

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 16, 2022
Subject: Bill Brief on HB 2648

HB 2648 requires a criminal conviction for civil asset forfeiture, requires remittance of the proceeds of civil asset forfeiture to the state general fund and removes provisions making motor vehicles with altered vehicle identification numbers contraband.

Section 1 amends K.S.A. 8-116 to remove the current law provision providing that every motor vehicle, trailer or semitrailer with the vehicle identification number destroyed, removed, altered or defaced that has been seized is contraband under K.S.A. 22-2512.

Section 2 amends K.S.A. 22-2512, which is the statute that provides for what happens with property seized by law enforcement. The section is amended to provide that if no criminal charges are filed or prosecution is declined, property seized shall be returned to the owner or disposed of as further provided in this section.

Section 3 amends K.S.A. 60-4104, which is the statute that provides the list of conduct giving rise to asset forfeiture. The section is amended to provide that such conduct only gives rise to forfeiture after a conviction related to the offense. A criminal conviction would not be required when property is forfeited pursuant to a plea agreement or an agreement for a grant of immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution.

Section 4 amends K.S.A. 60-4105 and section 5 amends K.S.A. 60-4106, which are the statutes that provides what property is subject to forfeiture. These sections are amended to conform with the conviction requirement that would now be in place in K.S.A. 60-4104.

Section 6 amends K.S.A. 60-4107, which is the statute that provides for seizure of property under the act. The section is amended to add a new subsection (o) providing that when property is seized for forfeiture under this act, the seizing agency shall not request or induce any

person who asserts ownership of property to waive their interest in property until forfeiture proceedings are commenced.

Section 7 amends K.S.A. 60-4112, which governs the judicial proceedings under this act. A new subsection (h) is added to provide that following seizure, the person from whom the property was seized may petition the court to determine whether the forfeiture was unconstitutionally excessive. The plaintiff's attorney has the burden of establishing that the forfeiture is proportional to the seriousness of the offense beyond a reasonable doubt. The bill provides a list of factors the court may consider when determining whether forfeiture is unconstitutionally excessive.

Section 8 amends K.S.A. 60-4113, which governs in rem proceedings under the act. The section is amended to require the plaintiff's attorney to prove the interest in property is subject to forfeiture beyond a reasonable doubt instead of the current law standard of by a preponderance of the evidence.

Section 9 amends K.S.A. 60-4117, which provides for the disposition of property forfeited under this act. Current law allows the transfer of property to any federal agency. This bill would allow transfer of the property to a federal agency when the property was seized and forfeited under federal law. It also provides that all proceeds from the disposition of property forfeited under the act shall be remitted to the state general fund.

Section 10 amends K.S.A. 60-4127, which requires certain reporting related to asset forfeiture. The section is amended to conform with the conviction requirement that would now be in place in K.S.A. 60-4104. Current law also requires reporting of how law enforcement spent the proceeds from the disposition of forfeited property. These reporting provisions are removed because the agencies will now remit proceeds to the state general fund.