

2012 Kansas Statutes

60-4114. In personam proceedings. (a) (1) A judicial *in personam* forfeiture proceeding brought by the plaintiff's attorney pursuant to an *in personam* civil action alleging conduct giving rise to forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the *in personam* action. The action shall be in addition to or in lieu of *in rem* forfeiture procedures.

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

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

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

(2) A provision of notice would jeopardize the availability of the property for forfeiture.

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

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

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

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

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

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

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

(h) Except as provided in subsection (c) of K.S.A. 60-4112, no person claiming an interest in property subject to forfeiture under this act may intervene in a trial or appeal of a criminal action or in an *in personam* civil action involving the forfeiture of the property.

History: L. 1994, ch. 339, § 14; July 1.