

HOUSE BILL No. 2177

By Committee on Federal and State Affairs

1-26

9 AN ACT concerning disposition of certain forfeited firearms; amending
10 K.S.A. 21-4206 and K.S.A. 2004 Supp. 60-4117 and repealing the ex-
11 isting sections.
12

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

14 Section 1. K.S.A. 21-4206 is hereby amended to read as follows: 21-
15 4206. (1) Upon conviction of a violation or upon adjudication as a juvenile
16 offender for a violation of K.S.A. 21-4201, 21-4202, 21-4204 or 21-4219,
17 and amendments thereto, and K.S.A. 21-4204a, any weapon seized in
18 connection therewith shall remain in the custody of the trial court.

19 (2) Any stolen weapon so seized and detained, when no longer
20 needed for evidentiary purposes, shall be returned to the person entitled
21 to possession, if known. All other confiscated weapons when no longer
22 needed for evidentiary purposes, shall in the discretion of the trial court,
23 be: (a) Destroyed; (b) forfeited to the law enforcement agency seizing
24 the weapon for use within such agency ~~or traded~~, trading to a properly
25 licensed federal firearms dealer for other new or used firearms or acces-
26 sories for use within such agency or trading to another law enforcement
27 agency for that agency's use; or (c) forfeited to the Kansas bureau of
28 investigation for law enforcement, testing, comparison or destruction by
29 the Kansas bureau of investigation forensic laboratory.

30 Sec. 2. K.S.A. 2004 Supp. 60-4117 is hereby amended to read as
31 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
32 thereto: (a) When property is forfeited under this act, the law enforce-
33 ment agency may:

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

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

40 (3) sell property which is not required by law to be destroyed and
41 which is not harmful to the public:

42 (A) All property, except real property, designated by the seizing
43 agency to be sold shall be sold at public sale to the highest bidder for

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

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

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

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

16 (b) When firearms are forfeited under this act, the firearms, in the
17 discretion of the seizing agency, shall be destroyed, used within the seiz-
18 ing agency for official purposes, traded to another law enforcement
19 agency for use within such agency, *traded to a properly licensed federal*
20 *firearms dealer for other new or used firearms or accessories for use*
21 *within such agency* or given to the Kansas bureau of investigation for law
22 enforcement, testing, comparison or destruction by the Kansas bureau of
23 investigation forensic laboratory.

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

26 (1) For satisfaction of any court preserved security interest or lien;

27 (2) thereafter, for payment of all proper expenses of the proceedings
28 for forfeiture and disposition, including expenses of seizure, inventory,
29 appraisal, maintenance of custody, preservation of availability, advertising,
30 service of process, sale and court costs;

31 (3) reasonable attorney fees:

32 (A) If the plaintiff's attorney is a county or district attorney, an assis-
33 tant, or another governmental agency's attorney, fees shall not exceed
34 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),
35 in an uncontested forfeiture nor 20% of the total proceeds, less the
36 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees
37 shall be deposited in the county or city treasury and credited to the special
38 prosecutor's trust fund. Moneys in such fund shall not be considered a
39 source of revenue to meet normal operating expenditures, including sal-
40 ary enhancement. Such fund shall be expended by the county or district
41 attorney, or other governmental agency's attorney through the normal
42 county or city appropriation system and shall be used for such additional
43 law enforcement and prosecutorial purposes as the county or district at-

1 torney or other governmental agency's attorney deems appropriate, in-
2 cluding educational purposes. All moneys derived from past or pending
3 forfeitures shall be expended pursuant to this act. The board of county
4 commissioners shall provide adequate funding to the county or district
5 attorney's office to enable such office to enforce this act. Neither future
6 forfeitures nor the proceeds therefrom shall be used in planning or adopt-
7 ing a county or district attorney's budget; or

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

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

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

15 (1) If the law enforcement agency is a state agency, the entire amount
16 shall be deposited in the state treasury and credited to such agency's state
17 forfeiture fund. There is hereby established in the state treasury the fol-
18 lowing state funds: Kansas bureau of investigation state forfeiture fund,
19 Kansas highway patrol state forfeiture fund, Kansas department of cor-
20 rections state forfeiture fund and Kansas national guard counter drug
21 state forfeiture fund. Expenditures from the Kansas bureau of investi-
22 gation state forfeiture fund shall be made upon warrants of the director
23 of accounts and reports issued pursuant to vouchers approved by the
24 attorney general or by a person or persons designated by the attorney
25 general. Expenditures from the Kansas highway patrol state forfeiture
26 fund shall be made upon warrants of the director of accounts and reports
27 issued pursuant to vouchers approved by the superintendent of the high-
28 way patrol or by a person or persons designated by the superintendent.
29 Expenditures from the Kansas department of corrections state forfeiture
30 fund shall be made upon warrants of the director of accounts and reports
31 issued pursuant to vouchers approved by the secretary of the department
32 of corrections or by a person or persons designated by the secretary.
33 Expenditures from the Kansas national guard counter drug state forfei-
34 ture fund shall be made upon warrants of the director of accounts and
35 reports issued pursuant to vouchers approved by the adjutant general of
36 Kansas or by a person or persons designated by the adjutant general. Each
37 agency shall compile and submit a forfeiture fund report to the legislature
38 on or before February 1 of each year. Such report shall include, but not
39 be limited to: (A) The fund balance on December 1; (B) the deposits and
40 expenditures for the previous 12-month period ending December 1.
41 Upon the effective date of this act, the director of accounts and reports
42 is directed to transfer each agency's balance in the state special asset
43 forfeiture fund to the agency's new, state forfeiture fund. All liabilities of

1 the state special asset forfeiture fund existing prior to such date are hereby
2 imposed on the Kansas bureau of investigation state forfeiture fund, Kan-
3 sas highway patrol state forfeiture fund and the Kansas department of
4 corrections state forfeiture fund. The state special asset forfeiture fund is
5 hereby abolished.

6 (2) If the law enforcement agency is a city or county agency, the
7 entire amount shall be deposited in such city or county treasury and cred-
8 ited to a special law enforcement trust fund. Each agency shall compile
9 and submit annually a special law enforcement trust fund report to the
10 entity which has budgetary authority over such agency and such report
11 shall specify, for such period, the type and approximate value of the for-
12 feited property received, the amount of any forfeiture proceeds received,
13 and how any of those proceeds were expended.

14 (3) Moneys in the Kansas bureau of investigation state forfeiture
15 fund, Kansas highway patrol state forfeiture fund, Kansas department of
16 corrections state forfeiture fund, the special law enforcement trust funds
17 and the Kansas national guard counter drug state forfeiture fund shall not
18 be considered a source of revenue to meet normal operating expenses.
19 Such funds shall be expended by the agencies or departments through
20 the normal city, county or state appropriation system and shall be used
21 for such special, additional law enforcement purposes as the law enforce-
22 ment agency head deems appropriate. Neither future forfeitures nor the
23 proceeds from such forfeitures shall be used in planning or adopting a
24 law enforcement agency's budget.

25 Sec. 3. K.S.A. 21-4206 and K.S.A. 2004 Supp. 60-4117 are hereby
26 repealed.

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