

HOUSE BILL No. 2193

By Committee on Judiciary

2-7

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to the acquittal of the crime giving rise to forfeiture; return of
3 property; amending K.S.A. 65-7014 and K.S.A. 2018 Supp. 60-4112
4 and 60-4117 and repealing the existing sections.

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

7 Section 1. K.S.A. 2018 Supp. 60-4112 is hereby amended to read as
8 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
9 subject to the provisions of this section.

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

18 (c) If property is seized for forfeiture or a forfeiture lien is filed
19 without a previous judicial determination of probable cause or order of
20 forfeiture or a hearing under K.S.A. 60-4114(c), and amendments thereto,
21 the court, on an application filed by an owner of or interest holder in the
22 property within 14 days after notice of the property's seizure for forfeiture
23 or lien, or actual knowledge of it, whichever is earlier, and after complying
24 with the requirements for claims in K.S.A. 60-4109, and amendments
25 thereto, after seven days' notice to the plaintiff's attorney, may issue an
26 order to show cause to the seizing agency, for a hearing on the sole issue
27 of whether probable cause for forfeiture of the property then exists. The
28 hearing shall be held within 30 days of the order to show cause unless
29 continued for good cause on motion of either party. If the court finds that
30 there is no probable cause for forfeiture of the property, or if the seizing
31 agency elects not to contest the issue, the property shall be released to the
32 custody of the applicant, as custodian for the court, or from the lien
33 pending the outcome of a judicial proceeding pursuant to this act. If the
34 court finds that probable cause for the forfeiture of the property exists, the
35 court shall not order the property released.

36 (d) All applications filed within the 14-day period prescribed by

1 subsection (c) shall be consolidated for a single hearing relating to each
2 applicant's interest in the property seized for forfeiture.

3 (e) A person charged with a criminal offense may apply at any time
4 before final judgment to the court where the forfeiture proceeding is
5 pending for the release of property seized for forfeiture, that is necessary
6 for the defense of the person's criminal charge. The application shall
7 satisfy the requirements under K.S.A. 60-4111(b), and amendments
8 thereto. The court shall hold a probable cause hearing if the applicant
9 establishes that:

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

12 (2) the person has no access to other moneys adequate for the
13 payment of criminal counsel; and

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

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

23 (g) A defendant convicted in any criminal proceeding is precluded
24 from later denying the elements of the criminal offense of which the
25 defendant was convicted in any proceeding pursuant to this section. For
26 the purposes of this section, a conviction results from a verdict or plea of
27 guilty, including a plea of no contest or nolo contendere.

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

33 (i) In hearings and determinations pursuant to this section, the court
34 may receive and consider, in making any determination of probable cause
35 or reasonable cause, all evidence admissible in determining probable cause
36 at a preliminary hearing or in the issuance of a search warrant, together
37 with inferences therefrom.

38 (j) The totality of the circumstances shall determine if the property of
39 a person is subject to forfeiture under this act. Factors that may be
40 considered include, but are not limited to, the following:

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

42 (2) the property was acquired by the person during that period of the
43 conduct giving rise to forfeiture or within a reasonable time after the

1 period;

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

4 (4) the proximity to contraband or an instrumentality giving rise to
5 forfeiture.

6 (k) A finding that property is the proceeds of conduct giving rise to
7 forfeiture does not require proof the property is the proceeds of any
8 particular exchange or transaction.

9 (l) A person who acquires any property subject to forfeiture is a
10 constructive trustee of the property, and such property's fruits, for the
11 benefit of the seizing agency, to the extent that such agency's interest is not
12 exempt from forfeiture. If property subject to forfeiture has been
13 commingled with other property, the court shall order the forfeiture of the
14 mingled property and of any fruits of the mingled property, to the extent of
15 the property subject to forfeiture, unless an owner or interest holder proves
16 that specified property does not contain property subject to forfeiture, or
17 that such owner's or interest holder's interest in specified property is
18 exempt from forfeiture.

19 (m) All property declared forfeited under this act vests in the law
20 enforcement agency seeking forfeiture on the date of commission of the
21 conduct giving rise to forfeiture together with the proceeds of the property
22 after that time. Any such property or proceeds subsequently transferred to
23 any person remain subject to forfeiture and thereafter shall be ordered
24 forfeited unless the transferee acquired the property in good faith, for
25 value, and was not knowingly taking part in an illegal transaction, and the
26 transferee's interest is exempt under K.S.A. 60-4106, and amendments
27 thereto.

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

31 (o) On motion, the court shall stay discovery against the criminal
32 defendant and against the seizing agency in civil proceedings during a
33 related criminal proceeding alleging the same conduct, after making
34 provision to prevent loss to any party resulting from the delay. ~~Such a stay~~
35 ~~shall not be available pending any appeal by a defendant.~~

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

39 (q) An action pursuant to this act shall be consolidated with any other
40 action or proceeding pursuant to this act or to such other foreclosure or
41 trustee sale proceedings relating to the same property on motion of the
42 plaintiff's attorney, and may be consolidated on motion of an owner or
43 interest holder.

1 Sec. 2. K.S.A. 2018 Supp. 60-4117 is hereby amended to read as
2 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
3 thereto: (a) *When a person from whose possession or control property was*
4 *seized under this act is charged with a criminal offense related to the*
5 *conduct or offense giving rise to forfeiture under this act, and the person*
6 *is either acquitted of the criminal charge or the criminal charge is*
7 *dismissed, the property seized shall be returned to the person in the same*
8 *condition as the property was in when it was seized.*

9 (b) When property is forfeited under this act, the law enforcement
10 agency may:

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

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

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

19 (A) All property, except real property, designated by the seizing
20 agency to be sold shall be sold at public sale to the highest bidder for cash
21 without appraisal. The seizing agency shall first cause notice of the sale to
22 be made by publication at least once in an official county newspaper as
23 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
24 include the time, place, and conditions of the sale and description of the
25 property to be sold. Nothing in this subsection shall prevent a state agency
26 from using the state surplus property system and such system's procedures
27 shall be sufficient to meet the requirements of this subsection.

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

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

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

36 ~~(b)~~(c) When firearms are forfeited under this act, the firearms in the
37 discretion of the seizing agency, shall be destroyed, used within the seizing
38 agency for official purposes, traded to another law enforcement agency for
39 use within such agency or given to the Kansas bureau of investigation for
40 law enforcement, testing, comparison or destruction by the Kansas bureau
41 of investigation forensic laboratory.

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

1 (1) For satisfaction of any court preserved security interest or lien, or
2 in the case of a violation, as defined by K.S.A. 60-4104(i), and
3 amendments thereto, the proceeds shall be remitted to the state treasurer in
4 accordance with the provisions of K.S.A. 75-4215, and amendments
5 thereto. Upon receipt of such remittance, the state treasurer shall deposit
6 the entire amount into the state treasury to the credit of the medicaid fraud
7 reimbursement fund;

8 (2) thereafter, for payment of all proper expenses of the proceedings
9 for forfeiture and disposition, including expenses of seizure, inventory,
10 appraisal, maintenance of custody, preservation of availability, advertising,
11 service of process, sale and court costs;

12 (3) reasonable attorney fees:

13 (A) If the plaintiff's attorney is a county or district attorney, an
14 assistant, or another governmental agency's attorney, fees shall not exceed
15 15% of the total proceeds, less the amounts of subsection ~~(e)~~(d)(1) and (2),
16 in an uncontested forfeiture nor 20% of the total proceeds, less the
17 amounts of subsection ~~(e)~~(d)(1) and (2), in a contested forfeiture. Such
18 fees shall be deposited in the county or city treasury and credited to the
19 special prosecutor's trust fund. Moneys in such fund shall not be
20 considered a source of revenue to meet normal operating expenditures,
21 including salary enhancement. Such fund shall be expended by the county
22 or district attorney, or other governmental agency's attorney through the
23 normal county or city appropriation system and shall be used for such
24 additional law enforcement and prosecutorial purposes as the county or
25 district attorney or other governmental agency's attorney deems
26 appropriate, including educational purposes. All moneys derived from past
27 or pending forfeitures shall be expended pursuant to this act. The board of
28 county commissioners shall provide adequate funding to the county or
29 district attorney's office to enable such office to enforce this act. Neither
30 future forfeitures nor the proceeds therefrom shall be used in planning or
31 adopting a county or district attorney's budget;

32 (B) if the plaintiff's attorney is the attorney general and the conduct
33 and offense giving rise to forfeiture is pursuant to K.S.A. 60-4104(i), and
34 amendments thereto, fees shall not exceed 15% of the total proceeds, less
35 the amounts of subsection ~~(e)~~(d)(1) and (2) in an uncontested forfeiture nor
36 20% of the total proceeds, less the amounts of subsection ~~(e)~~(d)(1) and (2)
37 in a contested forfeiture. Such fees shall be remitted to the state treasurer
38 in accordance with the provisions of K.S.A. 75-4215, and amendments
39 thereto. Upon receipt of each such remittance, the state treasurer shall
40 deposit the entire amount in the state treasury to the credit of the medicaid
41 fraud prosecution revolving fund. Moneys paid into the medicaid fraud
42 prosecution revolving fund pursuant to this subsection shall be
43 appropriated to the attorney general for use by the attorney general in the

- 1 investigation and prosecution of medicaid fraud and abuse; or
2 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
3 shall be negotiated by the employing law enforcement agency;
4 (4) repayment of law enforcement funds expended in purchasing of
5 contraband or controlled substances, subject to any interagency agreement.
6 ~~(d)~~(e) Any proceeds remaining shall be credited as follows, subject to
7 any interagency agreement:
8 (1) If the law enforcement agency is a state agency, the entire amount
9 shall be deposited in the state treasury and credited to such agency's state
10 forfeiture fund. There is hereby established in the state treasury the
11 following state funds: Kansas bureau of investigation state forfeiture fund,
12 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
13 highway patrol state forfeiture fund, Kansas department of corrections
14 state forfeiture fund and Kansas national guard counter drug state
15 forfeiture fund. Expenditures from the Kansas bureau of investigation state
16 forfeiture fund shall be made upon warrants of the director of accounts and
17 reports issued pursuant to vouchers approved by the attorney general or by
18 a person or persons designated by the attorney general. Expenditures from
19 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
20 made upon warrants of the director of accounts and reports issued pursuant
21 to vouchers approved by the attorney general or by a person or persons
22 designated by the attorney general. Expenditures from the Kansas highway
23 patrol state forfeiture fund shall be made upon warrants of the director of
24 accounts and reports issued pursuant to vouchers approved by the
25 superintendent of the highway patrol or by a person or persons designated
26 by the superintendent. Expenditures from the Kansas department of
27 corrections state forfeiture fund shall be made upon warrants of the
28 director of accounts and reports issued pursuant to vouchers approved by
29 the secretary of the department of corrections or by a person or persons
30 designated by the secretary. Expenditures from the Kansas national guard
31 counter drug state forfeiture fund shall be made upon warrants of the
32 director of accounts and reports issued pursuant to vouchers approved by
33 the adjutant general of Kansas or by a person or persons designated by the
34 adjutant general.
35 (2) If the law enforcement agency is a city or county agency, the
36 entire amount shall be deposited in such city or county treasury and
37 credited to a special law enforcement trust fund.
38 ~~(e)~~(f) (1) Moneys in the Kansas bureau of investigation state
39 forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas
40 department of corrections state forfeiture fund, the special law
41 enforcement trust funds and the Kansas national guard counter drug state
42 forfeiture fund shall not be considered a source of revenue to meet normal
43 operating expenses. Such funds shall be expended by the agencies or

1 departments through the normal city, county or state appropriation system
2 and shall be used for such special, additional law enforcement purposes
3 specified in subsection ~~(e)~~(f)(2) as the law enforcement agency head
4 deems appropriate. Neither future forfeitures nor the proceeds from such
5 forfeitures shall be used in planning or adopting a law enforcement
6 agency's budget.

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

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

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

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

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

20 (E) the costs associated with the purchase of multi-use equipment and
21 operations used by both law enforcement and non-law enforcement
22 personnel;

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

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

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

30 (I) the costs associated with conducting awareness programs by law
31 enforcement agencies;

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

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

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

40 (3) Moneys in the funds described in subsection ~~(e)~~(f)(1) shall be
41 separated and accounted for in a manner that allows accurate tracking and
42 reporting of deposits and expenditures of the following categories of
43 money:

1 (A) Proceeds from forfeiture credited to the fund pursuant to this
2 section;

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

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

5 ~~(f)~~(g) Moneys in the Kansas attorney general's medicaid fraud
6 forfeiture fund shall defray costs of the attorney general in connection with
7 the duties of investigating and prosecuting medicaid fraud and abuse.

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

13 (2) If the law enforcement agency is a city or county agency, such
14 agency shall compile and submit annually a special law enforcement trust
15 fund report to the entity that has budgetary authority over such agency and
16 such report shall specify, for such period, the type and approximate value
17 of the forfeited property received, the amount of any forfeiture proceeds
18 received and how any of those proceeds were expended.

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

20 Sec. 3. K.S.A. 65-7014 is hereby amended to read as follows: 65-
21 7014. (a) All regulated chemicals which have been or are intended to be
22 manufactured, provided, sold, furnished, transferred, delivered, or
23 possessed in violation of this act shall be deemed contraband, and may be
24 seized and summarily forfeited to the state.

25 (b) A violation of this act shall constitute conduct giving rise to
26 forfeiture pursuant to the Kansas standard asset forfeiture act K.S.A. 60-
27 4101 et seq. and amendments thereto. When property is forfeited pursuant
28 to a violation of the Kansas chemical control act, the department shall sell
29 all property not destroyed pursuant to ~~subsection (a)(2) of~~ K.S.A. 60-
30 4117(b)(2), and amendments thereto, at public sale to the highest bidder
31 for cash without appraisal. The proceeds of any sale shall be credited to the
32 cleanup account which is hereby created in the chemical control fund.
33 Moneys in such account can only be expended directly or through
34 contracts for the costs of drug manufacturing site clean ups.

35 Sec. 4. K.S.A. 65-7014 and K.S.A. 2018 Supp. 60-4112 and 60-4117
36 are hereby repealed.

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