

As Amended by Senate Committee

Session of 2006

SENATE BILL No. 342

By Committee on Judiciary

1-10

10 AN ACT concerning medicaid fraud; relating to obstruction of an inves-
11 tigation and forfeiture; amending K.S.A. 60-4104, 60-4105, 60-4107,
12 60-4117 and 60-4119 and repealing the existing sections.
13

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

15 New Section 1. (a) Obstruction of a medicaid fraud investigation is
16 knowingly and intentionally engaging in one or more of the following
17 during an investigation of any matter pursuant to K.S.A. 21-3844 *et seq.*,
18 and amendments thereto:

19 (1) Falsifying, concealing or covering up a material fact by any trick,
20 misstatement, scheme or device; or

21 (2) making or causing to be made any materially false writing or doc-
22 ument knowing that such writing or document contains any false, ficti-
23 tious or fraudulent statement or entry.

24 **(b) Obstruction of a medical fraud investigation is a severity**
25 **level 9, nonperson felony.**

26 ~~(b)~~ (c) This section shall be part of and supplemental to the Kansas
27 medicaid fraud control act.

28 Sec. 2. K.S.A. 60-4104 is hereby amended to read as follows: 60-
29 4104. Conduct and offenses giving rise to forfeiture under this act,
30 whether or not there is a prosecution or conviction related to the offense,
31 are:

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

33 (b) violations of the uniform controlled substances act, K.S.A. 65-
34 4101 *et seq.*, and amendments thereto;

35 (c) theft which is classified as a felony violation pursuant to K.S.A.
36 21-3701, and amendments thereto, in which the property taken was
37 livestock;

38 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
39 thereto;

40 (e) money laundering, K.S.A. 65-4142, and amendments thereto;

41 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
42 mercial gambling, K.S.A. 21-4304, and amendments thereto;

43 (g) counterfeiting, K.S.A. 2004 Supp. 21-3763, and amendments

1 thereto;

2 (h) *medicaid fraud*, K.S.A. 21-3844 *et seq.*, and amendments thereto;

3 ~~(h)~~ (i) an act or omission occurring outside this state, which would
4 be a violation in the place of occurrence and would be described in this
5 section if the act occurred in this state, whether or not it is prosecuted in
6 any state;

7 ~~(i)~~ (j) an act or omission committed in furtherance of any act or omis-
8 sion described in this section including any inchoate or preparatory of-
9 fense, whether or not there is a prosecution or conviction related to the
10 act or omission;

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

14 Sec. 3. K.S.A. 60-4105 is hereby amended to read as follows: 60-
15 4105. The following property is subject to forfeiture:

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

17 (b) ***except as otherwise provided by law***, all property, ~~including of~~
18 *every kind, including, but not limited to, cash and negotiable instruments*
19 *and the whole of any lot or tract of land and any appurtenances or im-*
20 *provements to real property that is either:*

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

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

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

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

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

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

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

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

41 (i) any items bearing a counterfeit mark.

42 Sec. 4. K.S.A. 60-4107 is hereby amended to read as follows: 60-
43 4107. (a) Property may be seized for forfeiture by a law enforcement

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

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

15 (c) Property may be seized constructively by:

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

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

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

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

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

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

42 (g) When property is seized for forfeiture under this act, the seizing
43 agency shall, within 45 days of such seizure, forward to the county or

1 district attorney in whose jurisdiction the seizure occurred, a written re-
2 quest for forfeiture which shall include a statement of facts and circum-
3 stances of the seizure, the estimated value of the property, the owner and
4 lienholder of the property, the amount of any lien, and a summary of the
5 facts relied on for forfeiture.

6 (h) Upon receipt of a written request for forfeiture from a local law
7 enforcement agency, the county or district attorney shall have 15 days to
8 accept the request. Should such county or district attorney decline such
9 request, or fail to answer, the seizing agency may:

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

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

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

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

23 (k) Nothing in this act shall prevent a seizing agency from requesting
24 federal adoption of a seizure. It shall not be necessary to obtain any order
25 pursuant to K.S.A. 22-2512, and amendments thereto, to release any
26 seized property to a federal agency should the county or district attorney
27 approve of such transfer.

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

37 ~~(m)~~ (m) Settlements under this act shall not be conditioned upon any
38 disposition of criminal charges.

39 Sec. 5. K.S.A. 60-4117 is hereby amended to read as follows: 60-
40 4117. Except as provided in K.S.A. 65-7014, and amendments thereto:

41 (a) When property is forfeited under this act, the law enforcement agency
42 may:

43 (1) Retain such property for official use or transfer the custody or

1 ownership to any local, state or federal agency, subject to any lien pre-
2 served by the court;

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

6 (3) sell property which is not required by law to be destroyed and
7 which is not harmful to the public;

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

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

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

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

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

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

33 (1) For satisfaction of any court preserved security interest or lien,
34 *or in the case of a violation, as defined by subsection (h) of K.S.A. 60-*
35 *4104, and amendments thereto, the proceeds shall be remitted to the state*
36 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*
37 *amendments thereto. Upon receipt of such remittance, the state treasurer*
38 *shall deposit the entire amount into the state treasury to the credit of the*
39 *medicaid fraud reimbursement fund;*

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

1 (3) reasonable attorney fees:

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

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

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

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

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

41 (1) If the law enforcement agency is a state agency, the entire amount
42 shall be deposited in the state treasury and credited to such agency's state
43 forfeiture fund. There is hereby established in the state treasury the fol-

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

36 (2) If the law enforcement agency is a city or county agency, the
37 entire amount shall be deposited in such city or county treasury and cred-
38 ited to a special law enforcement trust fund. Each agency shall compile
39 and submit annually a special law enforcement trust fund report to the
40 entity which has budgetary authority over such agency and such report
41 shall specify, for such period, the type and approximate value of the for-
42 feited property received, the amount of any forfeiture proceeds received,
43 and how any of those proceeds were expended.

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

12 (4) *Moneys in the Kansas attorney general's medicaid fraud forfeiture*
13 *fund shall defray costs of the attorney general in connection with the*
14 *duties of investigating and prosecuting medicaid fraud and abuse.*

15 Sec. 6. K.S.A. 60-4119 is hereby amended to read as follows: 60-
16 4119. (a) If a person is or may be called to produce evidence at a depo-
17 sition, hearing or trial under this act or at an investigation brought by the
18 attorney under K.S.A. 60-4118, *and amendments thereto*, the district
19 court for the county in which the deposition, hearing, trial, or investiga-
20 tion is or may be held, upon certification in writing of a request of the
21 county or district attorney for the county, *or the attorney general*, shall
22 issue an order, ex parte or after a hearing, requiring the person to produce
23 evidence, notwithstanding that person's refusal to do so on the basis of
24 the privilege against self-incrimination.

25 (b) The county or district attorney, *or the attorney general*, may cer-
26 tify in writing a request for an ex parte order under this section if in such
27 ~~county or district~~ attorney's judgment:

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

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

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

38 (d) The production of evidence compelled by order issued under this
39 section, and any information directly or indirectly derived from such ev-
40 idence, may not be used against the person in a subsequent criminal case,
41 except in a prosecution for perjury, K.S.A. 21-3805, and amendments
42 thereto, making false writing, K.S.A. 21-3711, and amendments thereto,
43 or an offense otherwise involving a failure to comply with the order. Noth-

1 ing in this subsection shall be interpreted as preventing the use in a crim-
2 inal action any evidence lawfully obtained independently of these
3 procedures.

4 Sec. 7. K.S.A. 60-4104, 60-4105, 60-4107, 60-4117 and 60-4119 are
5 hereby repealed.

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