

**HOUSE BILL No. 2640**

By Representative Osman

2-8

1 AN ACT concerning asset forfeiture; relating to criminal forfeiture of  
2 property with a value of less than \$100,000; enacting the criminal  
3 forfeiture act; amending K.S.A. 2021 Supp. 60-4103 and repealing the  
4 existing section.

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

7 New Section 1. Sections 1 through 24, and amendments thereto, shall  
8 be known and may be cited as the criminal forfeiture act. This act applies  
9 to the seizure and forfeiture of property with a value of less than \$100,000  
10 that is used in the commission of a crime or is proceeds derived from the  
11 commission of a crime described in K.S.A. 60-4104, and amendments  
12 thereto.

13 New Sec. 2. As used in the criminal forfeiture act, sections 1 through  
14 24, and amendments thereto:

15 (a) "Abandoned property" means personal property left by an owner  
16 who relinquishes all rights to control of such property. "Abandoned  
17 property" does not include real property.

18 (b) "Act" means the criminal forfeiture act.

19 (c) "Actual knowledge" means direct and clear awareness of  
20 information, a fact or a condition.

21 (d) "Contraband" means any property that is illegal to possess.

22 (e) "Conveyance" means a device used for transportation.  
23 "Conveyance" includes a motor vehicle, trailer, snowmobile, airplane,  
24 vessel or any equipment attached to one of these devices. "Conveyance"  
25 does not include property that is stolen.

26 (f) "Innocent owner" means an owner, co-owner, defendant's heir or a  
27 person who regularly uses property subject to forfeiture and who does not  
28 have actual knowledge of the use of the property in the crime giving rise to  
29 forfeiture pursuant to this act. "Innocent owner" does not include the  
30 defendant or a secured interest holder.

31 (g) "Instrumentality" means property otherwise lawful to possess that  
32 is used in a crime giving rise to forfeiture. "Instrumentality" includes land,  
33 buildings, containers, conveyances, equipment, materials, products, tools,  
34 computers, computer software, telecommunications devices, firearms,  
35 ammunition and accessories for firearms and ammunition.

36 (h) "Law enforcement agency" means a public agency that employs

1 law enforcement officers as defined in K.S.A. 74-5602, and amendments  
2 thereto.

3 (i) "Proceeds" means money, securities, negotiable instruments or  
4 other means of exchange obtained from the sale of property or contraband.

5 (j) "Prosecuting attorney" means the same as defined in K.S.A. 22-  
6 2202, and amendments thereto.

7 (k) "Real property" means land and anything growing on, attached to  
8 or erected on such land, including a building.

9 (l) "Secured interest holder" means a person who is a secured  
10 creditor, mortgagee, lienholder or other person who has a valid claim,  
11 security interest, mortgage, lien, leasehold or other interest in the property  
12 subject to forfeiture. "Secured interest holder" does not include the  
13 defendant or an innocent owner.

14 New Sec. 3. (a) A court that has jurisdiction over a criminal case  
15 giving rise to forfeiture under this act shall have jurisdiction over the  
16 related forfeiture proceeding.

17 (b) A forfeiture proceeding under this act shall be a part of the  
18 criminal case. A hearing on such forfeiture shall be conducted after the  
19 defendant has been convicted of the crime giving rise to forfeiture.

20 New Sec. 4. (a) A court may issue an ex parte order to attach, seize or  
21 secure personal property that is the subject of a potential forfeiture  
22 proceeding and to provide for the custody of such property in accordance  
23 with this act.

24 (b) Personal property may be seized without a court order issued  
25 pursuant to subsection (a) if:

26 (1) The personal property subject to forfeiture is seized incident to a  
27 lawful arrest;

28 (2) there is probable cause to believe the delay caused by the  
29 necessity of obtaining an order pursuant to subsection (a) would result in  
30 the removal or destruction of the personal property; or

31 (3) the personal property is the subject of a previous valid judgment  
32 of forfeiture.

33 New Sec. 5. (a) Real property shall not be seized or restrained  
34 without a court order.

35 (b) (1) A court shall not issue an order to seize or restrain real  
36 property unless the defendant and any other person with a known interest  
37 in such property receive notice and are given an opportunity for a hearing  
38 to determine whether probable cause exists for such seizure or restraint.

39 (2) Notice under paragraph (1) shall be made by personal service. If  
40 personal service is not made after reasonable attempts, notice may be  
41 made by publication.

42 (c) If a prosecuting attorney initiates legal proceedings to sell or  
43 destroy real property, the prosecuting attorney shall notify the defendant

1 and any other person with a known interest in the property within 30 days.

2 New Sec. 6. No property rights exist in stolen property or contraband,  
3 and such property or contraband may be seized. Stolen property shall be  
4 returned to the lawful owner. Contraband shall be destroyed in accordance  
5 with K.S.A. 22-2512, and amendments thereto.

6 New Sec. 7. When property is seized, a law enforcement officer shall  
7 give an itemized receipt to the person from whom the property was seized.  
8 Such receipt shall be numbered and shall constitute notice of seizure. If the  
9 person possessing the property is not present at the time of the seizure, the  
10 law enforcement officer shall leave the receipt in the place where the  
11 property was found, if reasonably possible.

12 New Sec. 8. (a) The following property is not subject to seizure or  
13 forfeiture pursuant to this act:

- 14 (1) Real property that is a homestead;
- 15 (2) money in an amount of \$200 or less; and
- 16 (3) a motor vehicle with a market value of \$2,000 or less.

17 (b) A prosecuting attorney shall provide law enforcement agencies in  
18 the prosecuting attorney's jurisdiction with the names of publications to  
19 use to establish the value of a motor vehicle.

20 New Sec. 9. A law enforcement officer may not request, induce or  
21 require a person to waive a person's interest in property for purposes of  
22 seizing or forfeiting property. A document purporting to waive any interest  
23 or rights in seized property is void and inadmissible in court.

24 New Sec. 10. Title to property subject to forfeiture vests with the  
25 state when the court issues a forfeiture judgment, and such title shall relate  
26 back to the time when the property was seized. Title to substitute assets  
27 vests when the court issues an order forfeiting substitute assets.

28 New Sec. 11. (a) If a defendant in a criminal case is represented by a  
29 public defender or appointed counsel, such public defender or appointed  
30 counsel shall represent the defendant in a related forfeiture proceeding.

31 (b) If a defendant or an innocent owner engages in pro se  
32 representation in a forfeiture proceeding, the prosecuting attorney and the  
33 court may engage in discussions with the defendant or an innocent owner  
34 for the purpose of resolving the claim.

35 New Sec. 12. (a) A prosecuting attorney shall perform a reasonable  
36 search of public records to identify any person, other than the defendant,  
37 known to have an interest in the property subject to forfeiture.

38 (b) The prosecuting attorney shall give notice to any person, other  
39 than the defendant, identified to have an interest in the property subject to  
40 forfeiture. Such notice shall include the seizure receipt number given  
41 pursuant to section 7, and amendments thereto. Notice shall be by personal  
42 service. If personal service is not made after reasonable attempts, notice  
43 may be made by publication. The following language shall be included

1 with the notice: "WARNING: You may lose the right to be heard in court if  
2 you do not file promptly a statement of interest or ownership." If notice is  
3 not properly served on a person who has an interest in the property, the  
4 court shall order the return of the property to such person on request of  
5 such person.

6 New Sec. 13. (a) After property is seized, a defendant or any person  
7 with an interest in such property may petition the court to conduct a  
8 hearing on such seizure. The court shall hold such hearing:

9 (1) As a separate hearing; or

10 (2) in combination with a hearing conducted on the related criminal  
11 proceeding, including a preliminary hearing or other pretrial hearing.

12 (b) Such hearing shall be conducted within 30 days of the petition. A  
13 party may request one extension of not more than 10 days and shall  
14 provide evidence of good cause for such extension.

15 (c) The court shall order the return of such property if the court finds:

16 (1) The seizure was conducted in violation of this act;

17 (2) a criminal charge has not been filed and no extension of the filing  
18 period is available;

19 (3) the property is not reasonably required to be held as evidence;

20 (4) the final judgment is likely to be in favor of the defendant or  
21 person with interest in the property; or

22 (5) the property is the only reasonable means for the defendant to pay  
23 for legal representation unless the prosecuting attorney shows by a  
24 preponderance of the evidence that the property is the instrumentality of or  
25 proceeds derived directly from the crime giving rise to forfeiture.

26 (d) The court may return property, in whole or in part, to the  
27 defendant for the purpose of obtaining counsel if such property is not  
28 needed as evidence.

29 New Sec. 14. (a) When a prosecuting attorney seeks to forfeit  
30 property, the prosecuting attorney shall file a notice of proposed forfeiture  
31 with the court. The notice shall accompany the initial charging document  
32 as a separate document and shall include:

33 (1) A description of the property seized;

34 (2) the time, date and place of the seizure;

35 (3) the seizure receipt number on the receipt issued pursuant to  
36 section 7, and amendments thereto; and

37 (4) a description of how the property was used in or is proceeds  
38 derived from the alleged crime.

39 (b) The notice may seek forfeiture of the property as a sanction  
40 related to the crime giving rise to forfeiture or as part of a sentencing  
41 consideration. Such notice shall not be read to a jury. The prosecuting  
42 attorney may amend the notice at any time before a trial in the criminal  
43 case is commenced. If notice is not filed with the initial charging

1 document, the court may grant an unlimited number of 30-day extensions  
2 for filing such notice for good cause.

3 (c) If the prosecuting attorney does not file notice with the initial  
4 charging document, no extension is granted pursuant to subsection (b) or  
5 an extension granted pursuant to subsection (b) expires, the court shall  
6 order the return of the property to the owner.

7 (d) Forfeiture proceedings shall be conducted in a manner consistent  
8 with the Kansas code of criminal procedure.

9 New Sec. 15. (a) Property may be forfeited if the state:

10 (1) Secures a conviction for a crime described in K.S.A. 60-4104, and  
11 amendments thereto; and

12 (2) establishes by a preponderance of the evidence that the property is  
13 an instrumentality of or proceeds derived from such crime.

14 (b) Nothing in this section shall prohibit property being forfeited as  
15 part of a:

16 (1) Plea agreement; or

17 (2) grant of immunity or reduced punishment, with or without the  
18 filing of a criminal charge, in exchange for testifying or assisting a law  
19 enforcement investigation or prosecution.

20 (c) The court may waive the conviction requirement of subsection (a)  
21 and grant title of the property to the state if the prosecuting attorney files a  
22 motion within 90 days of seizure of the property and shows, by a  
23 preponderance of the evidence, that the defendant:

24 (1) Died;

25 (2) was deported by the United States government;

26 (3) abandoned the property; or

27 (4) fled the jurisdiction.

28 New Sec. 16. (a) The defendant may petition the court to determine  
29 whether the forfeiture is unconstitutionally excessive. The defendant has  
30 the burden of establishing that forfeiture is unconstitutionally excessive by  
31 a preponderance of the evidence.

32 (b) In determining whether the forfeiture is unconstitutionally  
33 excessive, the court may consider all relevant factors, including, but not  
34 limited to:

35 (1) The seriousness of the crime and the crime's impact on the  
36 community;

37 (2) the extent to which the defendant participated in the crime;

38 (3) the extent to which the property was used in committing the  
39 crime;

40 (4) whether the crime was completed or attempted;

41 (5) the sentence or fine to be imposed for committing the crime;

42 (6) if the property is a motor vehicle, the hardship to the defendant if  
43 the forfeiture would deprive the defendant of the defendant's livelihood;

1 and

2 (7) an unjust hardship to the defendant's family if the property is  
3 forfeited.

4 (c) In determining the value of the property, the court may consider  
5 all relevant factors related to the fair market value of the property. The  
6 court shall not consider the value of the property to the state in  
7 determining whether the forfeiture is unconstitutionally excessive.

8 New Sec. 17. (a) Property encumbered by a security interest shall not  
9 be subject to forfeiture.

10 (b) The prosecuting attorney shall return property to a secured interest  
11 holder up to the value of the interest. If the property is not returned, the  
12 secured interest holder may petition the court at any time prior to  
13 conviction in the criminal case. The petition may include the receipt  
14 number of the receipt issued pursuant to section 7, and amendments  
15 thereto.

16 (c) The court shall hold a hearing on the petition within 30 days after  
17 it is filed. The secured interest holder shall establish, by a preponderance  
18 of the evidence, the validity of such security interest. If the secured interest  
19 holder alleges a valid interest but the prosecuting attorney disputes the  
20 validity of the interest, the prosecuting attorney shall establish, by a  
21 preponderance of the evidence, that the:

22 (1) Interest is invalid;

23 (2) interest resulted from a fraudulent conveyance; or

24 (3) secured interest holder consented to the use of the property in the  
25 crime giving rise to forfeiture.

26 (d) If the prosecuting attorney does not meet the burden described in  
27 subsection (c), the court shall order the state to relinquish claim to the  
28 property, up to the value of the secured interest, and shall order the return  
29 of the such interest to the secured interest holder.

30 New Sec. 18. (a) Property of an innocent owner shall not be subject  
31 to forfeiture.

32 (b) The prosecuting attorney shall return property to an innocent  
33 owner. If the property is not returned, the innocent owner may petition the  
34 court at any time prior to conviction in the criminal case. Such petition  
35 shall not be subject to any fees, including a filing fee or docket fee. The  
36 petition may include the receipt number of the receipt issued pursuant to  
37 section 7, and amendments thereto. The petition shall include a simple  
38 statement that describes:

39 (1) The innocent owner's interest in or regular use of the property;

40 (2) the relief sought by the innocent owner; and

41 (3) any additional facts supporting the innocent owner's claim.

42 (c) The court shall hold a hearing on the petition within 30 days after  
43 it is filed. The innocent owner shall establish, by a preponderance of the

1 evidence, the validity of such owner's interest in or regular use of the  
2 property. If the innocent owner alleges a valid interest but the prosecuting  
3 attorney disputes the validity of the interest, the prosecuting attorney shall  
4 establish, by a preponderance of the evidence, that the:

5 (1) Interest is invalid;  
6 (2) innocent owner does not regularly use such property;  
7 (3) innocent owner had actual knowledge or reasonably should have  
8 known that the property was used in or derived directly from the crime  
9 giving rise to forfeiture; or

10 (4) the innocent owner was not a bona fide purchaser without notice  
11 of any defect in the title and for valuable consideration.

12 (d) If the prosecuting attorney does not meet the burden described in  
13 subsection (c), the court shall order the state to relinquish claim to the  
14 property and shall order the return of such property to the innocent owner.

15 (e) No information provided by an innocent owner pursuant to this  
16 section shall be used as evidence in the criminal case against the  
17 defendant. Nothing in this section shall prohibit the innocent owner from  
18 providing information to the prosecuting attorney or the defendant or  
19 testifying at any trial.

20 (f) A defendant may invoke the right against self-incrimination or the  
21 marital privilege during a forfeiture proceeding. The trier of fact may draw  
22 an adverse inference from the invocation of such right or privilege.

23 New Sec. 19. (a) If the prosecuting attorney fails to meet such  
24 attorney's burden in the criminal forfeiture proceeding, the court shall enter  
25 a judgment dismissing the forfeiture proceeding and ordering the return of  
26 the property to the owner unless the owner's possession of such property is  
27 illegal.

28 (b) If the prosecuting attorney meets such attorney's burden in the  
29 criminal case and related forfeiture proceeding, the court shall enter a  
30 judgment forfeiting the property.

31 (c) The court may enter a judgment following a hearing pursuant to a  
32 plea agreement or stipulation or at the court's discretion.

33 New Sec. 20. (a) Upon motion by the prosecuting attorney, the court  
34 may order the forfeiture of substitute property owned solely by the  
35 defendant up to the value of property that would otherwise be subject to  
36 forfeiture but is beyond the court's jurisdiction or cannot be located after  
37 due diligence, if the prosecuting attorney establishes by a preponderance  
38 of the evidence that the defendant:

39 (1) Dissipated the property;  
40 (2) transferred, sold or deposited property with a third party to avoid  
41 forfeiture;  
42 (3) diminished the value of the property substantially; or  
43 (4) commingled property with other property that cannot be divided

1 without difficulty.

2 (b) The prosecuting attorney shall not seek personal money  
3 judgments or other remedies related to the forfeiture of property not  
4 provided for by this act.

5 New Sec. 21. A defendant is not jointly and severally liable for  
6 forfeiture awards owed by other defendants. When ownership is unclear, a  
7 court may order each defendant to forfeit property on a pro rata basis or by  
8 another means the court finds equitable.

9 New Sec. 22. (a) A party to a forfeiture proceeding, other than the  
10 defendant, may appeal the court's decision in such proceeding. The  
11 defendant may appeal the court's decision regarding the seizure or  
12 forfeiture of property following final judgment in the forfeiture  
13 proceeding.

14 (b) In any proceeding in which an owner's claim prevails by  
15 recovering at least half, by value, of the property, the court shall order the  
16 seizing agency or prosecuting attorney to pay:

17 (1) Reasonable attorney fees and other litigation costs incurred by the  
18 owner;

19 (2) post-judgment interest; and

20 (3) in cases involving money or other negotiable instruments or the  
21 proceeds of an interlocutory sale, any interest actually paid from the date  
22 of the seizure.

23 New Sec. 23. If the court orders the return of property, the law  
24 enforcement agency holding the property shall return the property to the  
25 owner within five days of the date of the order. The owner shall not be  
26 subject to any expenses related to towing, storage or preservation of the  
27 property. The law enforcement agency that holds the property is  
28 responsible for any damages, storage fees and related costs associated with  
29 the property.

30 New Sec. 24. (a) When property other than money is forfeited  
31 pursuant to this section, the court shall order the sale of the forfeited  
32 property. The court may order forfeited money and the proceeds of a sale  
33 to:

34 (1) Pay restitution to the victim of the crime;

35 (2) satisfy recorded liens, mortgages or filed security interests in  
36 forfeited property;

37 (3) pay reasonable costs for the towing, storage, maintenance, repairs,  
38 advertising and sale and other costs associated with the forfeited property;

39 (4) reimburse the seizing law enforcement agency for non-personnel  
40 operating costs, including money for a controlled drug buy, related to the  
41 investigation of the crime; and

42 (5) reimburse the prosecuting attorney, public defender or court-  
43 appointed attorney for non-personnel costs, including filing fees,



1 subpoenas, court reporters and transcripts.

2 (b) After the court orders proceeds to be paid pursuant to subsection  
3 (a), any proceeds remaining shall be deposited in the state treasury to the  
4 credit of the state general fund.

5 (c) A law enforcement agency shall not:

6 (1) Sell forfeited property directly or indirectly to an employee of the  
7 law enforcement agency, to any person related to an employee of the law  
8 enforcement agency or to another law enforcement agency;

9 (2) transfer property that was seized or forfeited under state law to a  
10 federal agency.

11 (d) Nothing in subsection (c) shall prohibit a state law enforcement  
12 agency from participating in joint task forces with the federal government.  
13 Any proceeds from such task forces shall be deposited in the state treasury  
14 to the credit of the state general fund.

15 Sec. 25. K.S.A. 2021 Supp. 60-4103 is hereby amended to read as  
16 follows: 60-4103. (a) *The provisions of this act shall only apply to*  
17 *property seized with a value of more than \$100,000. All other seizure and*  
18 *forfeiture of property shall be subject to the provisions of the criminal*  
19 *forfeiture act, sections 1 through 24, and amendments thereto.*

20 (b) The district court has jurisdiction under this act over:

21 (1) All interests in property if the property for which forfeiture is  
22 sought is within this state at the time the action is filed; or

23 (2) the interest of an owner or interest holder in the property if the  
24 owner or interest holder is subject to personal jurisdiction in this state.

25 ~~(b)~~(c) (1) In addition to the venue provided for under any other  
26 provision of law, a proceeding for forfeiture under this act may be  
27 commenced and maintained in the county in which any part of the  
28 property is found or in the county in which a civil or criminal action could  
29 be commenced and maintained against an owner or interest holder for the  
30 conduct alleged to give rise to the forfeiture.

31 (2) (A) Except as provided in subsection (b)(2)(B), any proceeding  
32 for forfeiture brought by the attorney general may be commenced and  
33 maintained in:

34 (i) Any county in which there is proper venue as provided in  
35 subsection (b)(1) or any other provision of law; or

36 (ii) Shawnee county unless a motion to change venue is properly filed  
37 with the court not later than 20 days after service of the petition  
38 commencing such proceeding. If such motion to change venue is properly  
39 filed, the court shall transfer the proceeding to another county in which  
40 there is proper venue as provided in subsection (b)(1) or any other  
41 provision of law.

42 (B) If a proceeding for forfeiture is brought by the attorney general  
43 and involves property, law enforcement agencies, or owners or interest

1 holders of property in multiple counties, such proceeding may be  
2 commenced and maintained in:

3 (i) Shawnee county; or

4 (ii) any county in which there is proper venue as provided in  
5 subsection (b)(1) or any other provision of law.

6 Sec. 26. K.S.A. 2021 Supp. 60-4103 is hereby repealed.

7 Sec. 27. This act shall take effect and be in force from and after its  
8 publication in the statute book.