

February 12, 2024

The Honorable Susan Humphries, Chairperson
House Committee on Judiciary
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Humphries:

SUBJECT: Fiscal Note for HB 2606 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2606 is respectfully submitted to your committee.

HB 2606 would redefine the offenses involving controlled substances that give rise to asset seizures and forfeitures to include possession of any opiates, depressants, stimulants, hallucinogenic drugs, and other substances, drug paraphernalia, and toxic vapors. The bill would specify that, prior to final judgment in a judicial forfeiture proceeding, the court must determine if the proposed forfeiture is unconstitutionally excessive. The bill would also change the time requirement from 45 days to 14 days for the seizing agency to forward a written request for forfeiture to the county or district attorney. The county or district attorney would be required to accept or decline the forfeiture request within 14 days. After the 14-day time limit has expired or the seizing agency has been notified that the county or district attorney has declined the request, the seizing agency would have 14 days to request a state law enforcement agency to adopt the forfeiture or to engage a private attorney to represent them in a forfeiture proceeding. After such time expires, the property would have to be returned within 30 days to the owner.

The bill would require forfeiture proceedings to be commenced by filing a notice of pending forfeiture or a judicial forfeiture action and a probable cause affidavit. After an affidavit is filed, a judge would determine if there were probable cause to believe the property is subject to forfeiture. The bill would require a notice of a pending forfeiture that is mailed to an owner or interest holder to include certain information. An owner or interest holder of seized property would be allowed to petition a court for determination or reconsideration of its prior probable cause determination. If no probable cause is found, the court must order the property to the custody of the applicant. A person from whom the property was seized would be allowed to petition a court, at any time, to determine whether such forfeiture is unconstitutionally excessive. The bill outlines factors a court would consider in determining whether a forfeiture is unconstitutionally excessive.

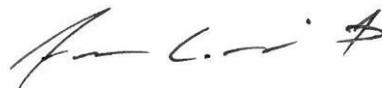
In any proceeding in which the court finds that the claimant showed that at least half of the aggregate value of the claimant's interest in the property or currency must be returned, the court shall order the seizing agency to pay reasonable attorney fees, post judgment interest, or in case involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure. If there are multiple claims to the same property, the seizing agency would not be liable for attorney fees and costs associated with any claim if the seizing agency meets certain conditions. The bill would also allow attorney fees, litigation costs, and interest to be paid from certain special revenue funds. The bill would remove reporting requirements of state law enforcement agencies to the Legislature and local governments.

The Highway Patrol indicates that the bill would require the agency to pay reasonable legal fees for the claimant in adverse court rulings if they prove by clear and convincing evidence that the property was not subject to forfeiture. The agency notes that raising the standard to clear and convincing evidence creates a more rigorous standard to meet than a preponderance of evidence standard. The agency states that the fiscal effect of the bill would be determined by the members of the Judiciary. However, a precise fiscal effect cannot be determined because the number of adverse decisions cannot be estimated.

The Office of Judicial Administration indicates enactment of the bill could require district court judges to address petitions received and conduct hearings, consider additional factors during hearings, and make findings. This could increase the workload of the Judicial Branch. However, a precise fiscal effect cannot be estimated.

The Kansas Bureau of Investigation indicates enactment of the bill would not have a fiscal effect on the agency's operations. Any fiscal effect associated with HB 2606 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,



Adam C. Proffitt
Director of the Budget

cc: Trisha Morrow, Judiciary
Paul Weisgerber, Kansas Bureau of Investigation
Sherry Macke, Kansas Highway Patrol