

SENATE BILL No. 458

By Committee on Judiciary

2-6

1 AN ACT concerning seizure and forfeiture of property; relating to the
2 Kansas standard asset seizure and forfeiture act; specifying that certain
3 drug offenses do not give rise to forfeiture under the act; requiring
4 courts to make a finding that forfeiture is not excessive; restricting
5 actions prior to commencement of forfeiture proceedings; requiring
6 probable cause affidavit filing and review to commence forfeiture
7 proceedings; increasing the burden of proof required to forfeit property
8 to clear and convincing evidence; providing persons involved in
9 forfeiture proceedings the ability to request a jury trial; authorizing
10 courts to order payment of attorney fees and costs for certain claimants;
11 requiring the Kansas bureau of investigation to submit forfeiture fund
12 financial reports to the legislature; amending K.S.A. 2023 Supp. 60-
13 4104, 60-4106, 60-4107, 60-4109, 60-4111, 60-4112, 60-4113, 60-
14 4114, 60-4116, 60-4117 and 60-4127 and repealing the existing
15 sections.

16

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

18 Section 1. K.S.A. 2023 Supp. 60-4104 is hereby amended to read as
19 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
20 act, whether or not there is a prosecution or conviction related to the
21 offense, are:

22 (a) All offenses which statutorily and specifically authorize forfeiture;

23 (b) violations involving controlled substances, as described in K.S.A.
24 ~~21-5701 through 21-5717~~ 21-5703, 21-5705, 21-5707, 21-5708(b), 21-
25 5709(a), (b)(1), (c) and (d), 21-5710, 21-5713(a), 21-5714 and 21-5716,
26 and amendments thereto;

27 (c) theft, as defined in K.S.A. 21-5801, and amendments thereto;

28 (d) criminal discharge of a firearm, as defined in K.S.A. 21-6308(a)
29 (1) and (a)(2), and amendments thereto;

30 (e) gambling, as defined in K.S.A. 21-6404, and amendments thereto,
31 and commercial gambling, as defined in K.S.A. 21-6406(a)(1), and
32 amendments thereto;

33 (f) counterfeiting, as defined in K.S.A. 21-5825, and amendments
34 thereto;

35 (g) unlawful possession or use of a scanning device or reencoder, as
36 described in K.S.A. 21-6108, and amendments thereto;

- 1 (h) medicaid fraud, as described in K.S.A. 21-5925 through 21-5934,
2 and amendments thereto;
- 3 (i) an act or omission occurring outside this state, which would be a
4 violation in the place of occurrence and would be described in this section
5 if the act occurred in this state, whether or not it is prosecuted in any state;
- 6 (j) an act or omission committed in furtherance of any act or omission
7 described in this section including any inchoate or preparatory offense,
8 whether or not there is a prosecution or conviction related to the act or
9 omission;
- 10 (k) any solicitation or conspiracy to commit any act or omission
11 described in this section, whether or not there is a prosecution or
12 conviction related to the act or omission;
- 13 (l) terrorism, as defined in K.S.A. 21-5421, and amendments thereto,
14 illegal use of weapons of mass destruction, as defined in K.S.A. 21-5422,
15 and amendments thereto, and furtherance of terrorism or illegal use of
16 weapons of mass destruction, as described in K.S.A. 21-5423, and
17 amendments thereto;
- 18 (m) unlawful conduct of dog fighting and unlawful possession of dog
19 fighting paraphernalia, as defined in K.S.A. 21-6414(a) and (b), and
20 amendments thereto;
- 21 (n) unlawful conduct of cockfighting and unlawful possession of
22 cockfighting paraphernalia, as defined in K.S.A. 21-6417(a) and (b), and
23 amendments thereto;
- 24 (o) selling sexual relations, as defined in K.S.A. 21-6419, and
25 amendments thereto, promoting the sale of sexual relations, as defined in
26 K.S.A. 21-6420, and amendments thereto, and buying sexual relations, as
27 defined in K.S.A. 21-6421, and amendments thereto;
- 28 (p) human trafficking and aggravated human trafficking, as defined in
29 K.S.A. 21-5426, and amendments thereto;
- 30 (q) violations of the banking code, as described in K.S.A. 9-2012, and
31 amendments thereto;
- 32 (r) mistreatment of a dependent adult, as defined in K.S.A. 21-5417,
33 and amendments thereto;
- 34 (s) giving a worthless check, as defined in K.S.A. 21-5821, and
35 amendments thereto;
- 36 (t) forgery, as defined in K.S.A. 21-5823, and amendments thereto;
- 37 (u) making false information, as defined in K.S.A. 21-5824, and
38 amendments thereto;
- 39 (v) criminal use of a financial card, as defined in K.S.A. 21-5828, and
40 amendments thereto;
- 41 (w) unlawful acts concerning computers, as described in K.S.A. 21-
42 5839, and amendments thereto;
- 43 (x) identity theft and identity fraud, as defined in K.S.A. 21-6107(a)

1 and (b), and amendments thereto;

2 (y) electronic solicitation, as defined in K.S.A. 21-5509, and
3 amendments thereto;

4 (z) felony violations of fleeing or attempting to elude a police officer,
5 as described in K.S.A. 8-1568, and amendments thereto;

6 (aa) commercial sexual exploitation of a child, as defined in K.S.A.
7 21-6422, and amendments thereto;

8 (bb) violations of the Kansas racketeer influenced and corrupt
9 organization act, as described in K.S.A. 21-6329, and amendments thereto;

10 (cc) indecent solicitation of a child and aggravated indecent
11 solicitation of a child, as defined in K.S.A. 21-5508, and amendments
12 thereto;

13 (dd) sexual exploitation of a child, as defined in K.S.A. 21-5510, and
14 amendments thereto; and

15 (ee) violation of a consumer protection order as defined in K.S.A. 21-
16 6423, and amendments thereto.

17 Sec. 2. K.S.A. 2023 Supp. 60-4106 is hereby amended to read as
18 follows: 60-4106. (a) *Except as provided in this subsection*, all property,
19 including all interests in property, described in K.S.A. 60-4105, and
20 amendments thereto, is subject to forfeiture subject to all mortgages, deeds
21 of trust, financing statements or security agreements properly of record
22 prior to the forfeiture held by an interest holder ~~except that property~~
23 ~~specifically exempted hereunder.~~

24 (1) No real property or conveyance, or an interest therein, may be
25 forfeited under this act unless the offense or conduct giving rise to
26 forfeiture constitutes a felony.

27 (2) No conveyance used by any person as a common carrier in the
28 transaction of business as a common carrier is subject to forfeiture under
29 this act unless the owner or other person in charge of the conveyance is a
30 consenting party or privy to a violation of this act.

31 (3) No property is subject to forfeiture under this act if the owner or
32 interest holder acquired the property before or during the conduct giving
33 rise to the property's forfeiture, and such owner or interest holder:

34 (A) Did not know and could not have reasonably known of the act or
35 omission or that it was likely to occur; or

36 (B) acted reasonably to prevent the conduct giving rise to forfeiture.

37 (4) No property is subject to forfeiture if the owner or interest holder
38 acquired the property after the conduct giving rise to the property's
39 forfeiture, including acquisition of proceeds of conduct giving rise to
40 forfeiture, and such owner or interest holder:

41 (A) Acquired the property in good faith, for value; and

42 (B) was not knowingly taking part in an illegal transaction.

43 (5) (A) An interest in property acquired in good faith by an attorney

1 as reasonable payment or to secure payment for legal services in a criminal
2 matter relating to violations of this act or for the reimbursement of
3 reasonable expenses related to the legal services is exempt from forfeiture
4 unless before the interest was acquired the attorney knew of a judicial
5 determination of probable cause that the property is subject to forfeiture.

6 (B) The state bears the burden of proving that an exemption claimed
7 under this section is not applicable. Evidence made available by the
8 compelled disclosure of confidential communications between an attorney
9 and a client other than nonprivileged information relating to attorney fees,
10 is not admissible to satisfy the state's burden of proof.

11 (b) Notwithstanding subsection (a), property is not exempt from
12 forfeiture, even though the owner or interest holder lacked knowledge or
13 reason to know that the conduct giving rise to property's forfeiture had
14 occurred or was likely to occur, if the:

15 (1) Person whose conduct gave rise to the property's forfeiture had
16 authority to convey the property of the person claiming the exemption to a
17 good faith purchaser for value at the time of the conduct;

18 (2) owner or interest holder is criminally responsible for the conduct
19 giving rise to the property's forfeiture, whether or not there is a prosecution
20 or conviction; or

21 (3) owner or interest holder acquired the property with notice of the
22 property's actual or constructive seizure for forfeiture under this act, or
23 with reason to believe that the property was subject to forfeiture under this
24 act.

25 (c) Prior to final judgment in a judicial forfeiture proceeding, ~~a the~~
26 court shall ~~limit the scope of a proposed forfeiture to the extent the court~~
27 ~~finds the effect of the forfeiture is grossly disproportionate to the nature~~
28 ~~and severity of the owner's conduct including, but not limited to, a~~
29 ~~consideration of any of the following factors:~~

30 ~~(1) The gain received or expected to be received by an owner from~~
31 ~~conduct that allows forfeiture;~~

32 ~~(2) the value of the property subject to forfeiture;~~

33 ~~(3) the extent to which the property actually facilitated the criminal~~
34 ~~conduct;~~

35 ~~(4) the nature and extent of the owner's knowledge of the role of~~
36 ~~others in the conduct that allows forfeiture of the property and efforts of~~
37 ~~the owner to prevent the conduct; and~~

38 ~~(5) the totality of the circumstances regarding the investigation~~
39 ~~determine whether the proposed forfeiture is unconstitutionally excessive~~
40 ~~pursuant to K.S.A. 60-4112(g), and amendments thereto, if the court has~~
41 ~~not made such determination earlier in the proceeding as a result of a~~
42 ~~petition filed pursuant to K.S.A. 60-4112(g), and amendments thereto.~~

43 Sec. 3. K.S.A. 2023 Supp. 60-4107 is hereby amended to read as

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

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

16 (c) Property may be seized constructively by:

17 (1) Posting notice of seizure for forfeiture or notice of pending
18 forfeiture on the property.

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

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

28 (d) The seizing agency shall make reasonable effort to provide notice
29 of the seizure to the person from ~~whose~~ *whom* possession or control *of* the
30 property was seized and any interest holder of record within 30 days of
31 seizing the property. If no person is in possession or control, the seizing
32 agency may attach the notice to the property or to the place of the
33 property's seizure or may make a reasonable effort to deliver the notice to
34 the owner of the property. The notice shall contain a general description of
35 the property seized, the date and place of seizure, the name of the seizing
36 agency and the address and telephone number of the seizing officer or
37 other person or agency from whom information about the seizure may be
38 obtained.

39 (e) A person who acts in good faith and in a reasonable manner to
40 comply with an order of the court or a request of a law enforcement officer
41 is not liable to any person on account of acts done in reasonable
42 compliance with the order or request. No liability may attach from the fact
43 that a person declines a law enforcement officer's request to deliver

1 property.

2 (f) A possessory lien of a person from ~~whose~~ *whom* possession of the
3 property is seized is not affected by the seizure.

4 (g) When property is seized for forfeiture under this act, the seizing
5 agency shall, ~~within 45 days of~~ *14 days after* such seizure, forward to the
6 county or district attorney in whose jurisdiction the seizure occurred, a
7 written request for forfeiture which shall include a statement of facts and
8 circumstances of the seizure, the estimated value of the property, the
9 owner and lienholder of the property, the amount of any lien, and a
10 summary of the facts relied on for forfeiture.

11 (h) (1) Upon receipt of a written request for forfeiture from a local
12 law enforcement agency, the county or district attorney shall accept or
13 decline the request within 14 days. ~~¶~~

14 (2) *Upon the expiration of the 14-day time limitation provided in*
15 *paragraph (1) or upon notification that the county or district attorney*
16 *declines such request, ~~or fails to answer~~ whichever occurs first, the seizing*
17 *agency ~~may~~ has 14 days to:*

18 ~~(A)~~ (A) Request a state law enforcement agency that enforces this act
19 to adopt the forfeiture; or

20 ~~(B)~~ (B) engage an attorney, approved by the county or district attorney,
21 to represent the agency in the forfeiture proceeding, but in no event shall
22 the county or district attorney approve an attorney with whom the county
23 or district attorney has a financial interest, either directly or indirectly.

24 (3) *Upon the expiration of the 14-day time limitation provided in*
25 *paragraph (2), if a state law enforcement agency has not adopted the*
26 *forfeiture or the seizing agency has not engaged an attorney to represent*
27 *the agency, the property that was seized for forfeiture shall be returned*
28 *within 30 days to the owner or interest holder or as provided for the same*
29 *kind of property in K.S.A. 22-2512, and amendments thereto.*

30 (i) (1) Upon receipt of a written request for forfeiture from a state law
31 enforcement agency, the county or district attorney shall accept or decline
32 the request within 14 days. ~~¶~~

33 (2) *Upon the expiration of the 14-day time limitation provided in*
34 *paragraph (1) or upon notification that the county or district attorney*
35 *declines such request, ~~or fails to answer~~ whichever occurs first, the seizing*
36 *agency ~~may~~ has 14 days to engage an assistant attorney general or other*
37 *attorney approved by the attorney general to represent the agency in the*
38 *forfeiture proceeding, but in no event shall the attorney general approve an*
39 *attorney with whom the attorney general has a financial interest, either*
40 *directly or indirectly.*

41 (3) *Upon the expiration of the 14-day time limitation provided in*
42 *paragraph (2), if the seizing agency has not engaged an attorney to*
43 *represent the agency, the property that was seized for forfeiture shall be*

1 returned within 30 days to the owner or interest holder or as provided for
 2 the same kind of property in K.S.A. 22-2512, and amendments thereto.

3 (j) Nothing in subsection (h) or (i) shall affect the time limitations for
 4 initiating or filing a forfeiture proceeding pursuant to K.S.A. 60-4109, and
 5 amendments thereto,

6 (k) A county or district attorney or the attorney general shall not
 7 request or receive any referral fee or personal financial benefit, either
 8 directly or indirectly, in any proceeding conducted under this act.

9 ~~(k)(l)~~ Nothing in this act shall prevent the attorney general, an
 10 employee of the attorney general or an authorized representative of the
 11 attorney general from conducting forfeiture proceedings under this act.

12 ~~(l)(m)~~ Nothing in this act shall prevent a seizing agency from
 13 requesting a law enforcement agency shall request federal adoption of a
 14 seizure pursuant to this act. It shall not be necessary to obtain any order
 15 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
 16 property to a federal agency if the county or district attorney approves of
 17 such transfer.

18 ~~(m)(n)~~ Nothing in this act shall prevent a seizing agency, or the
 19 plaintiff's attorney on behalf of the seizing agency, from settling any
 20 alleged forfeiture claim against property before or during forfeiture
 21 proceedings. Such settlement shall be in writing and shall be approved, if a
 22 local agency, by the county or district attorney or, if a state agency, by the
 23 attorney general's office and a district court judge. No hearing or other
 24 proceeding shall be necessary. The records of settlements occurring prior
 25 to commencement of judicial forfeiture proceedings in the district court
 26 shall be retained by the county or district attorney for not less than five
 27 years.

28 ~~(n)(o)~~ Settlements under this act shall not be conditioned upon any
 29 disposition of criminal charges.

30 (p) When property is seized for forfeiture under this act, the seizing
 31 agency shall not request, induce or otherwise coerce a person who has at
 32 any time asserted rights as an owner or interest holder of such property to
 33 waive in writing such rights in the property until forfeiture proceedings
 34 are commenced pursuant to K.S.A. 60-4109, and amendments thereto.

35 Sec. 4. K.S.A. 2023 Supp. 60-4109 is hereby amended to read as
 36 follows: 60-4109. (a) (1) (A) Forfeiture proceedings shall be commenced
 37 by filing:

38 (i) A notice of pending forfeiture or a judicial forfeiture action; and

39 (ii) an affidavit describing the probable cause supporting forfeiture.

40 (B) After an affidavit is filed under this section, further proceedings
 41 shall occur only after a judge of the district court has determined from the
 42 affidavit that there is probable cause to believe that the property is subject
 43 to forfeiture pursuant to K.S.A. 60-4105, and amendments thereto.

1 ~~(1)~~(2) If the plaintiff's attorney fails to initiate forfeiture proceedings
2 by notice of pending forfeiture within 90 days against property seized for
3 forfeiture or if the seizing agency fails to pursue forfeiture of the property
4 upon which a proper claim has been timely filed by filing a judicial
5 forfeiture proceeding within 90 days after notice of pending forfeiture, the
6 property shall be released on the request of an owner or interest holder to
7 such owner's or interest holder's custody, as custodian for the court,
8 pending further proceedings pursuant to this act. Such custodianship shall
9 not exceed 90 days following the release to the owner or interest holder
10 unless an extension is authorized by the court for good cause shown.

11 ~~(2)~~(3) If, after notice of pending forfeiture, a claimant files a petition
12 for recognition of exemption pursuant to K.S.A. 60-4110, and amendments
13 thereto, the plaintiff's attorney may delay filing the judicial forfeiture
14 proceeding for a total of 180 days after the notice of pending forfeiture
15 except that if an interest holder timely files a proper petition documenting
16 the complete nature and extent of such holder's interest, including all of the
17 contractual terms and current status, the plaintiff's attorney may delay
18 filing a judicial forfeiture proceeding only if such attorney provides each
19 such petitioner with a written recognition of exemption within 60 days
20 after the effective date of the notice of pending forfeiture, recognizing the
21 interest of such petitioner to the extent of documented outstanding
22 principal plus interest at the contract rate until paid and any attorney fees
23 ordered by a court pursuant to such contract.

24 ~~(3)~~(4) Whenever notice of pending forfeiture or service of an in rem
25 complaint or notice of a recognition of exemption and statement of
26 nonexempt interests is required under this act, notice or service shall be
27 given in accordance with one of the following:

28 (A) If the owner's or interest holder's name and current address are
29 known, by either personal service by any person qualified to serve process
30 or by any law enforcement officer or by mailing a copy of the notice by
31 certified mail, return receipt requested, to the known address, pursuant to
32 the code of civil procedure;

33 (B) if the owner's or interest holder's name and address are required
34 by law to be on record with a municipal, county, state or federal agency to
35 perfect an interest in the property, and the owner's or interest holder's
36 current address is not known, by mailing a copy of the notice by certified
37 mail, return receipt requested, to any address of record with any of the
38 described agencies, pursuant to the code of civil procedure; or

39 (C) if the owner's or interest holder's address is not known and is not
40 on record as provided in subparagraph (B), or the owner's or interest
41 holder's interest is not known, or if service by certified mail was attempted
42 pursuant to subparagraph (A) or (B) and was not effective, by publication
43 in one issue of the official county newspaper, as defined by K.S.A. 64-101,

1 and amendments thereto, in the county in which the seizure occurred.

2 (4)(5) Notice is effective pursuant to the code of civil procedure,
3 except that notice of pending forfeiture of real property is not effective
4 until it is recorded. Notice of pending forfeiture shall include a description
5 of the property, the date and place of seizure, the conduct giving rise to
6 forfeiture or the violation of law alleged and a summary of procedures and
7 procedural rights applicable to the forfeiture action. ~~Am~~ *When notice of*
8 *pending forfeiture is mailed to an owner or interest holder, the following*
9 *shall be included with the notice: (A) The affidavit describing the essential*
10 *facts probable cause supporting forfeiture shall be included with the*
11 *notice; and (B) copies of judicial council forms for petitioning for*
12 *recognition of an exemption pursuant to K.S.A. 60-4110, and amendments*
13 *thereto, and for making a claim pursuant to K.S.A. 60-4111, and*
14 *amendments thereto, shall be provided with the notice.*

15 (b) The plaintiff's attorney, ~~without a filing fee,~~ may file a lien for the
16 forfeiture of property upon the ~~initiation of any civil or criminal~~
17 ~~proceeding relating to conduct giving rise to forfeiture under this act or~~
18 ~~upon seizure for forfeiture commencement of a forfeiture proceeding as~~
19 ~~provided in subsection (a). The court shall not charge the plaintiff's~~
20 ~~attorney a filing fee.~~ Court costs may be assessed and, if assessed, shall
21 include the amount of the docket fee prescribed by K.S.A. 60-2001, and
22 amendments thereto, and any additional court costs accrued in the action.
23 A plaintiff's attorney may also file a forfeiture lien in this state in
24 connection with a proceeding or seizure for forfeiture in any other state
25 under a state or federal statute substantially similar to the relevant
26 provisions of this act. The filing constitutes notice to any person claiming
27 an interest in the seized property or in property owned by the named
28 person.

29 (1) The lien notice shall set forth the following:

30 (A) The name of the person and, in the discretion of the lienor, any
31 alias, or the name of any corporation, partnership, trust or other entity,
32 including nominees, that are owned entirely or in part or controlled by the
33 person; and

34 (B) the description of the seized property, the criminal or civil
35 proceeding that has been brought relating to conduct giving rise to
36 forfeiture under this act, the amount claimed by the lienor, the name of the
37 district court where the proceeding or action has been brought, and the
38 case number of the proceeding or action if known at the time of filing.

39 (2) A lien filed pursuant to this subsection applies to the described
40 seized property or to one named person, any aliases, fictitious names, or
41 other names, including the names of any corporation, partnership, trust, or
42 other entity, owned entirely or in part, or controlled by the named person,
43 and any interest in real property owned or controlled by the named person.

1 A separate forfeiture lien shall be filed for each named person.

2 (3) The notice of lien creates, upon filing, a lien in favor of the lienor
3 as it relates to the seized property or the named person or related entities.
4 The lien secures the amount of potential liability for civil judgment, and if
5 applicable, the fair market value of seized property relating to all
6 proceedings under this act enforcing the lien. The notice of forfeiture lien
7 referred to in this subsection shall be filed in accordance with the
8 provisions of the laws of this state relating to the type of property that is
9 subject to the lien. The validity and priority of the forfeiture lien shall be
10 determined in accordance with applicable law pertaining to liens. The
11 lienor may amend or release, in whole or in part, a lien filed under this
12 subsection at any time by filing, without a filing fee, an amended lien in
13 accordance with this subsection which identifies the lien amended. The
14 lienor, as soon as practical after filing the lien, shall furnish to any person
15 named in the lien a notice of the filing of the lien. Failure to furnish notice
16 under this subsection shall not invalidate or otherwise affect the lien.

17 (4) Upon entry of judgment in the seizing agency's favor, the seizing
18 agency may proceed to execute on the lien as provided by law.

19 (5) A trustee, constructive or otherwise, who has notice that a notice
20 of forfeiture lien, or a notice of pending forfeiture, or a ~~civil~~ forfeiture
21 proceeding has been filed against the property or against any person or
22 entity for whom the person holds title or appears as record owner, shall
23 furnish within 14 days, to the seizing agency or the plaintiff's attorney all
24 of the following information, unless all of the information is of record in
25 the public records giving notice of liens on that type of property:

26 (A) The name and address of each person or entity for whom the
27 property is held;

28 (B) the description of all other property whose legal title is held for
29 the benefit of the named person; and

30 (C) a copy of the applicable trust agreement or other instrument, if
31 any, under which the trustee or other person holds legal title or appears as
32 record owner of the property.

33 (6) A trustee with notice who knowingly fails to comply with the
34 provisions of this subsection shall be guilty of a class B nonperson
35 misdemeanor.

36 (7) A trustee with notice who fails to comply with paragraph (5) is
37 subject to a civil penalty of \$100 for each day of noncompliance. The court
38 shall enter judgment ordering payment of \$100 for each day of
39 noncompliance from the effective date of the notice until the required
40 information is furnished or the seizing agency executes the seizing
41 agency's judgment lien under this section.

42 (8) To the extent permitted by the constitutions of the United States
43 and the state of Kansas, the duty to comply with paragraph (5) shall not be

1 excused by any privilege or provision of law of this state or any other state
2 or country which authorizes or directs that testimony or records required to
3 be furnished pursuant to paragraph (5) are privileged, confidential and
4 otherwise may not be disclosed.

5 (9) A trustee who furnishes information pursuant to paragraph (5) is
6 immune from civil liability for the release of the information.

7 (10) An employee of the seizing agency or the plaintiff's attorney
8 who releases the information obtained pursuant to paragraph (5), except in
9 the proper discharge of official duties, is guilty of a class B nonperson
10 misdemeanor.

11 (11) If any information furnished pursuant to paragraph (5) is offered
12 in evidence, the court may seal that portion of the record or may order that
13 the information be disclosed in a designated way.

14 (12) A judgment or an order of payment entered pursuant to this
15 section becomes a judgment lien against the property alleged to be subject
16 to forfeiture.

17 Sec. 5. K.S.A. 2023 Supp. 60-4111 is hereby amended to read as
18 follows: 60-4111. (a) (1) Only an owner of or interest holder in property
19 seized for forfeiture may file a claim, and shall do so in the manner
20 provided in this section. The claim shall be mailed to the seizing agency
21 and to the plaintiff's attorney by certified mail, return receipt requested,
22 within 60 days after the effective date of notice of pending forfeiture.

23 (2) *The plaintiff's attorney shall file a notice of receipt with the court*
24 *when a claim is received unless the claim was already filed with the court.*
25 *Such filing shall include a copy of the claim and documents showing the*
26 *date that the claim was mailed and received.*

27 (b) The claim shall be signed by the claimant under penalty of
28 perjury, K.S.A. 21-5903, and amendments thereto, and shall set forth the
29 following:

30 (1) The caption of the proceedings and identifying number, if any, as
31 set forth on the notice of pending forfeiture or complaint, the name of the
32 claimant, and the name of the plaintiff's attorney who authorized the notice
33 of pending forfeiture or complaint;

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

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

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

38 (c) Substantial compliance with subsection (b) shall be deemed
39 sufficient.

40 (d) It is permissible to assert the right against self-incrimination in a
41 claim. If a claimant asserts the right, the court, in the court's discretion,
42 may draw an adverse inference from the assertion against the claimant.
43 The adverse inference shall not, by itself, be the basis of a judgment

1 against the claimant.

2 Sec. 6. K.S.A. 2023 Supp. 60-4112 is hereby amended to read as
3 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
4 subject to the provisions of this section.

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

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

34 ~~(d) All applications filed within the 14-day period prescribed by~~
35 ~~subsection (c) shall be consolidated for a single hearing relating to each~~
36 ~~applicant's interest in the property seized for forfeiture.~~

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

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

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

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

7 ~~(f)~~(e) If the court finds that there is no probable cause for forfeiture of
8 the property, the court shall order the property released ~~pursuant to~~
9 ~~subsection (e)~~ *to the custody of the applicant, as custodian for the court,*
10 *or from a forfeiture lien pending the outcome of a judicial proceeding*
11 *pursuant to this act.* If the seizing agency does not contest the hearing, the
12 court may release a reasonable amount of property for the payment of the
13 applicant's criminal defense costs. Property that has been released by the
14 court and that has been paid for criminal defense services actually
15 rendered is exempt under this act.

16 ~~(g)~~(f) A defendant convicted in any criminal proceeding is precluded
17 from later denying the elements of the criminal offense of which the
18 defendant was convicted in any proceeding pursuant to this section. For
19 the purposes of this section, a conviction results from a verdict or plea of
20 guilty, including a plea of no contest or nolo contendere.

21 (g) (1) *At any time following seizure pursuant to this act, the person*
22 *from whom possession or control of the property was seized may petition*
23 *the court to determine whether such forfeiture is unconstitutionally*
24 *excessive.*

25 (2) *The plaintiff's attorney has the burden of establishing that the*
26 *forfeiture is proportional to the seriousness of the offense giving rise to the*
27 *forfeiture by clear and convincing evidence at a hearing conducted by the*
28 *court without a jury. Such hearing may be a component of the associated*
29 *trial and not a separate hearing.*

30 (3) *In determining whether the forfeiture is unconstitutionally*
31 *excessive, the court may consider all relevant factors, including, but not*
32 *limited to:*

33 (A) *The seriousness of the offense;*

34 (B) *the extent of participation in the offense by the person from whom*
35 *possession or control of the property was seized;*

36 (C) *the extent to which the property was used in committing the*
37 *offense;*

38 (D) *the sentence imposed for committing the offense that gave rise to*
39 *forfeiture;*

40 (E) *the effect of the forfeiture on the livelihood of the person from*
41 *whom possession or control of the property was seized; and*

42 (F) *the fair market value of the property compared to the property*
43 *owner's net worth.*

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

6 (i) In hearings and determinations pursuant to this section, the court
7 may receive and consider, in making any determination of probable cause
8 or reasonable cause, all evidence admissible in determining probable cause
9 at a preliminary hearing or in the issuance of a search warrant, together
10 with inferences ~~therefrom~~ *from such admissible evidence*.

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

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

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

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

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

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

25 (l) A person who acquires any property subject to forfeiture is a
26 constructive trustee of the property, and such property's fruits, for the
27 benefit of the seizing agency, to the extent that such agency's interest is not
28 exempt from forfeiture. If property subject to forfeiture has been
29 commingled with other property, the court shall order the forfeiture of the
30 mingled property and of any fruits of the mingled property, to the extent of
31 the property subject to forfeiture, unless an owner or interest holder proves
32 that specified property does not contain property subject to forfeiture, or
33 that such owner's or interest holder's interest in specified property is
34 exempt from forfeiture.

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

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

4 (o) ~~On motion,~~ The court shall *automatically* stay discovery against
5 the criminal defendant and against the seizing agency in civil proceedings
6 during a related criminal proceeding alleging the same conduct, after
7 making provision to prevent loss to any party resulting from the delay.
8 ~~Such a stay shall not be available pending any appeal by a defendant~~ *The*
9 *court may lift the automatic stay of discovery upon good cause shown.*

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

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

18 Sec. 7. K.S.A. 2023 Supp. 60-4113 is hereby amended to read as
19 follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by
20 the plaintiff's attorney pursuant to a notice of pending forfeiture or verified
21 petition for forfeiture is also subject to the provisions of this section. If a
22 forfeiture is authorized by this act, it shall be ordered by the court in the in
23 rem action.

24 (b) An action in rem may be brought by the plaintiff's attorney in
25 addition to, or in lieu of, civil in personam forfeiture procedures. The
26 seizing agency may serve the complaint in the manner provided by K.S.A.
27 60-4109(a)(3), and amendments thereto, or as provided by the rules of
28 civil procedure.

29 (c) Only an owner of or an interest holder in the property who has
30 timely filed a proper claim may file an answer in an action in rem. For the
31 purposes of this section, an owner of or interest holder in property who has
32 filed a claim and answer shall be referred to as a claimant. *A claimant may*
33 *demand a jury trial pursuant to K.S.A. 60-238, and amendments thereto.*

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

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

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

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

43 (4) a detailed description of when and how the claimant obtained an

1 interest in the property.

2 (e) Substantial compliance with subsection (d) shall be deemed
3 sufficient.

4 (f) It is permissible to assert the right against self-incrimination in an
5 answer. If a claimant asserts the right, the court, in the court's discretion,
6 may draw an adverse inference from the assertion against the claimant.
7 The adverse inference shall not, by itself, be the basis of a judgment
8 against the claimant.

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

11 (h) ~~The issue shall be determined by the court alone.~~ The plaintiff's
12 attorney shall have the initial burden of proving the interest in the property
13 is subject to forfeiture by a preponderance of the *clear and convincing*
14 evidence. If the state proves the interest in the property is subject to
15 forfeiture, the claimant has the burden of showing by a preponderance of
16 the evidence that the claimant has an interest in the property which is not
17 subject to forfeiture.

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

26 Sec. 8. K.S.A. 2023 Supp. 60-4114 is hereby amended to read as
27 follows: 60-4114. (a) (1) A judicial in personam forfeiture proceeding
28 brought by the plaintiff's attorney pursuant to an in personam civil action
29 alleging conduct giving rise to forfeiture is also subject to the provisions of
30 this section. If a forfeiture is authorized by this act, it shall be ordered by
31 the court in the in personam action. The action shall be in addition to or in
32 lieu of in rem forfeiture procedures.

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

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

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

42 (2) a provision of notice would jeopardize the availability of the
43 property for forfeiture.

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

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

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

15 (d) On a determination of liability of a person for conduct giving rise
16 to forfeiture under this act, the court shall enter a judgment of forfeiture of
17 the property found to be subject to forfeiture described in the complaint
18 and shall also authorize the plaintiff's attorney or any law enforcement
19 officer to seize all property ordered forfeited which was not previously
20 seized or is not then under seizure. Following the entry of an order
21 declaring the property forfeited, the court, on application of the plaintiff's
22 attorney, may enter any appropriate order to protect the interest of the
23 seizing agency in the property ordered forfeited.

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

28 (f) An owner of or interest holder in property that has been forfeited
29 and whose claim is not precluded may file a claim as described in K.S.A.
30 60-4111, and amendments thereto, within 60 days after initial notice of
31 pending forfeiture or after notice under subsection (e), whichever is earlier.
32 *A claimant may demand a jury trial pursuant to K.S.A. 60-238, and*
33 *amendments thereto.* If the seizing agency does not recognize the claimed
34 exemption, the plaintiff's attorney shall file a complaint and the court shall
35 hold the hearing and determine the claim, without a jury, in the manner
36 provided for in rem judicial forfeiture actions in K.S.A. 60-4113, and
37 amendments thereto.

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

43 (h) Except as provided in K.S.A. 60-4112(c), and amendments

1 thereto, no person claiming an interest in property subject to forfeiture
2 under this act may intervene in a trial or appeal of a criminal action or in
3 an in personam civil action involving the forfeiture of the property.

4 Sec. 9. K.S.A. 2023 Supp. 60-4116 is hereby amended to read as
5 follows: 60-4116. (a) If no proper claims are timely filed in an action in
6 rem, or if no proper answer is timely filed in response to a complaint, the
7 plaintiff's attorney may apply for an order of forfeiture and allocation of
8 forfeited property pursuant to K.S.A. 60-4117, and amendments thereto.
9 Upon a determination by the court that the seizing agency's written
10 application established the court's jurisdiction, the giving of proper notice,
11 and facts sufficient to show probable cause for forfeiture, the court shall
12 order the property forfeited to the seizing agency.

13 (b) After final disposition of all claims timely filed in an action in
14 rem, or after final judgment and disposition of all claims timely filed in an
15 action in personam, the court shall enter an order that the seizing agency
16 has clear title to the forfeited property interest. Title to the forfeited
17 property interest and such property's proceeds shall be deemed to have
18 vested in the seizing agency on the commission of the conduct giving rise
19 to forfeiture under this act.

20 (c) If, in the discretion of the plaintiff's attorney, such plaintiff's
21 attorney has recognized in writing that an interest holder has an interest
22 that is exempt from forfeiture, the court, on application of the plaintiff's
23 attorney, may release or convey forfeited personal property to a regulated
24 interest holder on all of the following conditions:

25 (1) The interest holder has an interest which was acquired in the
26 regular course of business as an interest holder.

27 (2) The amount of the interest holder's encumbrance is readily
28 determinable and the amount has been reasonably established by proof
29 made available by the plaintiff's attorney to the court.

30 (3) The encumbrance held by the interest holder seeking possession is
31 the only interest exempted from forfeiture and the order forfeiting the
32 property to the seizing agency transferred all of the rights of the owner
33 prior to forfeiture, including rights of redemption to the seizing agency.

34 (4) After the court's release or conveyance, the interest holder shall
35 dispose of the property by a commercially reasonable public sale, and
36 within 14 days of disposition shall tender to the seizing agency the amount
37 received at disposition less the amount of the interest holder's
38 encumbrance and reasonable expense incurred by the interest holder in
39 connection with the sale or disposal.

40 (d) On order of the court forfeiting the subject property, the seizing
41 agency may transfer good and sufficient title to any subsequent purchaser
42 or transferee, unless satisfied and released earlier, subject to all mortgages,
43 deeds of trust, financing statements or security agreements of record prior

1 to the forfeiture held by an interest holder and the title shall be recognized
2 by all courts, by this state, and by all agencies of and any political
3 subdivision. Likewise on entry of judgment in favor of a person claiming
4 an interest in the property that is subject to proceedings to forfeit property
5 under this act, the court shall enter an order that the property or interest in
6 property shall be released or delivered promptly to that person free of liens
7 and encumbrances under this act and the person's cost bond shall be
8 discharged.

9 (e) Upon motion by the plaintiff's attorney, if it appears after a
10 hearing there was reasonable cause for the seizure for forfeiture or for the
11 filing of the notice of pending forfeiture or complaint, the court shall cause
12 a finding to be entered that reasonable cause existed, or that any such
13 action was taken under a reasonable good faith belief that it was proper,
14 and the claimant is not entitled to costs or damages, and the person or
15 seizing agency who made the seizure, and the plaintiff's attorney, are not
16 liable to suit or judgment on account of the seizure, suit or prosecution.
17 *Nothing in this subsection shall affect whether a claimant is entitled to*
18 *payment of attorney fees, litigation costs and interest pursuant to*
19 *subsection (f).*

20 (f) (1) The court ~~shall~~ *may* order a claimant who fails to establish that
21 a substantial portion of the claimant's interest is exempt from forfeiture
22 under K.S.A. 60-4105, and amendments thereto, to pay the reasonable
23 costs and expenses of any claimant who established such claimant's
24 interest is exempt from forfeiture under K.S.A. 60-4105, and amendments
25 thereto, and to pay the reasonable costs and expenses of the seizing agency
26 for the investigation and litigation of the matter, including reasonable
27 attorney fees, in connection with that claimant.

28 (2) *In any proceeding in which the court finds that the claimant has*
29 *prevailed by ordering the return of at least half of the aggregate value of*
30 *the claimant's interest in the property or currency in which the claimant*
31 *asserted an interest, the court shall order the seizing agency to pay:*

32 (A) *Reasonable attorney fees and other litigation costs incurred by*
33 *the claimant;*

34 (B) *post judgment interest; and*

35 (C) *in cases involving currency, other negotiable instruments or the*
36 *proceeds of an interlocutory sale, any interest actually paid from the date*
37 *of seizure.*

38 (g) *If there are multiple claims to the same property, the seizing*
39 *agency shall not be liable for attorney fees and costs associated with any*
40 *claim if the seizing agency:*

41 (1) *Promptly recognizes such claim;*

42 (2) *promptly returns the interest of the claimant in the property to the*
43 *claimant, if the property can be divided without difficulty and there are no*

1 *competing claims to that portion of the property;*

2 *(3) does not cause the claimant to incur additional costs or fees; and*

3 *(4) prevails in obtaining forfeiture with respect to one or more of the*
4 *other claims.*

5 *(h) If more than one law enforcement agency is substantially involved*
6 *in effecting a forfeiture pursuant to this act, and no interagency agreement*
7 *exists, the court shall equitably distribute the proceeds among such*
8 *agencies.*

9 ~~(h)~~*(i) Notwithstanding any other provision of law, upon the request of*
10 *the intellectual property owner, all seized items bearing a counterfeit mark*
11 *shall be released to the intellectual property owner for destruction or*
12 *disposition. If the intellectual property owner does not request release of*
13 *seized items bearing a counterfeit mark, such items shall be destroyed*
14 *unless the intellectual property owner consents to another disposition.*

15 Sec. 10. K.S.A. 2023 Supp. 60-4117 is hereby amended to read as
16 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
17 thereto: (a) When property is forfeited under this act, the law enforcement
18 agency may:

19 (1) Retain such property for official use or transfer the custody or
20 ownership to any local; ~~or state or federal~~ agency, subject to any lien
21 preserved by the court;

22 (2) *transfer the custody or ownership to any federal agency if the*
23 *property was seized and forfeited pursuant to federal law;*

24 (3) destroy or use for investigative or training purposes, any illegal or
25 controlled substances and equipment or other contraband, provided that
26 materials necessary as evidence shall be preserved;

27 ~~(3)~~*(4) sell property which is not required by law to be destroyed and*
28 *which is not harmful to the public:*

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

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

42 (C) No employee or public official of any agency involved in the
43 investigation, seizure or forfeiture of seized property may purchase or

1 attempt to purchase such property; or

2 ~~(4)~~(5) salvage the property, subject to any lien preserved by the court.

3 (b) When firearms are forfeited under this act, the firearms in the
4 discretion of the seizing agency, shall be destroyed, used within the seizing
5 agency for official purposes, traded to another law enforcement agency for
6 use within such agency or given to the Kansas bureau of investigation for
7 law enforcement, testing, comparison or destruction by the Kansas bureau
8 of investigation forensic laboratory.

9 (c) The proceeds of any sale shall be distributed in the following
10 order of priority:

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

18 (2) thereafter, for payment of all proper expenses of the proceedings
19 for forfeiture and disposition, including expenses of seizure, inventory,
20 appraisal, maintenance of custody, preservation of availability, advertising,
21 service of process, sale and court costs;

22 (3) reasonable attorney fees:

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

42 (B) if the plaintiff's attorney is the attorney general and the conduct
43 and offense giving rise to forfeiture is pursuant to K.S.A. 60-4104(i), and

1 amendments thereto, fees shall not exceed 15% of the total proceeds, less
2 the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor
3 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in
4 a contested forfeiture. Such fees shall be remitted to the state treasurer in
5 accordance with the provisions of K.S.A. 75-4215, and amendments
6 thereto. Upon receipt of each such remittance, the state treasurer shall
7 deposit the entire amount in the state treasury to the credit of the medicaid
8 fraud prosecution revolving fund. Moneys paid into the medicaid fraud
9 prosecution revolving fund pursuant to this subsection shall be
10 appropriated to the attorney general for use by the attorney general in the
11 investigation and prosecution of medicaid fraud and abuse; or

12 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
13 shall be negotiated by the employing law enforcement agency;

14 (4) repayment of law enforcement funds expended in purchasing of
15 contraband or controlled substances, subject to any interagency agreement.

16 (d) Any proceeds remaining shall be credited as follows, subject to
17 any interagency agreement:

18 (1) If the law enforcement agency is a state agency, the entire amount
19 shall be deposited in the state treasury and credited to such agency's state
20 forfeiture fund. There is hereby established in the state treasury the
21 following state funds: Kansas bureau of investigation state forfeiture fund,
22 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
23 highway patrol state forfeiture fund, Kansas department of corrections
24 state forfeiture fund and Kansas national guard counter drug state
25 forfeiture fund. Expenditures from the Kansas bureau of investigation state
26 forfeiture fund shall be made upon warrants of the director of accounts and
27 reports issued pursuant to vouchers approved by the attorney general or by
28 a person or persons designated by the attorney general. Expenditures from
29 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
30 made upon warrants of the director of accounts and reports issued pursuant
31 to vouchers approved by the attorney general or by a person or persons
32 designated by the attorney general. Expenditures from the Kansas highway
33 patrol state forfeiture fund shall be made upon warrants of the director of
34 accounts and reports issued pursuant to vouchers approved by the
35 superintendent of the highway patrol or by a person or persons designated
36 by the superintendent. Expenditures from the Kansas department of
37 corrections state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the secretary of the department of corrections or by a person or persons
40 designated by the secretary. Expenditures from the Kansas national guard
41 counter drug state forfeiture fund shall be made upon warrants of the
42 director of accounts and reports issued pursuant to vouchers approved by
43 the adjutant general of Kansas or by a person or persons designated by the

1 adjutant general.

2 (2) If the law enforcement agency is a city or county agency, the
3 entire amount shall be deposited in such city or county treasury and
4 credited to a special law enforcement trust fund.

5 (e) (1) Moneys in the Kansas bureau of investigation state forfeiture
6 fund, Kansas highway patrol state forfeiture fund, Kansas department of
7 corrections state forfeiture fund, the special law enforcement trust funds
8 and the Kansas national guard counter drug state forfeiture fund shall not
9 be considered a source of revenue to meet normal operating expenses.
10 Such funds shall be expended by the agencies or departments through the
11 normal city, county or state appropriation system and shall be used for
12 such special, additional law enforcement purposes specified in subsection
13 (e)(2) as the law enforcement agency head deems appropriate. Neither
14 future forfeitures nor the proceeds from such forfeitures shall be used in
15 planning or adopting a law enforcement agency's budget.

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

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

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

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

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

29 (E) the costs associated with the purchase of multi-use equipment and
30 operations used by both law enforcement and non-law enforcement
31 personnel;

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

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

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

39 (I) the costs associated with conducting awareness programs by law
40 enforcement agencies;

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

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

3 (L) transfers from a state or local law enforcement agency to a state,
4 county or local governmental agency or community non-profit
5 organization in support of the law enforcement agency's goals or missions;
6 *and*

7 (M) *payment of attorney fees, litigation costs and interest ordered by*
8 *a court pursuant to K.S.A. 60-4116, and amendments thereto.*

9 (3) Moneys in the funds described in subsection (e)(1) shall be
10 separated and accounted for in a manner that allows accurate tracking and
11 reporting of deposits and expenditures of the following categories of
12 money:

13 (A) Proceeds from forfeiture credited to the fund pursuant to this
14 section;

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

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

17 (f) Moneys in the Kansas attorney general's medicaid fraud forfeiture
18 fund shall defray costs of the attorney general in connection with the
19 duties of investigating and prosecuting medicaid fraud and abuse.

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

25 ~~(2) If the law enforcement agency is a city or county agency, such~~
26 ~~agency shall compile and submit annually a special law enforcement trust~~
27 ~~fund report to the entity that has budgetary authority over such agency and~~
28 ~~such report shall specify, for such period, the type and approximate value~~
29 ~~of the forfeited property received, the amount of any forfeiture proceeds~~
30 ~~received and how any of those proceeds were expended.~~

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

32 Sec. 11. K.S.A. 2023 Supp. 60-4127 is hereby amended to read as
33 follows: 60-4127. (a) ~~On or before July 1, 2019,~~ The Kansas bureau of
34 investigation shall establish the Kansas asset seizure and forfeiture
35 repository. The repository shall gather information concerning each seizure
36 for forfeiture made by a seizing agency pursuant to the Kansas standard
37 asset seizure and forfeiture act including, but not limited to, the following:

38 (1) The name of the seizing agency or the name of the lead agency if
39 part of a multi-jurisdictional task force;

40 (2) the county where the seizure occurred;

41 (3) the date and time the seizure occurred;

42 (4) any applicable agency or district court case numbers for the
43 seizure;

- 1 (5) a description of the initiating law enforcement activity leading to
2 the seizure;
- 3 (6) a description of the specific location where the seizure occurred;
- 4 (7) the conduct or offense giving rise to the forfeiture;
- 5 (8) a description of the type of property seized and the estimated
6 value;
- 7 (9) a description of the type of contraband seized and the estimated
8 value;
- 9 (10) whether criminal charges were filed for an offense related to the
10 forfeiture and, if so, court and case number information for the criminal
11 charges;
- 12 (11) a description of the final disposition of the forfeiture action,
13 including a description of the disposition of any claim or exemption
14 asserted under this act;
- 15 (12) whether the forfeiture was transferred to the federal government
16 for disposition;
- 17 (13) the total cost of the forfeiture action, including attorney fees; and
- 18 (14) the total amount of proceeds from the forfeiture action,
19 specifying the amount received by the seizing agency and the amount
20 received by any other agency or person.
- 21 (b) ~~On and after July 1, 2019,~~ The Kansas bureau of investigation
22 shall maintain the repository and an associated public website. ~~On or~~
23 ~~before July 1, 2019,~~ The Kansas bureau of investigation shall promulgate
24 rules and regulations to implement this section.
- 25 (c) ~~On and after July 1, 2019,~~ Each seizing agency shall report
26 information concerning each seizure for forfeiture to the Kansas asset
27 seizure and forfeiture repository as required by this section and the rules
28 and regulations promulgated pursuant to this section. The prosecuting
29 attorney shall submit information concerning each forfeiture action to the
30 seizing agency within 30 days after the final disposition of the forfeiture.
31 The seizing agency shall submit the required information to the repository
32 within 60 days after the final disposition of the forfeiture.
- 33 (d) ~~On or before February 1, 2020, and~~ Annually, on or before
34 February 1 ~~thereafter,~~ each law enforcement agency shall compile and
35 submit a forfeiture fund *financial* report to the Kansas asset seizure and
36 forfeiture repository as required by this section and the rules and
37 regulations promulgated pursuant to this section.
- 38 (1) If the law enforcement agency is a state agency, the report shall
39 include, but not be limited to:
 - 40 (A) The agency's state forfeiture fund balance on January 1 and
41 December 31 of the preceding calendar year; and
 - 42 (B) the total amount of the deposits and a listing, by category, of
43 expenditures from January 1 through December 31 of the preceding

1 calendar year.

2 (2) If the law enforcement agency is a city or county agency, the
3 report shall include, but not be limited to:

4 (A) The agency's special law enforcement trust fund balance on
5 January 1 and December 31 of the preceding calendar year; and

6 (B) the total amount of the deposits and a listing, by category, of
7 expenditures from January 1 through December 31 of the preceding
8 calendar year.

9 (3) The report shall separate and account for:

10 (A) Deposits and expenditures from proceeds from forfeiture credited
11 to the fund pursuant to K.S.A. 60-4117, and amendments thereto;

12 (B) deposits and expenditures from proceeds from forfeiture actions
13 under federal law; and

14 (C) amounts held by the agency related to pending forfeiture actions
15 under the Kansas standard asset seizure and forfeiture act.

16 (e) ~~(1) On March 1, 2020, and~~ Annually, on March 1 ~~thereafter~~, the
17 Kansas bureau of investigation shall determine whether each agency's
18 *forfeiture fund* financial report matches the agency's seizing report. If the
19 Kansas bureau of investigation determines that an agency's financial report
20 does not substantially match that agency's seizing report or the agency has
21 not submitted a financial report, the Kansas bureau of investigation shall
22 notify such agency of the difference in reports. Such agency shall correct
23 the reporting error within 30 days. If the reporting error is not corrected
24 within 30 days, the Kansas bureau of investigation shall send such law
25 enforcement agency, and the county or district attorney for the county in
26 which such law enforcement agency is located, a certified letter notifying
27 such agency that it is out of compliance. Upon receipt of such letter, no
28 forfeiture proceedings shall be filed on property seized by such law
29 enforcement agency. When such law enforcement agency has achieved
30 compliance with the reporting requirements, the bureau shall send such
31 law enforcement agency, and the county or district attorney for the county
32 in which such law enforcement agency is located, a certified letter
33 notifying such agency that it is in compliance and forfeiture proceeding
34 filings may continue pursuant to this act.

35 (2) Annually, on or before April 15, the Kansas bureau of
36 investigation shall report to the ~~legislature~~ *president of the senate, the*
37 *speaker of the house of representatives and the standing committees on*
38 *judiciary in the senate and the house of representatives:*

39 (A) Any law enforcement agencies in the state that have failed to
40 come into compliance with the reporting requirements in subsection (d);
41 *and*

42 (B) *each agency's forfeiture fund financial report submitted pursuant*
43 *to subsection (d).*

1 Sec. 12. K.S.A. 2023 Supp. 60-4104, 60-4106, 60-4107, 60-4109, 60-
2 4111, 60-4112, 60-4113, 60-4114, 60-4116, 60-4117 and 60-4127 are
3 hereby repealed.

4 Sec. 13. This act shall take effect and be in force from and after its
5 publication in the statute book.