

HOUSE BILL No. 2352

By Committee on Judiciary

2-8

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 requiring the plaintiff's attorney to prove beyond a reasonable doubt
3 that property is subject to forfeiture; amending K.S.A. 2022 Supp. 60-
4 4113 and 60-4114 and repealing the existing sections.

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

7 Section 1. K.S.A. 2022 Supp. 60-4113 is hereby amended to read as
8 follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by
9 the plaintiff's attorney pursuant to a notice of pending forfeiture or verified
10 petition for 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 rem action.

13 (b) An action in rem may be brought by the plaintiff's attorney in
14 addition to, or in lieu of, civil in personam forfeiture procedures. The
15 seizing agency may serve the complaint in the manner provided by K.S.A.
16 60-4109(a)(3), and amendments thereto, or as provided by the rules of
17 civil procedure.

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

22 (d) The answer shall be signed by the claimant under penalty of
23 perjury, K.S.A. 2022 Supp. 21-5903, and amendments thereto, shall
24 otherwise be in accordance with the rules of civil procedure on answers
25 and shall also set forth the following:

26 (1) The caption of the proceedings and identifying number, if any, as
27 set forth on the notice of pending forfeiture or complaint and the name of
28 the claimant;

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

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

31 (4) a detailed description of when and how the claimant obtained an
32 interest in the property.

33 (e) Substantial compliance with subsection (d) shall be deemed
34 sufficient.

35 (f) It is permissible to assert the right against self-incrimination in an
36 answer. If a claimant asserts the right, the court, in the court's discretion,

1 may draw an adverse inference from the assertion against the claimant.
2 The adverse inference shall not, by itself, be the basis of a judgment
3 against the claimant.

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

6 (h) The issue shall be determined by the court alone. The plaintiff's
7 attorney shall have the initial burden of proving *beyond a reasonable*
8 *doubt* the interest in the property is subject to forfeiture ~~by a~~
9 ~~preponderance of the evidence~~. If the state proves the interest in the
10 property is subject to forfeiture, the claimant has the burden of showing by
11 a preponderance of the evidence that the claimant has an interest in the
12 property ~~which~~ *that* is not subject to forfeiture.

13 (i) If the plaintiff's attorney fails to meet the burden of proof for
14 forfeiture, or a claimant establishes by a preponderance of the evidence
15 that the claimant has an interest that is exempt under the provisions of
16 K.S.A. 60-4106, and amendments thereto, the court shall order the interest
17 in the property returned or conveyed to the claimant. The court shall order
18 all other property forfeited to the seizing agency and conduct further
19 proceedings pursuant to K.S.A. 60-4116 and 60-4117, and amendments
20 thereto.

21 Sec. 2. K.S.A. 2022 Supp. 60-4114 is hereby amended to read as
22 follows: 60-4114. (a) (1) A judicial in personam forfeiture proceeding
23 brought by the plaintiff's attorney pursuant to an in personam civil action
24 alleging conduct giving rise to forfeiture is also subject to the provisions of
25 this section. If a forfeiture is authorized by this act, it shall be ordered by
26 the court in the in personam action. The action shall be in addition to or in
27 lieu of in rem forfeiture procedures.

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

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

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

37 (2) a provision of notice would jeopardize the availability of the
38 property for forfeiture.

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

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

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

10 (d) ~~On~~*The plaintiff's attorney shall have the burden of proving*
11 *beyond a reasonable doubt that the interest in the property is subject to*
12 *forfeiture. If the state proves that the interest in the property is subject to*
13 *forfeiture, the court shall make a determination of liability of a person for*
14 *conduct giving rise to forfeiture under this act; If the court makes a*
15 *determination of liability, the court shall enter a judgment of forfeiture of*
16 *the property found to be subject to forfeiture described in the complaint*
17 *and shall also authorize the plaintiff's attorney or any law enforcement*
18 *officer to seize all property ordered forfeited which was not previously*
19 *seized or is not then under seizure. Following the entry of an order*
20 *declaring the property forfeited, the court, on application of the plaintiff's*
21 *attorney, may enter any appropriate order to protect the interest of the*
22 *seizing agency in the property ordered forfeited.*

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

27 (f) An owner of or interest holder in property that has been forfeited
28 and whose claim is not precluded may file a claim as described in K.S.A.
29 60-4111, and amendments thereto, within 60 days after initial notice of
30 pending forfeiture or after notice under subsection (e), whichever is earlier.
31 If the seizing agency does not recognize the claimed exemption, the
32 plaintiff's attorney shall file a complaint and the court shall hold the
33 hearing and determine the claim, without a jury, in the manner provided
34 for in rem judicial forfeiture actions in K.S.A. 60-4113, and amendments
35 thereto.

36 (g) In accordance with findings made at the hearing, the court may
37 amend the order of forfeiture if the court determines that any claimant has
38 established by a preponderance of the evidence that the claimant has an
39 interest in the property and that the claimant's interest is exempt under
40 K.S.A. 60-4106, and amendments thereto.

41 (h) Except as provided in K.S.A. 60-4112(c), and amendments
42 thereto, no person claiming an interest in property subject to forfeiture
43 under this act may intervene in a trial or appeal of a criminal action or in

- 1 an in personam civil action involving the forfeiture of the property.
- 2 Sec. 3. K.S.A. 2022 Supp. 60-4113 and 60-4114 are hereby repealed.
- 3 Sec. 4. This act shall take effect and be in force from and after its
- 4 publication in the statute book.