

## HOUSE BILL No. 2845

By Committee on Judiciary

2-11

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9 AN ACT concerning medicaid fraud; enacting the medicaid false claims  
10 act; relating to asset seizure and forfeiture; amending K.S.A. 60-4107  
11 and 60-4119 and K.S.A. 2003 Supp. 60-4104, 60-4105 and 60-4117  
12 and repealing the existing sections.  
13

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

15 New Section 1. Sections 1 through 26, inclusive, and amendments  
16 thereto, shall be known and may be cited as the “Kansas Medicaid False  
17 Claims Act.”

18 New Sec. 2. As used in this act: (a) “Attorney general” means the  
19 attorney general, employees of the attorney general or authorized rep-  
20 resentatives of the attorney general.

21 (b) “Claim” means an electronic, electronic impulse, facsimile, mag-  
22 netic, oral, telephonic or written communication that is utilized to identify  
23 any goods, service, item, facility or accommodation as reimbursable to  
24 the Kansas medicaid program, or its fiscal agents, or which states income  
25 or expense is or may be used to determine a rate of payment by the Kansas  
26 medicaid program, or its fiscal agent.

27 (c) “Knowing” and “knowingly” mean that a person, with respect to  
28 information:

29 (1) Has actual knowledge of the information;

30 (2) acts in deliberate ignorance of the truth or falsity of the infor-  
31 mation or acts in reckless disregard of the truth or falsity of the infor-  
32 mation; and

33 (3) no proof of specific intent to defraud is required.

34 (d) “Medicaid program” means the Kansas program of medical assis-  
35 tance for which federal or state moneys, or any combination thereof, are  
36 expended as administered by the department of social and rehabilitation  
37 services, or its fiscal agent, or any successor federal or state agency, or  
38 both, health insurance program or waiver granted thereunder.

39 (e) “Original source” means a person:

40 (1) Who has direct and independent knowledge of the information  
41 on which the allegations were based;

42 (2) who voluntarily provided the information to the state or the at-  
43 torney general before bringing an action based on the information; and

1 (3) whose information provided the basis or caused the making of the  
2 investigation, hearing, audit or report that led to the public disclosure.

3 (f) "Person" means any natural person, agency, association, corpo-  
4 ration, company, business, firm, limited liability company, limited liability  
5 partnership, organization, partnership, trust or other legal entity, the  
6 agents, employees, independent contractors, and subcontractors, thereof,  
7 and the legal successors thereto.

8 (g) "Proceeds" and "Recovery" include civil penalties, as well as dou-  
9 ble or treble damages, but shall not include any allowance of costs, ex-  
10 penses or attorney's fees.

11 (h) "Record" means all written documents and electronic or magnetic  
12 data, including, but not limited to, medical records, X-rays, professional,  
13 financial or business records relating to the following: (1) the treatment  
14 or care of any recipient, (2) goods, services, items, facilities or accom-  
15 modations provided to any such recipient, (3) rates paid for such goods,  
16 services, items, facilities or accommodations, and (4) goods, services,  
17 items, facilities, or accommodations provided to nonmedicaid recipients;  
18 to verify rates or amounts of goods, services, items, facilities or accom-  
19 modations provided to medicaid recipients, as well as any records that  
20 the medicaid program, or its fiscal agents require providers to maintain.

21 (i) "Statement" means an electronic, electronic impulse, facsimile,  
22 magnetic, oral, telephonic, or written communication that is utilized to  
23 identify any goods, service, item, facility or accommodation as reimburs-  
24 able to the medicaid program, or its fiscal agent, or that states income or  
25 expense and is or may be used to determine a rate of payment by the  
26 medicaid program, or its fiscal agent.

27 New Sec. 3. (a) Any person who knowingly commits any of the fol-  
28 lowing acts:

29 (1) Makes, presents, submits, offers or causes to be made, presented,  
30 submitted or offered, to the medicaid program any false or fraudulent  
31 claim for payment under the medicaid program;

32 (2) makes, presents, submits, offers or causes to be made, presented,  
33 submitted or offered, to the medicaid program any false or fraudulent  
34 record or statement for use in obtaining payment or approval of a false  
35 or fraudulent claim under the medicaid program knowing such record or  
36 statement is false or fraudulent;

37 (3) conspires to defraud the medicaid program by getting a claim  
38 allowed or paid under the medicaid program knowing such claim is false  
39 or fraudulent; or

40 (4) makes, uses, or causes to be made or used, a record or statement  
41 to conceal, avoid, or decrease an obligation to pay or transmit money or  
42 property to the state, relative to the medicaid program, knowing such  
43 record or statement is false; shall be liable to the state for a civil penalty

1 of not less than \$2,500 and not more than \$10,000 for each false claim,  
2 plus three times the amount of damages which the state sustains because  
3 of the act of that person.

4 (b) A person violating this act shall also be liable for payment of all  
5 reasonable expenses that have been necessarily incurred by the attorney  
6 general in prosecution under this act, including, but not limited to, the  
7 costs of the investigation, litigation, attorney fees, and reasonable expert  
8 fees.

9 (c) The recoveries provided for in this section shall be in addition to  
10 and not in lieu of any criminal penalties that may be provided by law.

11 New Sec. 4. (a) In a civil action pursuant to this act, the court may  
12 assess a judgment of not less than two nor more than three times the  
13 amount of damages sustained because of the act of the person if the court  
14 finds that the person against whom the judgment is entered:

15 (1) Furnished all information known to such person concerning the  
16 violation to the attorney general within 30 days after the date on which  
17 the person first obtained or became aware of the information;

18 (2) fully cooperated with any investigation of such violation by the  
19 attorney general; and

20 (3) at the time such person furnished the attorney general with the  
21 information about the violation, no criminal prosecution or civil or ad-  
22 ministrative action pursuant to this act had commenced with respect to  
23 such violation, and the person had no actual knowledge of the existence  
24 of an investigation into such violation.

25 (b) The court shall set forth in a written order its findings and basis  
26 for reducing the treble damages award.

27 New Sec. 5. Liability pursuant to this act is joint and several for any  
28 violation done by two or more persons.

29 New Sec. 6. The attorney general may investigate any alleged viola-  
30 tion pursuant to this act and may bring a civil action pursuant to this act  
31 against such person, or persons.

32 New Sec. 7. (a) Except as otherwise provided in this act, a private  
33 plaintiff may bring a civil action for a violation of new section 3, and  
34 amendments thereto, of this act on his own account and for the state.  
35 The action shall be brought in the name of the state of Kansas. The action  
36 may be dismissed only if the court and the attorney general give written  
37 consent to the dismissal and their reasons for consenting, taking into  
38 account the public purposes of this act and the best interests of the  
39 parties.

40 (b) If a private plaintiff brings an action pursuant to this act, no person  
41 other than the attorney general may intervene or bring a related action  
42 based on the facts underlying the pending action.

43 (c) An action may not be maintained by a private plaintiff pursuant

1 to this act if the action is based upon allegations or transactions that are  
2 the subject of a civil action or an administrative proceeding for a monetary  
3 penalty to which the state is already a party.

4 (d) A petition filed pursuant to this section must be placed under seal  
5 and so remain until the attorney general has elected whether to intervene.  
6 No service may be made upon the defendant until the petition is  
7 unsealed.

8 (e) On the date the private plaintiff files his petition, he shall send a  
9 copy of the petition to the attorney general by mail with return receipt  
10 requested. He shall send with each copy of the petition a written disclo-  
11 sure of substantially all material evidence and information he possesses.

12 New Sec. 8. No court shall have jurisdiction over an action brought  
13 pursuant to new section 7, and amendments thereto, of this act that is  
14 based upon information discovered by:

15 (a) A present or former employee of the state during his employment,  
16 unless the present or former employee first in good faith exhausted all  
17 internal procedures for reporting and seeking recovery of the proceeds  
18 of the fraudulent activity through official channels and the state failed to  
19 act on the information provided for a period of at least 6 months;

20 (b) a present or former employee of a fiscal agent of the state med-  
21 icaid program, unless the present or former employee first in good faith  
22 exhausted all internal procedures for reporting and seeking recovery of  
23 the proceeds of the fraudulent activity through official channels through  
24 both the fiscal agent and the state and both the fiscal agent and the state  
25 failed to act on the information provided for a period of at least 6 months;  
26 or

27 (c) any present or former government or private industry employee,  
28 who has or had access to technical or informational resources involving  
29 governmentally funded health related programs, unless the present or  
30 former employee can demonstrate that he has knowledge of information  
31 on which the allegations were based independent of his present or former  
32 employment.

33 New Sec. 9. No court shall have jurisdiction over an action brought  
34 pursuant to new section 7, and amendments thereto, of this act that is  
35 based upon the public disclosure of allegations or transactions in a crim-  
36 inal, civil or administrative hearing, report, audit, investigation, or from  
37 the news media, unless the action is brought by the attorney general or  
38 an original source of the information.

39 New Sec. 10. (a) Within 120 days after receiving a petition and writ-  
40 ten disclosure pursuant to subsection (f) of new section 7, and amend-  
41 ments thereto, the attorney general may intervene and proceed with the  
42 action or he may, for good cause shown, move the court to extend the  
43 time for his election whether to intervene and conduct the action. The

1 motion may be supported by affidavits or other submissions made to the  
2 court in camera.

3 (b) Before the expiration of the 120-day period or any extensions  
4 obtained under subsection (a), the attorney general shall do either of the  
5 following:

6 (1) Notify the court that he intends to intervene and proceed with  
7 the action, in which case the action shall be conducted by the attorney  
8 general and the petition shall be unsealed.

9 (2) notify the court that he declines to proceed with the action, in  
10 which case the petition shall be unsealed and the private plaintiff shall  
11 have the right to conduct the action.

12 New Sec. 11. (a) If the attorney general elects to intervene and pro-  
13 ceed with the action, he shall have the primary responsibility for prose-  
14 cuting the action, and shall not be bound by an act of the private plaintiff  
15 bringing the action. The private plaintiff shall have the right to continue  
16 as a party to the action pursuant to new section 7, and amendments  
17 thereto.

18 (b) The attorney general may move to dismiss the action for good  
19 cause. The private plaintiff must be notified of the filing of the motion  
20 and is entitled to oppose it and present evidence at the hearing.

21 (c) Except as otherwise provided in this subsection, the attorney gen-  
22 eral may settle the action. If the attorney general intends to settle the  
23 action, he shall notify the private plaintiff of that fact. Upon the request  
24 of the private plaintiff, the court shall determine whether settlement of  
25 the action is consistent with the public purposes of this chapter and shall  
26 not approve the settlement of the action unless it determines that such  
27 settlement is consistent with the public purposes of this chapter.

28 New Sec. 12. (a) If the attorney general elects not to intervene in a  
29 action filed pursuant to new section 7, and amendments thereto, the  
30 private plaintiff has the same rights in conducting the action as the attor-  
31 ney general would have had. However, if the attorney general so requests,  
32 he shall be served with copies of all pleadings or other papers filed in the  
33 action, and shall be supplied with copies of all deposition transcripts at  
34 the attorney general's expense.

35 (b) When a private plaintiff proceeds and conducts the action, the  
36 court, without limiting the status and rights of the private plaintiff initi-  
37 ating the action, may nevertheless permit the attorney general to inter-  
38 vene at a later date upon a showing of good cause.

39 New Sec. 13. The defendant shall not be required to respond to any  
40 petition filed under new section 7, and amendments thereto, of this act  
41 until 20 days after the petition is unsealed and served upon him.

42 New Sec. 14. (a) Whether or not the attorney general elects to in-  
43 tervene and proceed with the action, the court may stay discovery by a

1 private plaintiff for not more than 60 days if the attorney general shows  
2 that the proposed discovery would interfere with the investigation or pros-  
3 ecution of a civil or criminal matter arising out of the same facts.

4 (b) The court may extend the stay upon a further showing that the  
5 attorney general has pursued the civil or criminal investigation or pro-  
6 ceeding with reasonable diligence and the proposed discovery would in-  
7 terfere with its continuation. Discovery may not be stayed for a total of  
8 more than six months over the objection of the private plaintiff, except  
9 for good cause shown by the attorney general.

10 (c) A showing made pursuant to this section must be made to the  
11 court in camera.

12 New Sec. 15. (a) Upon a showing by the attorney general that un-  
13 restricted participation during the course of the litigation by the private  
14 plaintiff initiating the action would interfere with or unduly delay the  
15 attorney general's prosecution of the case, or would be repetitious, irrel-  
16 evant, or for purposes of harassment, the court may, in its discretion,  
17 impose limitations on the private plaintiff's participation such as:

- 18 (1) Limiting the number of witnesses the private plaintiff may call;
- 19 (2) limiting the length of the testimony of such witnesses;
- 20 (3) limiting the private plaintiff's cross-examination of witnesses; or
- 21 (4) otherwise limiting the participation by the private plaintiff in the  
22 litigation.

23 (b) Upon a showing by the defendant that unrestricted participation  
24 during the course of the litigation by the private plaintiff initiating the  
25 action would be for purposes of harassment or would cause the defendant  
26 undue burden or unnecessary expense, the court may limit the partici-  
27 pation by the private plaintiff in the litigation.

28 New Sec. 16. (a) An action brought pursuant to this act may not be  
29 commenced more than three years after the date of discovery of the  
30 fraudulent activity by the attorney general or more than five years after  
31 the violation of new section 3, and amendments thereto, occurred, which-  
32 ever occurs last.

33 (b) Within those limits set forth in subsection (a) of this section, an  
34 action brought pursuant to this act may be based upon a violation that  
35 occurred prior to July 1, 2004.

36 (c) In an action brought pursuant to this act, the standard of proof  
37 for all essential elements of the cause of action, including damages, shall  
38 be a preponderance of the evidence.

39 (d) Notwithstanding any other provision of law, the rules of criminal  
40 procedure, or the rules of evidence, a final judgment in any criminal  
41 proceeding charging medicaid fraud, whether upon a verdict of guilty  
42 after trial or a plea of guilty or nolo contendere, estops the defendant  
43 found guilty in such criminal proceeding from denying the essential ele-

1 ments of that offense in any action commenced under this act which  
2 involves the same transaction as the criminal proceeding.

3 New Sec. 17. Proceeds recovered as a result of an action filed pur-  
4 suant to this act shall be distributed in the following order:

5 (1) To refund moneys falsely obtained from the federal and state  
6 governments pursuant to subsection (a) of new section 21, and amend-  
7 ments thereto;

8 (2) to the attorney general pursuant to new section 18, and amend-  
9 ments thereto;

10 (3) to the private plaintiff pursuant to the terms and conditions of  
11 new section 19 and new section 20, and amendments thereto; and

12 (4) to the state treasurer for deposit in the state general fund pursuant  
13 to subsection (b) of new section 21, and amendments thereto.

14 New Sec. 18. (a) If the attorney general initiates an action pursuant  
15 to this act, 33% of any recovery shall be remitted to the state treasurer  
16 in accordance with the provisions of K.S.A. 75-4215, and amendments  
17 thereto. Upon receipt of each such remittance, the state treasurer shall  
18 deposit the entire amount in the state treasury to the credit of the med-  
19 icaid fraud prosecution revolving fund, as created and established in the  
20 state treasury pursuant to subsection (c) of K.S.A. 21-3851, and amend-  
21 ments thereto. Moneys paid in to the medicaid fraud prosecution revolv-  
22 ing fund pursuant to this act shall be appropriated to the attorney general  
23 for use by the attorney general in the investigation and prosecution of  
24 false or fraudulent claims under the medicaid program.

25 (b) If the attorney general intervenes at any time in an action brought  
26 by a private plaintiff pursuant to new section 7, and amendments thereto,  
27 of this act, 25% of any recovery shall be remitted to the state treasurer  
28 in accordance with the provisions of K.S.A. 75-4215, and amendments  
29 thereto. Upon receipt of each such remittance, the state treasurer shall  
30 deposit the entire amount in the state treasury to the credit of the med-  
31 icaid fraud prosecution revolving fund, as created and established in the  
32 state treasury pursuant to subsection (c) of K.S.A. 21-3851, and amend-  
33 ments thereto. Moneys paid in to the medicaid fraud prosecution revolv-  
34 ing fund pursuant to this act shall be appropriated to the attorney general  
35 for use by the attorney general in the investigation and prosecution of  
36 false or fraudulent claims under the medicaid program.

37 (c) All moneys recovered pursuant to subsection (b) of new section  
38 3, and amendments thereto, shall be remitted to the state treasurer in  
39 accordance with the provisions of K.S.A. 75-4215, and amendments  
40 thereto. Upon receipt of each such remittance, the state treasurer shall  
41 deposit the entire amount in the state treasury to the credit of the med-  
42 icaid fraud prosecution revolving fund, as created and established in the  
43 state treasury pursuant to subsection (c) of K.S.A. 21-3851, and amend-

1 ments thereto. Moneys paid in to the medicaid fraud prosecution involv-  
2 ing fund pursuant to this act shall be appropriated to the attorney general  
3 in order to defray the costs of the attorney general in connection with his  
4 duties provided by this act in the investigation and prosecution of false  
5 and fraudulent claims under the medicaid program.

6 New Sec. 19. (a)(1) When the attorney general intervenes and con-  
7 ducts the action which was brought by a private plaintiff pursuant to new  
8 section 7, and amendments thereto, the private plaintiff, subject to par-  
9 agraph (2) of subsection (a) of this section, is entitled to receive at least  
10 15% but not more than 25% of any recovery, according to the extent to  
11 which the person substantially contributed to the prosecution of the  
12 action.

13 (2) Where the action is one which the court finds to be based pri-  
14 marily on the disclosures of specific information other than information  
15 provided by the private plaintiff relating to allegations or transactions in  
16 a criminal, civil or administrative hearing, report, audit, investigation, or  
17 from the news media, the court may award such sums as it considers  
18 appropriate, but in no case more than 10% of any recovery, taking into  
19 account the significance of the information and the role of the private  
20 plaintiff in advancing the case to litigation.

21 (3) Any payment made under subsections (a)(1) or (2) of this section  
22 shall be made from the recovery.

23 (b) If the attorney general does not intervene and conduct the action,  
24 the private plaintiff bringing the action or settling the claim shall receive  
25 an amount which the court deems reasonable for collecting the civil pen-  
26 alty and damages. The amount shall be at least 25% and not more than  
27 50% of any recovery, to be paid to the private plaintiff from the recovery.

28 (c) Whether or not the attorney general conducts the action, if the  
29 court finds that the action was brought by a private plaintiff who planned  
30 and initiated the violation of new section 3, and amendments thereto,  
31 upon which the action was brought, then the court may, to the extent the  
32 court considers appropriate, reduce the share of the proceeds of the ac-  
33 tion which the private plaintiff would otherwise receive under subsection  
34 (a) or (b) of this section, taking into account the role of the private plaintiff  
35 in advancing the case to litigation and any relevant circumstances per-  
36 taining to the violation. If the private plaintiff bringing the action is con-  
37 victed of criminal conduct arising from such person's role in the violation  
38 of new section 3, and amendments thereto, upon which the action is  
39 brought, the private plaintiff shall be dismissed from the civil action and  
40 shall not receive any share of the recovery from the action. Such dismissal  
41 shall not prejudice the right of the attorney general to continue the action.

42 New Sec. 20. (a) If the action is one described in new section 8, and  
43 amendments thereto, the present or former employee of the state is not

1 entitled to any minimum percentage of any recovery, but the court may  
2 award such employee no more than 25% of the recovery if the attorney  
3 general intervenes in the action, or no more than 33% if the attorney  
4 general does not intervene, according to, in the court's discretion, the  
5 significance of such employee's information, the extent of such em-  
6 ployee's contribution to the conduct of the action and the response to  
7 such employee's efforts to report the false claim and gain recovery  
8 through other official channels.

9 (b) If the private plaintiff is a present or former employee of the state  
10 and benefitted financially from the violation of new section 3, and amend-  
11 ments thereto, upon which the action was brought, such private plaintiff  
12 is not entitled to any minimum percentage of any recovery, but the court  
13 may award such private plaintiff no more than 15% of the recovery if the  
14 attorney general intervenes, or no more than 20% if the attorney general  
15 does not intervene, and the court may, to the extent the court considers  
16 appropriate, reduce the share of the proceeds of the action which the  
17 private plaintiff would otherwise receive according to the ignificance of  
18 such private plaintiff's information, the extent of such private plaintiff's  
19 contribution to the conduct of the action, the extent of such private plain-  
20 tiff's involvement in the fraudulent activity, such private plaintiff's at-  
21 tempts to avoid or resist the activity and the other circumstances of the  
22 activity. If the private plaintiff bringing the action is convicted of criminal  
23 conduct arising from such person's role in the violation of new section 3,  
24 and amendments thereto, upon which the action is brought, the private  
25 plaintiff shall be dismissed from the civil action and shall not receive any  
26 share of the recovery from the action. Such dismissal shall not prejudice  
27 the right of the attorney general to continue the action.

28 New Sec. 21. (a) A portion of the recovery equal to amount of mon-  
29 eys falsely obtained from the federal and state governments, and affected  
30 state agencies shall be remitted to the state treasurer in accordance with  
31 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt  
32 of each such remittance, the state treasurer shall deposit the entire  
33 amount in the state treasury to the credit of the medicaid fraud reim-  
34 bursement fund, which was previously created and established in the state  
35 treasury pursuant to subsection (b) of K.S.A. 21-3851, and amendments  
36 thereto. Moneys in the medicaid fraud reimbursement fund shall be di-  
37 vided and payments made from such fund to the federal government and  
38 affected state agencies for the refund of moneys falsely obtained from  
39 the federal and state governments.

40 (b) That portion of any recovery not previously apportioned pursuant  
41 to new sections 18, 19 and 20 and subsection (a) of this section, and  
42 amendments thereto, shall be remitted to the state treasurer in accord-  
43 ance with the provisions of K.S.A. 75-4215, and amendments thereto.

1 Upon receipt of each such remittance, the state treasurer shall deposit  
2 the entire amount in the state general fund.

3 New Sec. 22. (a) If the attorney general or a private plaintiff, or  
4 both, prevails in or settles an action pursuant to new section 7, and  
5 amendments thereto, the private plaintiff is entitled to a reasonable  
6 amount for expenses that the court finds were necessarily incurred, in-  
7 cluding reasonable costs, attorney's fees and the fees of expert consultants  
8 and expert witnesses. Those expenses must be awarded against the de-  
9 fendant, and may not be allowed against the state or the attorney general.

10 (b) If the attorney general does not intervene and conduct the action,  
11 and the private plaintiff conducts the action, the court shall award to the  
12 defendant reasonable expenses and attorney's fees against the private  
13 plaintiff who conducted the action if the defendant prevails in the action  
14 and the court finds that the claim of the private plaintiff bringing the  
15 action was clearly frivolous, clearly vexatious or brought primarily for the  
16 purpose of harassment.

17 (c) Neither the state nor the attorney general shall be liable for ex-  
18 penses which a private plaintiff incurs in bringing an action under new  
19 section 7, and amendments thereto.

20 New Sec. 23. Any action under this act may be brought in any county  
21 or district in which the defendant or, in the case of multiple defendants,  
22 any one defendant can be found, resides, transacts business, or in which  
23 any act proscribed by this act occurred.

24 New Sec. 24. (a) An employer shall not adopt or enforce any rule or  
25 policy forbidding an employee to disclose information to the attorney  
26 general or a law enforcement agency or to act in furtherance of an action  
27 pursuant to this act, including investigation for, bringing or testifying in  
28 such an action.

29 (b) An employer shall not discharge, demote, suspend, threaten, ha-  
30 rass, deny promotion to or otherwise discriminate against or penalize an  
31 employee in the terms or conditions of such employee's employment  
32 because of lawful acts done by such employee on such employee's behalf  
33 or on behalf of others in disclosing information to the attorney general  
34 or a law enforcement agency in furtherance of an action pursuant to this  
35 act, including investigation for, bringing or testifying in such an action.

36 New Sec. 25. (a) An employer who violates subsection (b) of new  
37 section 24, and amendments thereto, shall be liable to the affected em-  
38 ployee in a civil action for all relief necessary to make him whole, includ-  
39 ing, without limitation, reinstatement with the same seniority as if the  
40 discrimination had not occurred or damages in lieu of reinstatement if  
41 appropriate, twice the amount of lost compensation, interest on the lost  
42 compensation, any special damage sustained as a result of the discrimi-  
43 nation and punitive damages if appropriate. The employer shall be liable

- 1 for litigation costs and reasonable attorney's fees.
- 2 (b) An employee who is discharged, demoted, suspended, harassed,  
3 denied promotion or in any other manner discriminated against or pe-  
4 nalized in the terms and conditions of employment by such employee's  
5 employer because of participation in conduct which directly or indirectly  
6 resulted in a false medicaid claim being submitted to the state shall be  
7 entitled to the remedies provided in subsection (a) of this section, if both  
8 of the following occur:
- 9 (1) The employee voluntarily disclosed information to the attorney  
10 general, government or law enforcement agency or voluntarily acted in  
11 furtherance of a false claims action pursuant to this act, including inves-  
12 tigation for, initiation of, testimony for, or assistance in an action filed or  
13 to be filed; and
- 14 (2) the employee was harassed, threatened with termination or de-  
15 motion, or otherwise coerced by such employee's employer into any par-  
16 ticipation in fraudulent activity in the first place.
- 17 New Sec. 26. If any provision of this act or the application thereof  
18 to any person or circumstance is held invalid, the invalidity does not affect  
19 other provisions or applications of the act which can be given effect with-  
20 out the invalid provision or application, and to this end the provisions of  
21 this act are severable.
- 22 Sec. 27. K.S.A. 2003 Supp. 60-4104 is hereby amended to read as  
23 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this  
24 act, whether or not there is a prosecution or conviction related to the  
25 offense, are:
- 26 (a) All offenses which statutorily and specifically authorize forfeiture;  
27 (b) violations of the uniform controlled substances act, K.S.A. 65-  
28 4101 et seq., and amendments thereto;
- 29 (c) theft which is classified as a felony violation pursuant to K.S.A.  
30 21-3701, and amendments thereto, in which the property taken was  
31 livestock;
- 32 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments  
33 thereto;
- 34 (e) money laundering, K.S.A. 65-4142, and amendments thereto;
- 35 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-  
36 mercial gambling, K.S.A. 21-4304, and amendments thereto;
- 37 (g) counterfeiting, K.S.A. 2003 Supp. 21-3763, and amendments  
38 thereto;
- 39 (h) *medicaid fraud, K.S.A. 2003 Supp. 21-3844, et seq., and amend-*  
40 *ments thereto;*
- 41 ~~(h)~~ (i) an act or omission occurring outside this state, which would  
42 be a violation in the place of occurrence and would be described in this  
43 section if the act occurred in this state, whether or not it is prosecuted in

1 any state;

2 ~~(j)~~ (j) an act or omission committed in furtherance of any act or omis-  
3 sion described in this section including any inchoate or preparatory of-  
4 fense, whether or not there is a prosecution or conviction related to the  
5 act or omission;

6 ~~(k)~~ (k) any solicitation or conspiracy to commit any act or omission  
7 described in this section, whether or not there is a prosecution or con-  
8 viction related to the act or omission.

9 Sec. 28. K.S.A. 2003 Supp. 60-4105 is hereby amended to read as  
10 follows: 60-4105. The following property is subject to forfeiture:

11 (a) Property described in a statute authorizing forfeiture;

12 (b) all property *of every kind, including, but not limited to, cash and*  
13 *negotiable instruments, and*, including the whole of any lot or tract of land  
14 and any appurtenances or improvements to real property that is either:

15 (1) Furnished or intended to be furnished by any person in an  
16 exchange that constitutes conduct giving rise to forfeiture; or

17 (2) used or intended to be used in any manner to facilitate conduct  
18 giving rise to forfeiture;

19 (c) all proceeds of any conduct giving rise to forfeiture;

20 (d) ~~any~~ all property *of every kind, including, but not limited to, cash*  
21 *and negotiable instruments, and* derived from *or realized through* any  
22 proceeds which were obtained directly or indirectly from the commission  
23 of an offense listed in K.S.A. 60-4104, and amendments thereto;

24 (e) all weapons possessed, used, or available for use in any manner  
25 to facilitate conduct giving rise to forfeiture;

26 (f) ownership or interest in real property that is a homestead, to the  
27 extent the homestead was acquired with proceeds from conduct giving  
28 rise to forfeiture;

29 (g) contraband, which shall be seized and summarily forfeited to the  
30 state without regard to the procedures set forth in this act;

31 (h) all controlled substances, raw materials, controlled substance an-  
32 alogs, counterfeit substances, or imitation controlled substances that have  
33 been manufactured, distributed, dispensed, possessed, or acquired in vi-  
34 olation of the laws of this state; and

35 (i) any items bearing a counterfeit mark.

36 Sec. 29. K.S.A. 60-4107 is hereby amended to read as follows: 60-  
37 4107. (a) Property may be seized for forfeiture by a law enforcement  
38 officer upon process issued by the district court. The court may issue a  
39 seizure warrant on an affidavit under oath demonstrating that probable  
40 cause exists for the property's forfeiture or that the property has been  
41 the subject of a previous final judgment of forfeiture in the courts of any  
42 state or of the United States. The court may order that the property be  
43 seized on such terms and conditions as are reasonable in the discretion

1 of the court. The order may be made on or in connection with a search  
2 warrant. All real property is to be seized constructively or pursuant to a  
3 preseizure adversarial judicial determination of probable cause, except  
4 that this determination may be done ex parte when the attorney for the  
5 state has demonstrated exigent circumstances to the court.

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

9 (c) Property may be seized constructively by:

10 (1) Posting notice of seizure for forfeiture or notice of pending for-  
11 feiture on the property.

12 (2) Giving notice pursuant to K.S.A. 60-4109, *and amendments*  
13 *thereto*.

14 (3) Filing or recording in the public records relating to that type of  
15 property notice of seizure for forfeiture, notice of pending forfeiture, a  
16 forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to  
17 this act are not subject to a filing fee or other charge.

18 (d) The seizing agency, or the plaintiff's attorney, shall make reason-  
19 able effort to provide notice of the seizure to the person from whose  
20 possession or control the property was seized and any interest holder of  
21 record. If no person is in possession or control, the seizing agency may  
22 attach the notice to the property or to the place of the property's seizure  
23 or may make a reasonable effort to deliver the notice to the owner of the  
24 property. The notice shall contain a general description of the property  
25 seized, the date and place of seizure, the name of the seizing agency and  
26 the address and telephone number of the seizing officer or other person  
27 or agency from whom information about the seizure may be obtained.

28 (e) A person who acts in good faith and in a reasonable manner to  
29 comply with an order of the court or a request of a law enforcement  
30 officer is not liable to any person on account of acts done in reasonable  
31 compliance with the order or request. No liability may attach from the  
32 fact that a person declines a law enforcement officer's request to deliver  
33 property.

34 (f) A possessory lien of a person from whose possession property is  
35 seized is not affected by the seizure.

36 (g) When property is seized for forfeiture under this act, the seizing  
37 agency shall, within 45 days of such seizure, forward to the county or  
38 district attorney in whose jurisdiction the seizure occurred, a written re-  
39 quest for forfeiture which shall include a statement of facts and circum-  
40 stances of the seizure, the estimated value of the property, the owner and  
41 lienholder of the property, the amount of any lien, and a summary of the  
42 facts relied on for forfeiture.

43 (h) Upon receipt of a written request for forfeiture from a local law

1 enforcement agency, the county or district attorney shall have 15 days to  
2 accept the request. Should such county or district attorney decline such  
3 request, or fail to answer, the seizing agency may:

4 (1) Request a state law enforcement agency which enforces this act  
5 to adopt the forfeiture; or

6 (2) engage an attorney, approved by the county or district attorney,  
7 to represent the agency in the forfeiture proceeding.

8 (i) Upon receipt of a written request for forfeiture from a state law  
9 enforcement agency, the county or district attorney shall have 15 days to  
10 accept the request. Should such county or district attorney decline such  
11 request, or fail to answer, the seizing agency may engage an assistant  
12 attorney general or other attorney approved by the attorney general's  
13 office to represent the agency in the forfeiture proceeding.

14 (j) *Nothing in this act shall prevent the attorney general, an employee  
15 of the attorney general or an authorized representative of the attorney  
16 general from conducting forfeiture proceedings under this act.*

17 ~~(j)~~ (k) Nothing in this act shall prevent a seizing agency from re-  
18 questing federal adoption of a seizure. It shall not be necessary to obtain  
19 any order pursuant to K.S.A. 22-2512, and amendments thereto, to re-  
20 lease any seized property to a federal agency should the county or district  
21 attorney approve of such transfer.

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

31 ~~(l)~~ (m) Settlements under this act shall not be conditioned upon any  
32 disposition of criminal charges.

33 Sec. 30. K.S.A. 2003 Supp. 60-4117 is hereby amended to read as  
34 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments  
35 thereto: (a) When property is forfeited under this act, the law enforce-  
36 ment agency may:

37 (1) Retain such property for official use or transfer the custody or  
38 ownership to any local, state or federal agency, subject to any lien pre-  
39 served by the court;

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

43 (3) sell property which is not required by law to be destroyed and

1 which is not harmful to the public:

2 (A) All property, except real property, designated by the seizing  
3 agency to be sold shall be sold at public sale to the highest bidder for  
4 cash without appraisal. The seizing agency shall first cause notice of the  
5 sale to be made by publication at least once in an official county news-  
6 paper as defined by K.S.A. 64-101, and amendments thereto. Such notice  
7 shall include the time, place, and conditions of the sale and description  
8 of the property to be sold. Nothing in this subsection shall prevent a state  
9 agency from using the state surplus property system and such system's  
10 procedures shall be sufficient to meet the requirements of this subsection.

11 (B) Real property may be sold pursuant to subsection (A), or the  
12 seizing agency may contract with a real estate company, licensed in this  
13 state, to list, advertise and sell such real property in a commercially rea-  
14 sonable manner.

15 (C) No employee or public official of any agency involved in the in-  
16 vestigation, seizure or forfeiture of seized property may purchase or at-  
17 tempt to purchase such property; or

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

19 (b) When firearms are forfeited under this act, the firearms in the  
20 discretion of the seizing agency, shall be destroyed, used within the seiz-  
21 ing agency for official purposes, traded to another law enforcement  
22 agency for use within such agency or given to the Kansas bureau of in-  
23 vestigation for law enforcement, testing, comparison or destruction by  
24 the Kansas bureau of investigation forensic laboratory.

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

27 (1) For satisfaction of any court preserved security interest or lien *or*  
28 *in the case of a violation as defined by subsection (h) of K.S.A. 60-4104,*  
29 *and amendments thereto, then the attorney general shall remit all pro-*  
30 *ceeds to the state treasurer in accordance with the provisions of K.S.A.*  
31 *75-4215, and amendments thereto. Upon receipt of each such remittance,*  
32 *the state treasurer shall deposit the entire amount to the credit of the*  
33 *medicaid fraud reimbursement fund, which shall be divided and payments*  
34 *made from such fund to the federal government and affected state agencies*  
35 *for the refund of moneys falsely obtained from the federal and state*  
36 *governments;*

37 (2) thereafter, for payment of all proper expenses of the proceedings  
38 for forfeiture and disposition, including expenses of seizure, inventory,  
39 appraisal, maintenance of custody, preservation of availability, advertising,  
40 service of process, sale and court costs;

41 (3) reasonable attorney fees *incurred as a result of proceedings con-*  
42 *ducted under this act:*

43 (A) If the plaintiff's attorney is a county or district attorney, an assis-

1 tant, or another governmental agency's attorney, fees shall not exceed  
2 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),  
3 in an uncontested forfeiture nor 20% of the total proceeds, less the  
4 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees  
5 shall be deposited in the county or city treasury and credited to the special  
6 prosecutor's trust fund. Moneys in such fund shall not be considered a  
7 source of revenue to meet normal operating expenditures, including salary  
8 enhancement. Such fund shall be expended by the county or district  
9 attorney, or other governmental agency's attorney through the normal  
10 county or city appropriation system and shall be used for such additional  
11 law enforcement and prosecutorial purposes as the county or district at-  
12 torney or other governmental agency's attorney deems appropriate, in-  
13 cluding educational purposes. All moneys derived from past or pending  
14 forfeitures shall be expended pursuant to this act. The board of county  
15 commissioners shall provide adequate funding to the county or district  
16 attorney's office to enable such office to enforce this act. Neither future  
17 forfeitures nor the proceeds therefrom shall be used in planning or adopt-  
18 ing a county or district attorney's budget; or

19 *(B) if the plaintiff's attorney is the attorney general and the conduct*  
20 *and offense giving rise to forfeiture under this act is as defined in subsec-*  
21 *tion (h) of K.S.A. 60-4104, and amendments thereto, then fees shall not*  
22 *exceed 15% of the total proceeds, less the amounts of subsection (c)(1)*  
23 *and (2), in an uncontested forfeiture nor 20% of the total proceeds, less*  
24 *the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such*  
25 *fees shall be remitted to the state treasurer in accordance with the pro-*  
26 *visions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each*  
27 *such remittance, the state treasurer shall deposit the entire amount in the*  
28 *state treasury to the credit of the medicaid fraud prosecution revolving*  
29 *fund, as created and established in the state treasury pursuant to subsec-*  
30 *tion (c) of K.S.A. 21-3851, and amendments thereto. Moneys paid into the*  
31 *medicaid fraud prosecution revolving fund pursuant to this act shall be*  
32 *appropriated to the attorney general for use by the attorney general in*  
33 *the investigation and prosecution of false claims under the medicaid pro-*  
34 *gram; or*

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

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

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

42 (1) If the law enforcement agency is a state agency, the entire amount  
43 shall be deposited in the state treasury and credited to such agency's state

1 forfeiture fund. There is hereby established in the state treasury the fol-  
2 lowing state funds: Kansas bureau of investigation state forfeiture fund,  
3 *Kansas attorney general's medicaid fraud prosecution revolving fund, as*  
4 *created and established in the state treasury pursuant to subsection (c) of*  
5 *K.S.A. 21-3851, and amendments thereto*, Kansas highway patrol state  
6 forfeiture fund, Kansas department of corrections state forfeiture fund  
7 and Kansas national guard counter drug state forfeiture fund. Expendi-  
8 tures from the Kansas bureau of investigation state forfeiture fund shall  
9 be made upon warrants of the director of accounts and reports issued  
10 pursuant to vouchers approved by the attorney general or by a person or  
11 persons designated by the attorney general. *Expenditures from the Kansas*  
12 *attorney general's medicaid fraud prosecution revolving fund shall be*  
13 *made upon warrants of the director of accounts and reports issued pur-*  
14 *suant to vouchers approved by the attorney general or by a person or*  
15 *persons designated by the attorney general.* Expenditures from the Kansas  
16 highway patrol state forfeiture fund shall be made upon warrants of the  
17 director of accounts and reports issued pursuant to vouchers approved  
18 by the superintendent of the highway patrol or by a person or persons  
19 designated by the superintendent. Expenditures from the Kansas de-  
20 partment of corrections state forfeiture fund shall be made upon warrants  
21 of the director of accounts and reports issued pursuant to vouchers ap-  
22 proved by the secretary of the department of corrections or by a person  
23 or persons designated by the secretary. Expenditures from the Kansas  
24 national guard counter drug state forfeiture fund shall be made upon  
25 warrants of the director of accounts and reports issued pursuant to vouch-  
26 ers approved by the adjutant general of Kansas or by a person or persons  
27 designated by the adjutant general. Each agency shall compile and submit  
28 a forfeiture fund report to the legislature on or before February 1 of each  
29 year. Such report shall include, but not be limited to: (A) The fund bal-  
30 ance on December 1; (B) the deposits and expenditures for the previous  
31 12-month period ending December 1. Upon the effective date of this act,  
32 the director of accounts and reports is directed to transfer each agency's  
33 balance in the state special asset forfeiture fund to the agency's new, state  
34 forfeiture fund. All liabilities of the state special asset forfeiture fund  
35 existing prior to such date are hereby imposed on the Kansas bureau of  
36 investigation state forfeiture fund, Kansas highway patrol state forfeiture  
37 fund and the Kansas department of corrections state forfeiture fund. The  
38 state special asset forfeiture fund is hereby abolished.

39 (2) If the law enforcement agency is a city or county agency, the  
40 entire amount shall be deposited in such city or county treasury and cred-  
41 ited to a special law enforcement trust fund. Each agency shall compile  
42 and submit annually a special law enforcement trust fund report to the  
43 entity which has budgetary authority over such agency and such report

1 shall specify, for such period, the type and approximate value of the for-  
2 feited property received, the amount of any forfeiture proceeds received,  
3 and how any of those proceeds were expended.

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

15 (4) *Moneys in the Kansas attorney general's medicaid fraud and*  
16 *abuse state forfeiture fund shall be appropriated to the attorney general*  
17 *in order to defray costs of the attorney general in connection with his*  
18 *duties in the investigation and prosecution of medicaid fraud and abuse.*

19 Sec. 31. K.S.A. 60-4119 is hereby amended to read as follows: 60-  
20 4119. (a) If a person is or may be called to produce evidence at a depo-  
21 sition, hearing or trial under this act or at an investigation brought by the  
22 attorney under K.S.A. 60-4118, *and amendments thereto*, the district  
23 court for the county in which the deposition, hearing, trial, or investiga-  
24 tion is or may be held, upon certification in writing of a request of the  
25 county or district attorney for the county, *or the attorney general*, shall  
26 issue an order, ex parte or after a hearing, requiring the person to produce  
27 evidence, notwithstanding that person's refusal to do so on the basis of  
28 the privilege against self-incrimination.

29 (b) The county or district attorney *or the attorney general*, may certify  
30 in writing a request for an ex parte order under this section if in such  
31 ~~county or district~~ attorney's judgment:

32 (1) The production of the evidence may be necessary to the public  
33 interest; and

34 (2) the person has refused or is likely to refuse to produce evidence  
35 on the basis of such person's privilege against self-incrimination.

36 (c) If a person refuses, on the basis of such person's privilege against  
37 self-incrimination, to produce evidence in any proceeding described in  
38 this act, and the presiding officer informs the person of an order issued  
39 under this section, the person may not refuse to comply with the order.  
40 The person may be compelled or punished by the district court issuing  
41 an order for civil or criminal contempt.

42 (d) The production of evidence compelled by order issued under this  
43 section, and any information directly or indirectly derived from such ev-

1 idence, may not be used against the person in a subsequent criminal case,  
2 except in a prosecution for perjury, K.S.A. 21-3805, and amendments  
3 thereto, making false writing, K.S.A. 21-3711, and amendments thereto,  
4 or an offense otherwise involving a failure to comply with the order. Noth-  
5 ing in this subsection shall be interpreted as preventing the use in a crim-  
6 inal action any evidence lawfully obtained independently of these  
7 procedures.

8 Sec. 32. K.S.A. 60-4107 and 60-4119 and K.S.A. 2003 Supp. 60-4104,  
9 60-4105 and 60-4117 are hereby repealed.

10 Sec. 33. This act shall take effect and be in force from and after its  
11 publication in the statute book.