

SENATE BILL No. 3

By Legislative Post Audit Committee

12-5

1 AN ACT concerning forfeiture; amending the Kansas standard asset
2 seizure and forfeiture act; amending K.S.A. 2016 Supp. 60-4107 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 60-4107 is hereby amended to read as
7 follows: 60-4107. (a) Property may be seized for forfeiture by a law
8 enforcement officer upon process issued by the district court. The court
9 may issue a seizure warrant on an affidavit under oath demonstrating that
10 probable cause exists for the property's forfeiture or that the property has
11 been the subject of a previous final judgment of forfeiture in the courts of
12 any state or of the United States. The court may order that the property be
13 seized on such terms and conditions as are reasonable in the discretion of
14 the court. The order may be made on or in connection with a search
15 warrant. All real property is to be seized constructively or pursuant to a
16 preseizure adversarial judicial determination of probable cause, except that
17 this determination may be done ex parte when the attorney for the state has
18 demonstrated exigent circumstances to the court.

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

22 (c) Property may be seized constructively by:

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

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

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

34 (d) The seizing agency shall make reasonable effort to provide notice
35 of the seizure to the person from whose possession or control the property
36 was seized and any interest holder of record within 30 days of seizing the

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

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

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

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

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

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

29 (2) engage an attorney, approved by the county or district attorney, to
30 represent the agency in the forfeiture proceeding. *The county or district*
31 *attorney shall not represent the agency in the forfeiture proceeding as a*
32 *private attorney nor shall any law firm represent such agency in the*
33 *forfeiture proceeding in which the county or district attorney has an*
34 *affiliation.*

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

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

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

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

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

18 Sec. 2. K.S.A. 2016 Supp. 60-4107 is hereby repealed.

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