a description of the specific location where the seizure occurred;

24 (7) the conduct or offense giving rise to the forfeiture;

25 (8) a description of the type of property seized and the estimated
26 value;

27 (9) a description of the type of contraband seized and the estimated
28 value;

29 (10) whether criminal charges were filed for an offense related to the
30 forfeiture and, if so, court and case number information for the criminal
31 charges;

32 (11) a description of the final disposition of the forfeiture action,
33 including a description of the disposition of any claim or exemption
34 asserted under this act;

35 (12) whether the forfeiture was transferred to the federal government
36 for disposition;

1 (13) the total cost of the forfeiture action, including attorney fees; and

2 (14) the total amount of proceeds from the forfeiture action,
3 specifying the amount received by the seizing agency and the amount
4 received by any other agency or person.

5 (b) On and after July 1, 2019, the Kansas bureau of investigation
6 shall maintain the repository and an associated public website. On or
7 before July 1, 2019, the Kansas bureau of investigation shall promulgate
8 rules and regulations to implement this section.

9 (c) On and after July 1, 2019, each seizing agency shall report
10 information concerning each seizure for forfeiture to the Kansas asset
11 seizure and forfeiture repository as required by this section and the rules
12 and regulations promulgated pursuant to this section. The prosecuting
13 attorney shall submit information concerning each forfeiture action to the
14 seizing agency within 30 days after the final disposition of the forfeiture.
15 The seizing agency shall submit the required information to the repository
16 within 60 days after the final disposition of the forfeiture.

17 (d) On or before February 1, 2020, and annually on or before
18 February 1 thereafter, each law enforcement agency shall compile and
19 submit a forfeiture fund report to the Kansas asset seizure and forfeiture
20 repository as required by this section and the rules and regulations
21 promulgated pursuant to this section.

22 (1) If the law enforcement agency is a state agency, the report shall
23 include, but not be limited to:

24 (A) The agency's state forfeiture fund balance on January 1 and
25 December 31 of the preceding calendar year; and

26 (B) the total amount of the deposits and a listing, by category, of
27 expenditures from January 1 through December 31 of the preceding
28 calendar year.

29 (2) If the law enforcement agency is a city or county agency, the
30 report shall include, but not be limited to:

31 (A) The agency's special law enforcement trust fund balance on
32 January 1 and December 31 of the preceding calendar year; and

33 (B) the total amount of the deposits and a listing, by category, of
34 expenditures from January 1 through December 31 of the preceding
35 calendar year.

36 (3) The report shall separate and account for:

37 (A) Deposits and expenditures from proceeds from forfeiture credited
38 to the fund pursuant to K.S.A. 60-4117, and amendments thereto;

39 (B) deposits and expenditures from proceeds from forfeiture actions
40 under federal law; and

41 (C) amounts held by the agency related to pending forfeiture actions
42 under the Kansas standard asset seizure and forfeiture act.

43 (e) **On March 1, 2020, and annually on March 1 thereafter, the**

1 **Kansas bureau of investigation shall determine whether each agency's**
2 **financial report matches the agency's seizing report. If the Kansas**
3 **bureau of investigation determines that an agency's financial report**
4 **does not substantially match that agency's seizing report or the agency**
5 **has not submitted a financial report, the Kansas bureau of**
6 **investigation shall notify such agency of the difference in reports. Such**
7 **agency shall correct the reporting error within 30 days. If the**
8 **reporting error is not corrected within 30 days, the Kansas bureau of**
9 **investigation shall send such law enforcement agency, and the county**
10 **or district attorney for the county in which such law enforcement**
11 **agency is located, a certified letter notifying such agency that it is out**
12 **of compliance. Upon receipt of such letter, no forfeiture proceedings**
13 **shall be filed on property seized by such law enforcement agency.**
14 **When such law enforcement agency has achieved compliance with the**
15 **reporting requirements, the bureau shall send such law enforcement**
16 **agency, and the county or district attorney for the county in which**
17 **such law enforcement agency is located, a certified letter notifying**
18 **such agency that it is in compliance and forfeiture proceeding filings**
19 **may continue pursuant to this act. Annually, on or before April 15, the**
20 **Kansas bureau of investigation shall report to the legislature any law**
21 **enforcement agencies in the state that have failed to come into**
22 **compliance with the reporting requirements in subsection (d).**

23 Sec. 2. K.S.A. 2017 Supp. 45-220 is hereby amended to read as
24 follows: 45-220. (a) Each public agency shall adopt procedures to be
25 followed in requesting access to and obtaining copies of public records,
26 which procedures shall provide full access to public records, protect public
27 records from damage and disorganization, prevent excessive disruption of
28 the agency's essential functions, provide assistance and information upon
29 request and insure efficient and timely action in response to applications
30 for inspection of public records.

31 (b) A public agency may require a written request for inspection of
32 public records but shall not otherwise require a request to be made in any
33 particular form. Except as otherwise provided by subsection (c), a public
34 agency shall not require that a request contain more information than the
35 requester's name and address and the information necessary to ascertain
36 the records to which the requester desires access and the requester's right
37 of access to the records. A public agency may require proof of identity of
38 any person requesting access to a public record. No request shall be
39 returned, delayed or denied because of any technicality unless it is
40 impossible to determine the records to which the requester desires access.

41 (c) If access to public records of an agency or the purpose for which
42 the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A.
43 2017 Supp. 45-230, and amendments thereto, the agency may require a

1 person requesting the records or information therein to provide written
2 certification that:

3 (1) The requester has a right of access to the records and the basis of
4 that right; or

5 (2) the requester does not intend to, and will not: (A) Use any list of
6 names or addresses contained in or derived from the records or
7 information for the purpose of selling or offering for sale any property or
8 service to any person listed or to any person who resides at any address
9 listed; or (B) sell, give or otherwise make available to any person any list
10 of names or addresses contained in or derived from the records or
11 information for the purpose of allowing that person to sell or offer for sale
12 any property or service to any person listed or to any person who resides at
13 any address listed.

14 (d) A public agency shall establish, for business days when it does not
15 maintain regular office hours, reasonable hours when persons may inspect
16 and obtain copies of the agency's records. The public agency may require
17 that any person desiring to inspect or obtain copies of the agency's records
18 during such hours so notify the agency, but such notice shall not be
19 required to be in writing and shall not be required to be given more than 24
20 hours prior to the hours established for inspection and obtaining copies.

21 (e) Each official custodian of public records shall designate such
22 persons as necessary to carry out the duties of custodian under this act and
23 shall ensure that a custodian is available during regular business hours of
24 the public agency to carry out such duties.

25 (f) Each public agency shall provide, upon request of any person, the
26 following information:

27 (1) The principal office of the agency, its regular office hours and any
28 additional hours established by the agency pursuant to subsection (c).

29 (2) The title and address of the official custodian of the agency's
30 records and of any other custodian who is ordinarily available to act on
31 requests made at the location where the information is displayed.

32 (3) The fees, if any, charged for access to or copies of the agency's
33 records.

34 (4) The procedures to be followed in requesting access to and
35 obtaining copies of the agency's records, including procedures for giving
36 notice of a desire to inspect or obtain copies of records during hours
37 established by the agency pursuant to subsection (c).

38 (g) Except for requests of summary data compiled from information
39 submitted by multiple criminal justice agencies or as otherwise provided
40 by law, requests for records submitted to the central repository or any other
41 repositories supporting the criminal justice information system ~~which that~~
42 are maintained by the Kansas bureau of investigation pursuant to K.S.A.
43 22-4704 and 22-4705, and amendments thereto, shall be directed to the

1 criminal justice agency from which the records originated.

2 ~~(h)~~—As used in this ~~section~~ subsection, the terms "central repository,"
3 "criminal justice agency" and "criminal justice information system" have
4 the same meanings as defined in K.S.A. 22-4701, and amendments thereto.

5 *(h) Except for requests of summary data compiled from information*
6 *submitted by multiple law enforcement agencies or as otherwise provided*
7 *by law, requests for records submitted to the Kansas asset seizure and*
8 *forfeiture repository that are maintained by the Kansas bureau of*
9 *investigation pursuant to section 1, and amendments thereto, shall be*
10 *directed to the law enforcement agency from which the records originated.*

11 Sec. 3. K.S.A. 60-4101 is hereby amended to read as follows: 60-
12 4101. ~~This act~~ *K.S.A. 60-4101 through 60-4126 and section 1, and*
13 *amendments thereto, shall be known and may be cited as the Kansas*
14 *standard asset seizure and forfeiture act.*

15 Sec. 4. K.S.A. 60-4106 is hereby amended to read as follows: 60-
16 4106. (a) All property, including all interests in property, described in
17 K.S.A. 60-4105, *and amendments thereto*, is subject to forfeiture subject to
18 all mortgages, deeds of trust, financing statements or security agreements
19 properly of record prior to the forfeiture held by an interest holder except
20 that property specifically exempted hereunder:

21 (1) No real property or conveyance, or an interest therein, may be
22 forfeited under this act unless the offense or conduct giving rise to
23 forfeiture constitutes a felony.

24 (2) No conveyance used by any person as a common carrier in the
25 transaction of business as a common carrier is subject to forfeiture under
26 this act unless ~~it appears that~~ the owner or other person in charge of the
27 conveyance is a consenting party or privy to a violation of this act.

28 (3) No property is subject to forfeiture under this act if the owner or
29 interest holder acquired the property before or during the conduct giving
30 rise to the property's forfeiture, and such owner or interest holder:

31 (A) Did not know and could not have reasonably known of the act or
32 omission or that it was likely to occur; or

33 (B) acted reasonably to prevent the conduct giving rise to forfeiture.

34 (4) No property is subject to forfeiture if the owner or interest holder
35 acquired the property after the conduct giving rise to the property's
36 forfeiture, including acquisition of proceeds of conduct giving rise to
37 forfeiture, and ~~the~~ *such* owner or interest holder:

38 (A) Acquired the property in good faith, for value; and

39 (B) was not knowingly taking part in an illegal transaction.

40 (5) (A) An interest in property acquired in good faith by an attorney
41 as reasonable payment or to secure payment for legal services in a criminal
42 matter relating to violations of this act or for the reimbursement of
43 reasonable expenses related to the legal services is exempt from forfeiture

1 unless before the interest was acquired the attorney knew of a judicial
2 determination of probable cause that the property is subject to forfeiture.

3 (B) The state bears the burden of proving that an exemption claimed
4 under this section is not applicable. Evidence made available by the
5 compelled disclosure of confidential communications between an attorney
6 and a client other than nonprivileged information relating to attorney fees,
7 is not admissible to satisfy the state's burden of proof.

8 (b) Notwithstanding subsection (a), property is not exempt from
9 forfeiture, even though the owner or interest holder lacked knowledge or
10 reason to know that the conduct giving rise to property's forfeiture had
11 occurred or was likely to occur, if the:

12 (1) Person whose conduct gave rise to the property's forfeiture had
13 authority to convey the property of the person claiming the exemption to a
14 good faith purchaser for value at the time of the conduct;

15 (2) owner or interest holder is criminally responsible for the conduct
16 giving rise to the property's forfeiture, whether or not there is a prosecution
17 or conviction; or

18 (3) owner or interest holder acquired the property with notice of the
19 property's actual or constructive seizure for forfeiture under this act, or
20 with reason to believe that the property was subject to forfeiture under this
21 act.

22 (c) Prior to final judgment in a judicial forfeiture proceeding, a court
23 shall limit the scope of a proposed forfeiture to the extent the court finds
24 the effect of the forfeiture is grossly disproportionate to the nature and
25 severity of the owner's conduct including, but not limited to, a
26 consideration of any of the following factors:

27 (1) The gain received or expected to be received by an owner from
28 conduct that allows forfeiture;

29 (2) the value of the property subject to forfeiture;

30 (3) the extent to which the property actually facilitated the criminal
31 conduct;

32 (4) the nature and extent of the owner's knowledge of the role of
33 others in the conduct that allows forfeiture of the property and efforts of
34 the owner to prevent the conduct; and

35 (5) the totality of the circumstances regarding the investigation.

36 Sec. 5. K.S.A. 2017 Supp. 60-4107 is hereby amended to read as
37 follows: 60-4107. (a) Property may be seized for forfeiture by a law
38 enforcement officer upon process issued by the district court. The court
39 may issue a seizure warrant on an affidavit under oath demonstrating that
40 probable cause exists for the property's forfeiture or that the property has
41 been the subject of a previous final judgment of forfeiture in the courts of
42 any state or of the United States. The court may order that the property be
43 seized on such terms and conditions as are reasonable in the discretion of

1 the court. The order may be made on or in connection with a search
2 warrant. All real property is to be seized constructively or pursuant to a
3 pre-seizure adversarial judicial determination of probable cause, except
4 that this determination may be done ex parte when the attorney for the
5 state has demonstrated exigent circumstances to the court.

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

9 (c) Property may be seized constructively by:

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

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

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

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

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

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

39 (g) When property is seized for forfeiture under this act, the seizing
40 agency shall, within 45 days of such seizure, forward to the county or
41 district attorney in whose jurisdiction the seizure occurred, a written
42 request for forfeiture which shall include a statement of facts and
43 circumstances of the seizure, the estimated value of the property, the

1 owner and lienholder of the property, the amount of any lien, and a
2 summary of the facts relied on for forfeiture.

3 (h) Upon receipt of a written request for forfeiture from a local law
4 enforcement agency, the county or district attorney shall ~~have 14 days to~~
5 ~~accept the request. Should such~~ *accept or decline the request within 14*
6 *days. If the county or district attorney* ~~decline~~ *declines* such request, or ~~fail~~
7 *fails* to answer, the seizing agency may:

8 (1) Request a state law enforcement agency ~~which~~ *that* enforces this
9 act to adopt the forfeiture; or

10 (2) engage an attorney, approved by the county or district attorney, to
11 represent the agency in the forfeiture proceeding, *but in no event shall the*
12 *county or district attorney approve an attorney with whom the county or*
13 *district attorney has a financial interest, either directly or indirectly.*

14 (i) Upon receipt of a written request for forfeiture from a state law
15 enforcement agency, the county or district attorney shall ~~have 14 days to~~
16 ~~accept the request. Should such~~ *accept or decline the request within 14*
17 *days. If the county or district attorney* ~~decline~~ *declines* such request, or ~~fail~~
18 *fails* to answer, the seizing agency may engage an assistant attorney
19 general or other attorney approved by the attorney ~~general's office~~ *general*
20 to represent the agency in the forfeiture proceeding, *but in no event shall*
21 *the attorney general approve an attorney with whom the attorney general*
22 *has a financial interest, either directly or indirectly.*

23 (j) *A county or district attorney or the attorney general shall not*
24 *request or receive any referral fee or personal financial benefit, either*
25 *directly or indirectly, in any proceeding conducted under this act.*

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

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

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

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

3 Sec. 6. K.S.A. 2017 Supp. 60-4109 is hereby amended to read as
4 follows: 60-4109. (a) Forfeiture proceedings shall be commenced by filing
5 a notice of pending forfeiture or a judicial forfeiture action:

6 (1) If the plaintiff's attorney fails to initiate forfeiture proceedings by
7 notice of pending forfeiture within 90 days against property seized for
8 forfeiture or if the seizing agency fails to pursue forfeiture of the property
9 upon which a proper claim has been timely filed by filing a judicial
10 forfeiture proceeding within 90 days after notice of pending forfeiture, the
11 property shall be released on the request of an owner or interest holder to
12 such owner's or interest holder's custody, as custodian for the court,
13 pending further proceedings pursuant to this act. Such custodianship shall
14 not exceed 90 days following the release to the owner or interest holder
15 unless an extension is authorized by the court for good cause shown.

16 (2) If, after notice of pending forfeiture, a claimant files a petition for
17 recognition of exemption pursuant to K.S.A. 60-4110, and amendments
18 thereto, the plaintiff's attorney may delay filing the judicial forfeiture
19 proceeding for a total of 180 days after the notice of pending forfeiture
20 except that if an interest holder timely files a proper petition documenting
21 the complete nature and extent of such holder's interest, including all of the
22 contractual terms and current status, the plaintiff's attorney may delay
23 filing a judicial forfeiture proceeding only if such attorney provides each
24 such petitioner with a written recognition of exemption within 60 days
25 after the effective date of the notice of pending forfeiture, recognizing the
26 interest of such petitioner to the extent of documented outstanding
27 principal plus interest at the contract rate until paid and any attorney fees
28 ordered by a court pursuant to such contract.

29 (3) Whenever notice of pending forfeiture or service of an in rem
30 complaint or notice of a recognition of exemption and statement of
31 nonexempt interests is required under this act, notice or service shall be
32 given in accordance with one of the following:

33 (A) If the owner's or interest holder's name and current address are
34 known, by either personal service by any person qualified to serve process
35 or by any law enforcement officer or by mailing a copy of the notice by
36 certified mail, return receipt requested, to the known address, *pursuant to*
37 *the code of civil procedure*;

38 (B) if the owner's or interest holder's name and address are required
39 by law to be on record with a municipal, county, state or federal agency to
40 perfect an interest in the property, and the owner's or interest holder's
41 current address is not known, by mailing a copy of the notice by certified
42 mail, return receipt requested, to any address of record with any of the
43 described agencies, *pursuant to the code of civil procedure*; or

1 (C) if the owner's or interest holder's address is not known and is not
2 on record as provided in ~~paragraph~~ *subparagraph (B)*, or the owner's or
3 interest holder's interest is not known, *or if service by certified mail was*
4 *attempted pursuant to subparagraph (A) or (B) and was not effective*, by
5 publication in one issue of the official county newspaper, as defined by
6 K.S.A. 64-101, and amendments thereto, in the county in which the
7 seizure occurred.

8 (4) Notice is effective ~~upon personal service, publication or the~~
9 ~~mailing of a written notice, whichever is earlier~~ *pursuant to the code of*
10 *civil procedure*, except that notice of pending forfeiture of real property is
11 not effective until it is recorded. Notice of pending forfeiture shall include
12 a description of the property, the date and place of seizure, the conduct
13 giving rise to forfeiture or the violation of law alleged and a summary of
14 procedures and procedural rights applicable to the forfeiture action. *An*
15 *affidavit describing the essential facts supporting forfeiture shall be*
16 *included with the notice. Copies of judicial council forms for petitioning*
17 *for recognition of an exemption pursuant to K.S.A. 60-4110, and*
18 *amendments thereto, and for making a claim pursuant to K.S.A. 60-4111,*
19 *and amendments thereto, shall be provided with the notice.*

20 (b) The plaintiff's attorney, without a filing fee, may file a lien for the
21 forfeiture of property upon the initiation of any civil or criminal
22 proceeding relating to conduct giving rise to forfeiture under this act or
23 upon seizure for forfeiture. Court costs may be assessed and, if assessed,
24 shall include the amount of the docket fee prescribed by K.S.A. 60-2001,
25 and amendments thereto, and any additional court costs accrued in the
26 action. A plaintiff's attorney may also file a forfeiture lien in this state in
27 connection with a proceeding or seizure for forfeiture in any other state
28 under a state or federal statute substantially similar to the relevant
29 provisions of this act. The filing constitutes notice to any person claiming
30 an interest in the seized property or in property owned by the named
31 person.

32 (1) The lien notice shall set forth the following:

33 (A) The name of the person and, in the discretion of the lienor, any
34 alias, or the name of any corporation, partnership, trust or other entity,
35 including nominees, that are owned entirely or in part or controlled by the
36 person; and

37 (B) the description of the seized property, the criminal or civil
38 proceeding that has been brought relating to conduct giving rise to
39 forfeiture under this act, the amount claimed by the lienor, the name of the
40 district court where the proceeding or action has been brought, and the
41 case number of the proceeding or action if known at the time of filing.

42 (2) A lien filed pursuant to this subsection applies to the described
43 seized property or to one named person, any aliases, fictitious names, or

1 other names, including the names of any corporation, partnership, trust, or
2 other entity, owned entirely or in part, or controlled by the named person,
3 and any interest in real property owned or controlled by the named person.
4 A separate forfeiture lien shall be filed for each named person.

5 (3) The notice of lien creates, upon filing, a lien in favor of the lienor
6 as it relates to the seized property or the named person or related entities.
7 The lien secures the amount of potential liability for civil judgment, and if
8 applicable, the fair market value of seized property relating to all
9 proceedings under this act enforcing the lien. The notice of forfeiture lien
10 referred to in this subsection shall be filed in accordance with the
11 provisions of the laws of this state relating to the type of property that is
12 subject to the lien. The validity and priority of the forfeiture lien shall be
13 determined in accordance with applicable law pertaining to liens. The
14 lienor may amend or release, in whole or in part, a lien filed under this
15 subsection at any time by filing, without a filing fee, an amended lien in
16 accordance with this subsection which identifies the lien amended. The
17 lienor, as soon as practical after filing the lien, shall furnish to any person
18 named in the lien a notice of the filing of the lien. Failure to furnish notice
19 under this subsection shall not invalidate or otherwise affect the lien.

20 (4) Upon entry of judgment in the seizing agency's favor, the seizing
21 agency may proceed to execute on the lien as provided by law.

22 (5) A trustee, constructive or otherwise, who has notice that a notice
23 of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture
24 proceeding has been filed against the property or against any person or
25 entity for whom the person holds title or appears as record owner, shall
26 furnish within 14 days, to the seizing agency or the plaintiff's attorney all
27 of the following information, unless all of the information is of record in
28 the public records giving notice of liens on that type of property:

29 (A) The name and address of each person or entity for whom the
30 property is held;

31 (B) the description of all other property whose legal title is held for
32 the benefit of the named person; and

33 (C) a copy of the applicable trust agreement or other instrument, if
34 any, under which the trustee or other person holds legal title or appears as
35 record owner of the property.

36 (6) A trustee with notice who knowingly fails to comply with the
37 provisions of this subsection shall be guilty of a class B nonperson
38 misdemeanor.

39 (7) A trustee with notice who fails to comply with paragraph (5) is
40 subject to a civil penalty of \$100 for each day of noncompliance. The court
41 shall enter judgment ordering payment of \$100 for each day of
42 noncompliance from the effective date of the notice until the required
43 information is furnished or the seizing agency executes the seizing

1 agency's judgment lien under this section.

2 (8) To the extent permitted by the constitutions of the United States
3 and the state of Kansas, the duty to comply with paragraph (5) shall not be
4 excused by any privilege or provision of law of this state or any other state
5 or country which authorizes or directs that testimony or records required to
6 be furnished pursuant to paragraph (5) are privileged, confidential and
7 otherwise may not be disclosed.

8 (9) A trustee who furnishes information pursuant to paragraph (5) is
9 immune from civil liability for the release of the information.

10 (10) An employee of the seizing agency or the plaintiff's attorney
11 who releases the information obtained pursuant to paragraph (5), except in
12 the proper discharge of official duties, is guilty of a class B nonperson
13 misdemeanor.

14 (11) If any information furnished pursuant to paragraph (5) is offered
15 in evidence, the court may seal that portion of the record or may order that
16 the information be disclosed in a designated way.

17 (12) A judgment or an order of payment entered pursuant to this
18 section becomes a judgment lien against the property alleged to be subject
19 to forfeiture.

20 Sec. 7. K.S.A. 60-4110 is hereby amended to read as follows: 60-
21 4110. (a) The plaintiff's attorney ~~may~~ *shall* make an opportunity to file a
22 petition for recognition of exemption available in the following manner:

23 (1) ~~If the plaintiff's attorney makes an opportunity to file a petition for~~
24 ~~recognition of exemption available, The plaintiff's attorney shall se-~~
25 ~~indicate~~ *acknowledge the opportunity to file a petition for recognition of*
26 *exemption* in the notice of pending forfeiture described in ~~subsection (a) of~~
27 *K.S.A. 60-4109(a), and amendments thereto.*

28 (2) An owner of or an interest holder in the property may elect to file
29 a claim within ~~30~~ 60 days after the effective date of the notice of pending
30 forfeiture or a petition for recognition of exemption with the plaintiff's
31 attorney within ~~30~~ 60 days after the effective date of the notice, but no
32 petition may be filed after a court action has been commenced by the
33 seizing agency. The claim or petition shall *substantially* comply with the
34 requirements for claims in K.S.A. 60-4111, *and amendments thereto.* The
35 effective date of a notice of pending forfeiture shall be as provided for in
36 K.S.A. 60-4109, *and amendments thereto.*

37 (b) The following shall apply if one or more owners or interest
38 holders timely petition for recognition of exemption:

39 (1) The plaintiff's attorney shall provide the seizing agency and the
40 petitioning party with a written recognition of exemption and statement of
41 nonexempt interests relating to any or all interests in the property in
42 response to each petitioning party within ~~120~~ 90 days after the effective
43 date of the notice of pending forfeiture.

1 (2) An owner of or interest holder in any property declared
2 nonexempt may file a claim as described in K.S.A. 60-4111, *and*
3 *amendments thereto*, within~~30~~ 60 days after the effective date of the
4 notice of the recognition of exemption and statement of nonexempt
5 interests.

6 (3) The plaintiff's attorney may elect to proceed as provided herein
7 for judicial forfeiture at any time.

8 (4) If no petitioning party files a proper claim within~~30~~ 60 days after
9 the effective date of notice of the recognition of exemption and statement
10 of nonexempt interests, the recognition of exemption and statement of
11 nonexempt interests becomes final, and the plaintiff's attorney shall
12 proceed as provided in K.S.A. 60-4116 and 60-4117, *and amendments*
13 *thereto*.

14 (5) If a judicial proceeding follows a notice of pending forfeiture
15 making an opportunity to file a petition for recognition of exemption
16 available:

17 (A) No duplicate or repetitive notice is required. If a proper claim has
18 been timely filed pursuant to subsection (b)(2), the claim shall be
19 determined in a judicial forfeiture proceeding after the commencement of
20 such a proceeding under K.S.A. 60-4113, 60-4114 and 60-4115, *and*
21 *amendments thereto*.

22 (B) The proposed recognition of exemption and statement of
23 nonexempt interests responsive to all petitioning parties who subsequently
24 filed claims are void and will be regarded as rejected offers to
25 compromise.

26 (c) If no proper petition for recognition of exemption or proper claim
27 is timely filed, the plaintiff's attorney shall proceed as provided in K.S.A.
28 60-4116 and 60-4117, *and amendments thereto*.

29 Sec. 8. K.S.A. 2017 Supp. 60-4111 is hereby amended to read as
30 follows: 60-4111. (a) Only an owner of or interest holder in property
31 seized for forfeiture may file a claim, and shall do so in the manner
32 provided in this section. The claim shall be mailed to the seizing agency
33 and to the plaintiff's attorney by certified mail, return receipt requested,
34 within~~30~~ 60 days after the effective date of notice of pending forfeiture.
35 ~~No extension of time for the filing of a claim shall be granted except for~~
36 ~~good cause shown.~~

37 (b) ~~The claim and all supporting documents shall be in affidavit form,~~
38 ~~signed by the claimant under oath, and sworn to by the affiant before one~~
39 ~~who has authority to administer the oath, under penalty of perjury, K.S.A.~~
40 ~~2017 Supp. 21-5903, and amendments thereto, or making a false writing,~~
41 ~~K.S.A. 2017 Supp. 21-5824, and amendments thereto, and shall set forth~~
42 ~~all of the following:~~

43 (1) The caption of the proceedings and identifying number, if any, as

1 set forth on the notice of pending forfeiture or complaint, the name of the
2 claimant, and the name of the plaintiff's attorney who authorized the notice
3 of pending forfeiture or complaint;

4 (2) the address where the claimant will accept mail;

5 (3) the nature and extent of the claimant's interest in the property;,
6 *and*

7 ~~(4) The date, the identity of the transferor, and a detailed description~~
8 ~~of the circumstances of the claimant's acquisition of the~~ *when and how the*
9 *claimant obtained an* interest in the property.

10 ~~(5) The specific provision of this act relied on in asserting that the~~
11 ~~property is not subject to forfeiture.~~

12 ~~(6) All essential facts supporting each assertion.~~

13 ~~(7) The specific relief sought.~~

14 *(c) Substantial compliance with subsection (b) shall be deemed*
15 *sufficient.*

16 *(d) It is permissible to assert the right against self-incrimination in a*
17 *claim. If a claimant asserts the right, the court, in the court's discretion,*
18 *may draw an adverse inference from the assertion against the claimant.*
19 *The adverse inference shall not, by itself, be the basis of a judgment*
20 *against the claimant.*

21 Sec. 9. K.S.A. 2017 Supp. 60-4112 is hereby amended to read as
22 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
23 subject to the provisions of this section.

24 (b) The court, on application of the plaintiff's attorney, may enter any
25 restraining order or injunction, require the execution of satisfactory
26 performance bonds, create receiverships, appoint conservators, custodians,
27 appraisers, accountants or trustees, or take any other action to seize,
28 secure, maintain or preserve the availability of property subject to
29 forfeiture under this act, including a writ of attachment or a warrant for
30 such property's seizure, whether before or after the filing of a notice of
31 pending forfeiture or complaint.

32 (c) If property is seized for forfeiture or a forfeiture lien is filed
33 without a previous judicial determination of probable cause or order of
34 forfeiture or a hearing under ~~subsection (e) of~~ K.S.A. 60-4114(c), and
35 amendments thereto, the court, on an application filed by an owner or
36 interest holder in the property within 14 days after notice of the property's
37 seizure for forfeiture or lien, or actual knowledge of it, whichever is
38 earlier, and after complying with the requirements for claims in K.S.A. 60-
39 4109, and amendments thereto, after seven days' notice to the plaintiff's
40 attorney, may issue an order to show cause to the seizing agency, for a
41 hearing on the sole issue of whether probable cause for forfeiture of the
42 property then exists. The hearing shall be held within 30 days of the order
43 to show cause unless continued for good cause on motion of either party. If

1 the court finds that there is no probable cause for forfeiture of the property,
2 or if the seizing agency elects not to contest the issue, the property shall be
3 released to the custody of the applicant, as custodian for the court, or from
4 the lien pending the outcome of a judicial proceeding pursuant to this act.
5 If the court finds that probable cause for the forfeiture of the property
6 exists, the court shall not order the property released.

7 (d) All applications filed within the 14-day period prescribed by
8 subsection (c) shall be consolidated for a single hearing relating to each
9 applicant's interest in the property seized for forfeiture.

10 (e) A person charged with a criminal offense may apply at any time
11 before final judgment to the court where the forfeiture proceeding is
12 pending for the release of property seized for forfeiture, that is necessary
13 for the defense of the person's criminal charge. The application shall
14 satisfy the requirements under ~~subsection (b)~~ of K.S.A. 60-4111(b), and
15 amendments thereto. The court shall hold a probable cause hearing if the
16 applicant establishes that:

17 (1) The person has not had an opportunity to participate in a previous
18 adversarial judicial determination of probable cause-;

19 (2) the person has no access to other moneys adequate for the
20 payment of criminal counsel-; *and*

21 (3) the interest in property to be released is not subject to any claim
22 other than the forfeiture.

23 (f) If the court finds that there is no probable cause for forfeiture of
24 the property, the court shall order the property released pursuant to
25 subsection (c). If the seizing agency does not contest the hearing, the court
26 may release a reasonable amount of property for the payment of the
27 applicant's criminal defense costs. Property that has been released by the
28 court and that has been paid for criminal defense services actually
29 rendered is exempt under this act.

30 (g) A defendant convicted in any criminal proceeding is precluded
31 from later denying the ~~essential allegations~~ *elements* of the criminal
32 offense of which the defendant was convicted in any proceeding pursuant
33 to this section. For the purposes of this section, a conviction results from a
34 verdict or plea of guilty, including a plea of no contest or nolo contendere.

35 (h) In any proceeding under this act, if a claim is based on any
36 exemption provided for in this act, the burden of proving the existence of
37 the exemption is on the claimant, and is not necessary for the seizing
38 agency or plaintiff's attorney to negate the exemption in any application or
39 complaint.

40 (i) In hearings and determinations pursuant to this section, the court
41 may receive and consider, in making any determination of probable cause
42 or reasonable cause, all evidence admissible in determining probable cause
43 at a preliminary hearing or in the issuance of a search warrant, together

1 with inferences therefrom.

2 ~~(j) The fact that money, negotiable instruments, precious metals,~~
3 ~~communication devices, and weapons were found in close proximity to~~
4 ~~contraband or an instrumentality of conduct giving rise to forfeiture shall~~
5 ~~give rise to the rebuttable presumption, in the manner provided in~~
6 ~~subsection (a) of K.S.A. 60-414, and amendments thereto, that such item~~
7 ~~was the proceeds of conduct giving rise to forfeiture or was used or~~
8 ~~intended to be used to facilitate the conduct.~~

9 ~~(k) There shall be a rebuttable presumption, in the manner provided~~
10 ~~in subsection (a) K.S.A. 60-414, and amendments thereto, that any~~ *The*
11 *totality of the circumstances shall determine if the* property of a person is
12 subject to forfeiture under this act ~~if the seizing agency establishes, by the~~
13 ~~standard of proof applicable to that proceeding, all of~~ *Factors that may be*
14 *considered include, but are not limited to,* the following:

15 (1) The person has engaged in conduct giving rise to forfeiture;

16 (2) the property was acquired by the person during that period of the
17 conduct giving rise to forfeiture or within a reasonable time after the
18 period; ~~and~~

19 (3) there was no likely source for the property other than the conduct
20 giving rise to forfeiture; *and*

21 (4) *the proximity to contraband or an instrumentality giving rise to*
22 *forfeiture.*

23 ~~(k)~~ (k) A finding that property is the proceeds of conduct giving rise to
24 forfeiture does not require proof the property is the proceeds of any
25 particular exchange or transaction.

26 ~~(m)~~ (l) A person who acquires any property subject to forfeiture is a
27 constructive trustee of the property, and such property's fruits, for the
28 benefit of the seizing agency, to the extent that such agency's interest is not
29 exempt from forfeiture. If property subject to forfeiture has been
30 commingled with other property, the court shall order the forfeiture of the
31 mingled property and of any fruits of the mingled property, to the extent of
32 the property subject to forfeiture, unless an owner or interest holder proves
33 that specified property does not contain property subject to forfeiture, or
34 that such owner's or interest holder's interest in specified property is
35 exempt from forfeiture.

36 ~~(m)~~ (m) All property declared forfeited under this act vests in the law
37 enforcement agency seeking forfeiture on the date of commission of the
38 conduct giving rise to forfeiture together with the proceeds of the property
39 after that time. Any such property or proceeds subsequently transferred to
40 any person remain subject to forfeiture and thereafter shall be ordered
41 forfeited unless the transferee acquired the property in good faith, for
42 value, and was not knowingly taking part in an illegal transaction, and the
43 transferee's interest is exempt under K.S.A. 60-4106, and amendments

1 thereto.

2 ~~(n)~~ (n) An acquittal or dismissal in a criminal proceeding shall not
3 preclude civil proceedings under this act, nor give rise to any presumption
4 adverse or contrary to any fact alleged by the seizing agency.

5 ~~(o)~~ (o) On motion ~~by the plaintiff's attorney~~, the court shall stay
6 discovery against the criminal defendant and against the seizing agency in
7 civil proceedings during a related criminal proceeding alleging the same
8 conduct, after making provision to prevent loss to any party resulting from
9 the delay. Such a stay shall not be available pending any appeal by a
10 defendant.

11 ~~(p)~~ (p) Except as otherwise provided by this act, all proceedings
12 hereunder shall be governed by the rules of civil procedure pursuant to
13 K.S.A. 60-101 et seq., and amendments thereto.

14 ~~(q)~~ (q) An action pursuant to this act shall be consolidated with any
15 other action or proceeding pursuant to this act or to such other foreclosure
16 or trustee sale proceedings relating to the same property on motion of the
17 plaintiff's attorney, and may be consolidated on motion of an owner or
18 interest holder.

19 ~~(s)~~ ~~There shall be a rebuttable presumption, in the manner provided in~~
20 ~~subsection (a) of K.S.A. 60-414, and amendments thereto, that any~~
21 ~~property in or upon which controlled substances are located at the time of~~
22 ~~seizure, was being used or intended for use to facilitate an act giving rise~~
23 ~~to forfeiture.~~

24 Sec. 10. K.S.A. 2017 Supp. 60-4113 is hereby amended to read as
25 follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by
26 the plaintiff's attorney pursuant to a notice of pending forfeiture or verified
27 petition for forfeiture is also subject to the provisions of this section. If a
28 forfeiture is authorized by this act, it shall be ordered by the court in the in
29 rem action.

30 (b) An action in rem may be brought by the plaintiff's attorney in
31 addition to, or in lieu of, civil in personam forfeiture procedures. The
32 seizing agency may serve the complaint in the manner provided by
33 ~~subsection (a)(3) of K.S.A. 60-4109(a)(3)~~, and amendments thereto, or as
34 provided by the rules of civil procedure.

35 (c) Only an owner of or an interest holder in the property who has
36 timely filed a proper claim may file an answer in an action in rem. For the
37 purposes of this section, an owner of or interest holder in property who has
38 filed a claim and answer shall be referred to as a claimant.

39 (d) The answer shall be ~~in affidavit form~~, signed by the claimant
40 ~~under oath, and sworn to by the affiant before one who has authority to~~
41 ~~administer the oath~~, under penalty of perjury, K.S.A. 2017 Supp. 21-5903,
42 and amendments thereto, ~~or making a false writing, K.S.A. 2017 Supp. 21-~~
43 ~~5824, and amendments thereto, and shall otherwise be in accordance with~~

1 the rules of civil procedure on answers and shall also set forth ~~all of the~~
2 following:

3 (1) The caption of the proceedings and identifying number, if any, as
4 set forth on the notice of pending forfeiture or complaint and the name of
5 the claimant.;

6 (2) the address where the claimant will accept mail.;

7 (3) the nature and extent of the claimant's interest in the property.;

8 *and*
9 (4) ~~The date, the identity of the transferor, and the~~ a detailed
10 description of ~~the circumstances of the claimant's acquisition of the~~ *when*
11 *and how the claimant obtained an* interest in the property.

12 (5) ~~The specific provision of this act relied on in asserting that such~~
13 ~~property is not subject to forfeiture.~~

14 (6) ~~All essential facts supporting each assertion.~~

15 (7) ~~The specific relief sought.~~

16 (e) *Substantial compliance with subsection (d) shall be deemed*
17 *sufficient.*

18 (f) *It is permissible to assert the right against self-incrimination in an*
19 *answer. If a claimant asserts the right, the court, in the court's discretion,*
20 *may draw an adverse inference from the assertion against the claimant.*
21 *The adverse inference shall not, by itself, be the basis of a judgment*
22 *against the claimant.*

23 (g) The answer shall be filed within 21 days after service of the civil
24 in rem complaint.

25 (f) ~~The seizing agency and any claimant who has timely answered the~~
26 ~~complaint, at the time of filing such agency's pleadings, or at any other~~
27 ~~time not less than 30 days prior to the hearing, may serve discovery~~
28 ~~requests on any other party, the answers or response to which shall be due~~
29 ~~within 21 days of service. Discovery may include deposition of any person~~
30 ~~at any time after the expiration of 14 days after the filing and service of the~~
31 ~~complaint. Any party may move for a summary judgment at any time after~~
32 ~~an answer or responsive pleading is served and not less than 30 days prior~~
33 ~~to the hearing.~~

34 (g) (h) The issue shall be determined by the court alone, ~~and the~~
35 ~~hearing on the claim shall be held within 60 days after service of the~~
36 ~~petition unless continued for good cause. The plaintiff's attorney shall have~~
37 the initial burden of proving the interest in the property is subject to
38 forfeiture by a preponderance of the evidence. If the state proves the
39 interest in the property is subject to forfeiture, the claimant has the burden
40 of showing by a preponderance of the evidence that the claimant has an
41 interest in the property which is not subject to forfeiture.

42 (h) (i) If the plaintiff's attorney fails to meet the burden of proof for
43 forfeiture, or a claimant establishes by a preponderance of the evidence

1 that the claimant has an interest that is exempt under the provisions of
2 K.S.A. 60-4106, and amendments thereto, the court shall order the interest
3 in the property returned or conveyed to the claimant. The court shall order
4 all other property forfeited to the seizing agency and conduct further
5 proceedings pursuant to ~~the provision of~~ K.S.A. 60-4116 and 60-4117, and
6 amendments thereto.

7 Sec. 11. K.S.A. 60-4114 is hereby amended to read as follows: 60-
8 4114. (a) (1) A judicial in personam forfeiture proceeding brought by the
9 plaintiff's attorney pursuant to an in personam civil action alleging conduct
10 giving rise to forfeiture is also subject to the provisions of this section. If a
11 forfeiture is authorized by this act, it shall be ordered by the court in the in
12 personam action. The action shall be in addition to or in lieu of in rem
13 forfeiture procedures.

14 (2) In any proceeding pursuant to this section, the court, on
15 application of the plaintiff's attorney, may enter any order authorized by
16 K.S.A. 60-4112, *and amendments thereto*.

17 (b) The court may issue a temporary restraining order in an action
18 under this section on application of the plaintiff's attorney, without notice
19 or an opportunity for a hearing, if the plaintiff's attorney demonstrates that:

20 (1) There is probable cause to believe that in the event of a final
21 judgment, the property involved would be subject to forfeiture under the
22 provisions of this act; and

23 (2) A provision of notice would jeopardize the availability of the
24 property for forfeiture.

25 (c) Notice of the issuance of a temporary restraining order and an
26 opportunity for a hearing shall be given to persons known to have an
27 interest in the property. A hearing shall be held at the earliest possible date
28 in accordance with the applicable civil rule and shall be limited to the
29 issues of whether:

30 (1) There is a probability that the seizing agency will prevail on the
31 issue of forfeiture and that failure to enter the order could result in the
32 property being destroyed, conveyed, alienated, encumbered, further
33 encumbered, disposed of, purchased, received, removed from the
34 jurisdiction of the court, concealed, or otherwise made unavailable for
35 forfeiture; and

36 (2) the need to preserve the availability of property through the entry
37 of the requested order outweighs the hardship on any owner or interest
38 holder against whom the order is to be entered.

39 (d) On a determination of liability of a person for conduct giving rise
40 to forfeiture under this act, the court shall enter a judgment of forfeiture of
41 the property found to be subject to forfeiture described in the complaint
42 and shall also authorize the plaintiff's attorney or any law enforcement
43 officer to seize all property ordered forfeited which was not previously

1 seized or is not then under seizure. Following the entry of an order
2 declaring the property forfeited, the court, on application of the plaintiff's
3 attorney, may enter any appropriate order to protect the interest of the
4 seizing agency in the property ordered forfeited.

5 (e) Following the entry of an order of forfeiture under subsection (d),
6 the plaintiff's attorney may give notice of pending forfeiture, in the manner
7 provided in K.S.A. 60-4109, *and amendments thereto*, to all owners and
8 interest holders who have not previously been given notice.

9 (f) An owner of or interest holder in property that has been forfeited
10 and whose claim is not precluded may file a claim as described in K.S.A.
11 60-4111, *and amendments thereto*, within ~~30~~ 60 days after initial notice of
12 pending forfeiture or after notice under subsection (e), whichever is earlier.
13 If the seizing agency does not recognize the claimed exemption, the
14 plaintiff's attorney shall file a complaint and the court shall hold the
15 hearing and determine the claim, without a jury, in the manner provided
16 for in rem judicial forfeiture actions in K.S.A. 60-4113, *and amendments*
17 *thereto*.

18 (g) In accordance with findings made at the hearing, the court may
19 amend the order of forfeiture if the court determines that any claimant has
20 established by a preponderance of the evidence that the claimant has an
21 interest in the property and that the claimant's interest is exempt under ~~the~~
22 ~~provision of~~ K.S.A. 60-4106, *and amendments thereto*.

23 (h) Except as provided in ~~subsection (e) of~~ K.S.A. 60-4112(c), *and*
24 *amendments thereto*, no person claiming an interest in property subject to
25 forfeiture under this act may intervene in a trial or appeal of a criminal
26 action or in an in personam civil action involving the forfeiture of the
27 property.

28 Sec. 12. K.S.A. 2017 Supp. 60-4117 is hereby amended to read as
29 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
30 thereto: (a) When property is forfeited under this act, the law enforcement
31 agency may:

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

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

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

40 (A) All property, except real property, designated by the seizing
41 agency to be sold shall be sold at public sale to the highest bidder for cash
42 without appraisal. The seizing agency shall first cause notice of the sale to
43 be made by publication at least once in an official county newspaper as

1 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
2 include the time, place, and conditions of the sale and description of the
3 property to be sold. Nothing in this subsection shall prevent a state agency
4 from using the state surplus property system and such system's procedures
5 shall be sufficient to meet the requirements of this subsection.

6 (B) Real property may be sold pursuant to subsection (a)(3)(A), or
7 the seizing agency may contract with a real estate company, licensed in
8 this state, to list, advertise and sell such real property in a commercially
9 reasonable manner.

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

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

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

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

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

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

33 (3) reasonable attorney fees:

34 (A) If the plaintiff's attorney is a county or district attorney, an
35 assistant, or another governmental agency's attorney, fees shall not exceed
36 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
37 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
38 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
39 deposited in the county or city treasury and credited to the special
40 prosecutor's trust fund. Moneys in such fund shall not be considered a
41 source of revenue to meet normal operating expenditures, including salary
42 enhancement. Such fund shall be expended by the county or district
43 attorney, or other governmental agency's attorney through the normal

1 county or city appropriation system and shall be used for such additional
2 law enforcement and prosecutorial purposes as the county or district
3 attorney or other governmental agency's attorney deems appropriate,
4 including educational purposes. All moneys derived from past or pending
5 forfeitures shall be expended pursuant to this act. The board of county
6 commissioners shall provide adequate funding to the county or district
7 attorney's office to enable such office to enforce this act. Neither future
8 forfeitures nor the proceeds therefrom shall be used in planning or
9 adopting a county or district attorney's budget;

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

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

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

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

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

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

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

32 (3) (e) (1) Moneys in the Kansas bureau of investigation state
33 forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas
34 department of corrections state forfeiture fund, the special law
35 enforcement trust funds and the Kansas national guard counter drug state
36 forfeiture fund shall not be considered a source of revenue to meet normal
37 operating expenses. Such funds shall be expended by the agencies or
38 departments through the normal city, county or state appropriation system
39 and shall be used for such special, additional law enforcement purposes
40 *specified in subsection (e)(2)* as the law enforcement agency head deems
41 appropriate. Neither future forfeitures nor the proceeds from such
42 forfeitures shall be used in planning or adopting a law enforcement
43 agency's budget.

1 (2) Moneys in the funds described in subsection (e)(1) shall be used
2 only for the following special, additional law enforcement purposes:

3 (A) The support of investigations and operations that further the law
4 enforcement agency's goals or missions;

5 (B) the training of investigators, prosecutors and sworn and non-
6 sworn law enforcement personnel in any area that is necessary to perform
7 official law enforcement duties;

8 (C) the costs associated with the purchase, lease, construction,
9 expansion, improvement or operation of law enforcement or detention
10 facilities used or managed by the recipient agency;

11 (D) the costs associated with the purchase, lease, maintenance or
12 operation of law enforcement equipment for use by law enforcement
13 personnel that supports law enforcement activities;

14 (E) the costs associated with the purchase of multi-use equipment
15 and operations used by both law enforcement and non-law enforcement
16 personnel;

17 (F) the costs associated with a contract for a specific service that
18 supports or enhances law enforcement;

19 (G) the costs associated with travel and transportation to perform or
20 in support of law enforcement duties and activities;

21 (H) the costs associated with the purchase of plaques and certificates
22 for law enforcement personnel in recognition of a law enforcement
23 achievement, activity or training;

24 (I) the costs associated with conducting awareness programs by law
25 enforcement agencies;

26 (J) the costs associated with paying a state or local law enforcement
27 agency's matching contribution or share in a state or federal grant
28 program for items other than salaries;

29 (K) cash transfers from one state or local law enforcement agency to
30 another in support of the law enforcement agency's goals or missions; and

31 (L) transfers from a state or local law enforcement agency to a state,
32 county or local governmental agency or community non-profit
33 organization in support of the law enforcement agency's goals or missions.

34 (3) Moneys in the funds described in subsection (e)(1) shall be
35 separated and accounted for in a manner that allows accurate tracking
36 and reporting of deposits and expenditures of the following categories of
37 money:

38 (A) Proceeds from forfeiture credited to the fund pursuant to this
39 section;

40 (B) proceeds from pending forfeiture actions under this act; and

41 (C) proceeds from forfeiture actions under federal law.

42 (4) (f) Moneys in the Kansas attorney general's medicaid fraud
43 forfeiture fund shall defray costs of the attorney general in connection with

1 the duties of investigating and prosecuting medicaid fraud and abuse.

2 (g) (1) *If the law enforcement agency is a state agency, such agency*
3 *shall compile and submit a forfeiture fund report to the legislature on or*
4 *before February 1 of each year. Such report shall include, but not be*
5 *limited to: (A) The fund balance on December 1; and (B) the deposits and*
6 *expenditures for the previous 12-month period ending December 1.*

7 (2) *If the law enforcement agency is a city or county agency, such*
8 *agency shall compile and submit annually a special law enforcement trust*
9 *fund report to the entity that has budgetary authority over such agency*
10 *and such report shall specify, for such period, the type and approximate*
11 *value of the forfeited property received, the amount of any forfeiture*
12 *proceeds received and how any of those proceeds were expended.*

13 (3) *The provisions of this subsection shall expire on July 1, 2019.*

14 Sec. 13. K.S.A. 60-4101, 60-4106, 60-4110 and 60-4114 and K.S.A.
15 2017 Supp. 45-220, 60-4107, 60-4109, 60-4111, 60-4112, 60-4113 and 60-
16 4117 are hereby repealed.

17 Sec. 14. This act shall take effect and be in force from and after its
18 publication in the statute book.