

HOUSE BILL No. 2116

By Committee on Corrections and Juvenile Justice

1-19

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to offenses giving rise to forfeiture; proceedings; disposition of
3 property; reporting; amending K.S.A. 60-4106 and K.S.A. 2016 Supp.
4 60-4104, 60-4105, 60-4107, 60-4111, 60-4112 and 60-4117 and
5 repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) The attorney general shall maintain a searchable
9 public website that includes the following information about property
10 seized and forfeited pursuant to the Kansas standard asset seizure and
11 forfeiture act:

12 (1) The name of the law enforcement agency that seized such
13 property;

14 (2) the date of the seizure of such property;

15 (3) a description of such property;

16 (4) the location of the seizure;

17 (5) the estimated value of such property;

18 (6) the offense giving rise to forfeiture;

19 (7) the race, ethnicity and gender of the person from whom such
20 property was seized;

21 (8) the case number for the forfeiture; and

22 (9) the total value of all seized and forfeited property held by each
23 law enforcement agency.

24 (b) Each law enforcement agency shall provide the information
25 required by subsection (a) to the attorney general each month.

26 (c) Beginning in 2018 and each year thereafter, at the beginning of
27 each regular session of the legislature the attorney general shall provide a
28 report to the president of the senate and the speaker of the house of
29 representatives containing the information gathered pursuant to subsection
30 (a).

31 (d) The attorney general may adopt rules and regulations to carry out
32 the provisions of this section.

33 (e) This section shall be part of and supplemental to the Kansas
34 standard asset seizure and forfeiture act.

35 Sec. 2. K.S.A. 2016 Supp. 60-4104 is hereby amended to read as
36 follows: 60-4104. ~~Conduct and~~ Offenses giving rise to forfeiture under this

1 act, whether or not there is a prosecution or *only after a* conviction related
 2 to the offense, are:

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

4 (b) *felony* violations involving controlled substances, as described in
 5 K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;

6 (c) *felony violations of* theft, as defined in K.S.A. 2016 Supp. 21-
 7 5801, and amendments thereto;

8 (d) *felony violations of* criminal discharge of a firearm, as defined in
 9 K.S.A. 2016 Supp. 21-6308(a)(1) and (a)(2), and amendments thereto;

10 (e) ~~gambling~~, as defined in K.S.A. 2016 Supp. 21-6404, and
 11 ~~amendments thereto~~, and *felony violations of* commercial gambling, as
 12 defined in K.S.A. 2016 Supp. 21-6406(a)(1), and amendments thereto;

13 (f) *felony violations of* counterfeiting, as defined in K.S.A. 2016
 14 Supp. 21-5825, and amendments thereto;

15 (g) unlawful possession or use of a scanning device or reencoder, as
 16 described in K.S.A. 2016 Supp. 21-6108, and amendments thereto;

17 (h) *felony violations of* medicaid fraud, as described in K.S.A. 2016
 18 Supp. 21-5925 through 21-5934, and amendments thereto;

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

22 (j) ~~an act or omission committed in furtherance of any act or omission~~
 23 ~~described in this section including any inchoate or preparatory offense,~~
 24 ~~whether or not there is a prosecution or conviction related to the act or~~
 25 ~~omission;~~

26 (k) ~~any solicitation or conspiracy to commit any act or omission~~
 27 ~~described in this section, whether or not there is a prosecution or~~
 28 ~~conviction related to the act or omission;~~

29 (l) ~~(i)~~ terrorism, as defined in K.S.A. 2016 Supp. 21-5421, and
 30 amendments thereto, illegal use of weapons of mass destruction, as
 31 defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto, and
 32 furtherance of terrorism or illegal use of weapons of mass destruction, as
 33 described in K.S.A. 2016 Supp. 21-5423, and amendments thereto;

34 (m) ~~(j)~~ unlawful conduct of dog fighting and unlawful possession of
 35 ~~dog fighting paraphernalia~~, as defined in K.S.A. 2016 Supp. 21-6414(a)
 36 and (b), and amendments thereto;

37 (n) ~~(k)~~ unlawful conduct of cockfighting and unlawful possession of
 38 ~~cockfighting paraphernalia~~, as defined in K.S.A. 2016 Supp. 21-6417(a)
 39 and (b), and amendments thereto;

40 (o) ~~(l)~~ selling sexual relations, as defined in K.S.A. 2016 Supp. 21-
 41 6419, and amendments thereto, promoting the sale of sexual relations, as
 42 defined in K.S.A. 2016 Supp. 21-6420, and amendments thereto, and
 43 *felony violations of* buying sexual relations, as defined in K.S.A. 2016

1 Supp. 21-6421, and amendments thereto;

2 ~~(p)~~ (m) human trafficking and aggravated human trafficking, as
3 defined in K.S.A. 2016 Supp. 21-5426, and amendments thereto;

4 ~~(q)~~ (n) violations of the banking code, as described in K.S.A. 9-2012,
5 and amendments thereto;

6 ~~(r)~~ (o) *felony violations of mistreatment of a dependent adult and*
7 *felony violations of mistreatment of an elder person*, as defined in K.S.A.
8 2016 Supp. 21-5417, and amendments thereto;

9 ~~(s)~~ (p) *felony violations of giving a worthless check*, as defined in
10 K.S.A. 2016 Supp. 21-5821, and amendments thereto;

11 ~~(t)~~ (q) forgery, as defined in K.S.A. 2016 Supp. 21-5823, and
12 amendments thereto;

13 ~~(u)~~ (r) making false information, as defined in K.S.A. 2016 Supp. 21-
14 5824, and amendments thereto;

15 ~~(v)~~ (s) *felony violations of criminal use of a financial card*, as defined
16 in K.S.A. 2016 Supp. 21-5828, and amendments thereto;

17 ~~(w)~~ (t) *felony violations of unlawful acts concerning computers*, as
18 described in K.S.A. 2016 Supp. 21-5839, and amendments thereto;

19 ~~(x)~~ (u) identity theft and identity fraud, as defined in K.S.A. 2016
20 Supp. 21-6107~~(a) and (b)~~, and amendments thereto;

21 ~~(y)~~ (v) electronic solicitation, as defined in K.S.A. 2016 Supp. 21-
22 5509, and amendments thereto;

23 ~~(z)~~ (w) felony violations of fleeing or attempting to elude a police
24 officer, as described in K.S.A. 8-1568, and amendments thereto;

25 ~~(aa)~~ (x) commercial sexual exploitation of a child, as defined in
26 K.S.A. 2016 Supp. 21-6422, and amendments thereto;

27 ~~(bb)~~ (y) violations of the Kansas racketeer influenced and corrupt
28 organization act, as described in K.S.A. 2016 Supp. 21-6329, and
29 amendments thereto;

30 ~~(cc)~~ (z) indecent solicitation of a child and aggravated indecent
31 solicitation of a child, as defined in K.S.A. 2016 Supp. 21-5508, and
32 amendments thereto;

33 ~~(dd)~~ (aa) sexual exploitation of a child, as defined in K.S.A. 2016
34 Supp. 21-5510, and amendments thereto; and

35 ~~(ee)~~ (bb) violation of a consumer protection order as defined in
36 K.S.A. 2016 Supp. 21-6423, and amendments thereto.

37 Sec. 3. K.S.A. 2016 Supp. 60-4105 is hereby amended to read as
38 follows: 60-4105. *Except as provided in K.S.A. 60-4106, and amendments*
39 *thereto*, the following property is subject to forfeiture:

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

41 (b) except as otherwise provided by law, all property, of every kind,
42 including, but not limited to, cash and negotiable instruments and the
43 whole of any lot or tract of land and any appurtenances or improvements

1 to real property that is either:

2 (1) Furnished or intended to be furnished by any person in an
3 exchange that constitutes ~~conduct~~ *an offense* giving rise to forfeiture; or

4 (2) used or intended to be used in any manner to facilitate ~~conduct~~ *an*
5 *offense* giving rise to forfeiture, including, but not limited to, any
6 electronic device, computer, computer system, computer network or any
7 software or data owned by the defendant which is used during the
8 commission of an offense listed in K.S.A. 60-4104, and amendments
9 thereto;

10 (c) all proceeds of ~~any conduct~~ *an offense* giving rise to forfeiture;

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

15 (e) all weapons possessed, used, or available for use in any manner to
16 facilitate ~~conduct~~ *an offense* giving rise to forfeiture;

17 ~~(f) ownership or interest in real property that is a homestead, to the~~
18 ~~extent the homestead was acquired with proceeds from conduct giving rise~~
19 ~~to forfeiture;~~

20 ~~(g) (f)~~ *(f)* contraband, which shall be seized and summarily forfeited to
21 the state without regard to the procedures set forth in this act;

22 ~~(h) (g)~~ *(g)* all controlled substances, raw materials, controlled substance
23 analogs, counterfeit substances, or imitation controlled substances that
24 have been manufactured, distributed, dispensed, possessed, or acquired in
25 violation of the laws of this state; and

26 ~~(i) (h)~~ *(h)* any items bearing a counterfeit mark.

27 Sec. 4. K.S.A. 60-4106 is hereby amended to read as follows: 60-
28 4106. (a) All property, including all interests in property, described in
29 K.S.A. 60-4105, *and amendments thereto*, is subject to forfeiture subject to
30 all mortgages, deeds of trust, financing statements or security agreements
31 properly of record prior to the forfeiture held by an interest holder except
32 that property specifically exempted hereunder:

33 ~~(1) No real property or conveyance, or an interest therein, may be~~
34 ~~forfeited under this act unless the offense or conduct giving rise to~~
35 ~~forfeiture constitutes a felony.~~

36 ~~(2) No conveyance used by any person as a common carrier in the~~
37 ~~transaction of business as a common carrier is subject to forfeiture under~~
38 ~~this act unless it appears that the owner or other person in charge of the~~
39 ~~conveyance is a consenting party or privy to a violation of this act~~ *the*
40 *offense giving rise to forfeiture.*

41 (3) No property is subject to forfeiture under this act if the owner or
42 interest holder acquired the property before or during the ~~conduct~~
43 *commission of the offense* giving rise to the property's forfeiture, and such

1 owner or interest holder:

2 (A) Did not know and could not have reasonably known of the act or
3 omission or that it was likely to occur; or

4 (B) acted reasonably to prevent the ~~conduct~~ offense giving rise to
5 forfeiture.

6 (4) No property is subject to forfeiture if the owner or interest holder
7 acquired the property after the ~~conduct~~ commission of the offense giving
8 rise to the property's forfeiture, including acquisition of proceeds of
9 ~~conduct~~ an offense giving rise to forfeiture, and the owner or interest
10 holder acquired the property in good faith, for value and was not
11 knowingly taking part in an illegal transaction.

12 (5) (A) An interest in property acquired in good faith by an attorney
13 as reasonable payment or to secure payment for legal services in a criminal
14 matter relating to violations of this act or for the reimbursement of
15 reasonable expenses related to the legal services is exempt from forfeiture
16 unless before the interest was acquired the attorney knew of a judicial
17 determination of probable cause that the property is subject to forfeiture.

18 (B) The state bears the burden of proving that an exemption claimed
19 under ~~this section~~ subsection (a)(5)(A) is not applicable. Evidence made
20 available by the compelled disclosure of confidential communications
21 between an attorney and a client other than nonprivileged information
22 relating to attorney fees, is not admissible to satisfy the state's burden of
23 proof.

24 (6) *No motor vehicle that has a market value of \$10,000 or less is*
25 *subject to forfeiture under this act.*

26 (7) *No cash in any amount less than \$200 is subject to forfeiture*
27 *under this act.*

28 (8) *No ownership or interest in real property that is a homestead is*
29 *subject to forfeiture under this act.*

30 (b) Notwithstanding subsection (a), property is not exempt from
31 forfeiture, even though the owner or interest holder lacked knowledge or
32 reason to know that the ~~conduct~~ offense giving rise to property's forfeiture
33 had occurred or was likely to occur, if the:

34 (1) Person whose ~~conduct~~ offense gave rise to the property's forfeiture
35 had authority to convey the property of the person claiming the exemption
36 to a good faith purchaser for value at the time of the ~~conduct~~ offense; or

37 (2) ~~owner or interest holder is criminally responsible for the conduct~~
38 ~~giving rise to the property's forfeiture, whether or not there is a prosecution~~
39 ~~or conviction; or~~

40 (3) owner or interest holder acquired the property with notice of the
41 property's actual or constructive seizure for forfeiture under this act, or
42 with reason to believe that the property was subject to forfeiture under this
43 act.

1 (c) Prior to final judgment in a judicial forfeiture proceeding, a court
 2 shall limit the scope of a proposed forfeiture to the extent the court finds
 3 the effect of the forfeiture is grossly disproportionate to the nature and
 4 severity of the owner's conduct including, but not limited to, a
 5 consideration of any of the following factors:

6 (1) The gain received or expected to be received by an owner from
 7 ~~such conduct that allows forfeiture;~~

8 (2) the value of the property subject to forfeiture;

9 (3) the extent to which the property actually facilitated the ~~criminal~~
 10 ~~conduct~~ offense giving rise to forfeiture;

11 (4) the nature and extent of the owner's knowledge of the role of
 12 others in the ~~conduct~~ offense that allows forfeiture of the property and
 13 efforts of the owner to prevent the ~~conduct~~ such offense; and

14 (5) the totality of the circumstances regarding the investigation.

15 Sec. 5. K.S.A. 2016 Supp. 60-4107 is hereby amended to read as
 16 follows: 60-4107. (a) Property may be seized for forfeiture by a law
 17 enforcement officer upon process issued by the district court. The court
 18 may issue a seizure warrant on an affidavit under oath demonstrating that
 19 probable cause exists for the property's forfeiture or that the property has
 20 been the subject of a previous final judgment of forfeiture in the courts of
 21 any state or of the United States. The court may order that the property be
 22 seized on such terms and conditions as are reasonable in the discretion of
 23 the court. The order may be made on or in connection with a search
 24 warrant. All real property is to be seized constructively or pursuant to a
 25 preseizure adversarial judicial determination of probable cause, except that
 26 this determination may be done ex parte when the attorney for the state has
 27 demonstrated exigent circumstances to the court.

28 (b) *Personal* property may be seized for forfeiture by a law
 29 enforcement officer without process on probable cause to believe the
 30 property is subject to forfeiture under this act *and*:

31 (1) *The seizure of personal property is incident to a lawful arrest or*
 32 *search;*

33 (2) *the personal property has been the subject of a prior judgment in*
 34 *favor of the state; or*

35 (3) *the law enforcement officer has probable cause to believe that a*
 36 *delay in seizure of the personal property will result in the removal or*
 37 *destruction of such property.*

38 (c) Property may be seized constructively by:

39 (1) Posting notice of seizure for forfeiture or notice of pending
 40 forfeiture on the property.

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

43 (3) Filing or recording in the public records relating to that type of

1 property notice of seizure for forfeiture, notice of pending forfeiture, a
2 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
3 act are not subject to a filing fee or other charge, except that court costs
4 may be assessed and, if assessed, shall include the amount of the docket
5 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
6 additional court costs accrued in the action.

7 (d) The seizing agency shall make reasonable effort to provide
8 *written* notice of the seizure to the person from whose possession or
9 control the property was seized and any interest holder of record within 30
10 days of seizing the property. If no person is in possession or control, the
11 seizing agency may attach the notice to the property or to the place of the
12 property's seizure or may make a reasonable effort to deliver the notice to
13 the owner of the property. The *written* notice shall contain a general
14 description of the property seized, the date and place of seizure, the name
15 of the seizing agency and the address and telephone number of the seizing
16 officer or other person or agency from whom information about the seizure
17 may be obtained.

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

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

26 (g) ~~When property is seized for forfeiture under this act~~ *the person*
27 *from whose possession or control the property was seized has been*
28 *convicted of the offense giving rise to forfeiture under this act and the*
29 *property is forfeited pursuant to this act*, the seizing agency shall, within
30 45 days of such seizure, forward to the county or district attorney in whose
31 jurisdiction the seizure occurred, a written request for forfeiture which
32 shall include a statement of facts and circumstances of the seizure, the
33 estimated value of the property, the owner and lienholder of the property,
34 the amount of any lien; and a summary of the facts relied on for forfeiture.

35 (h) Upon receipt of a written request for forfeiture from a local law
36 enforcement agency, the county or district attorney shall have 14 days to
37 accept the request. Should such county or district attorney decline such
38 request, or fail to answer, the seizing agency may:

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

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

43 (i) Upon receipt of a written request for forfeiture from a state law

1 enforcement agency, the county or district attorney shall have 14 days to
2 accept the request. Should such county or district attorney decline such
3 request, or fail to answer, the seizing agency may engage an assistant
4 attorney general or other attorney approved by the attorney general's office
5 to represent the agency in the forfeiture proceeding.

6 (j) Nothing in this act shall prevent the attorney general, an employee
7 of the attorney general or an authorized representative of the attorney
8 general from conducting forfeiture proceedings under this act.

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

14 (l) Nothing in this act shall prevent a seizing agency, or the plaintiff's
15 attorney on behalf of the seizing agency, from settling any alleged
16 forfeiture claim against property before or during forfeiture proceedings.
17 Such settlement shall be in writing and shall be approved, if a local
18 agency, by the county or district attorney or, if a state agency, by the
19 attorney general's office and a district court judge. No hearing or other
20 proceeding shall be necessary. The records of settlements occurring prior
21 to commencement of judicial forfeiture proceedings in the district court
22 shall be retained by the county or district attorney for not less than five
23 years.

24 (m) Settlements under this act shall not be conditioned upon any
25 disposition of criminal charges.

26 Sec. 6. K.S.A. 2016 Supp. 60-4111 is hereby amended to read as
27 follows: 60-4111. (a) Only an owner of or interest holder in property
28 seized for forfeiture may file a claim, and shall do so in the manner
29 provided in this section. The claim shall be mailed to the seizing agency
30 and to the plaintiff's attorney by certified mail, return receipt requested,
31 within 30 days after the effective date of notice of pending forfeiture. No
32 extension of time for the filing of a claim shall be granted except for good
33 cause shown.

34 (b) The claim and all supporting documents shall be in affidavit form,
35 signed by the claimant under oath, and sworn to by the affiant before one
36 who has authority to administer the oath, under penalty of perjury, K.S.A.
37 2016 Supp. 21-5903, and amendments thereto, or making a false writing,
38 K.S.A. 2016 Supp. 21-5824, and amendments thereto, and shall set forth
39 all of the following:

40 (1) The caption of the proceedings and identifying number, if any, as
41 set forth on the notice of pending forfeiture or complaint, the name of the
42 claimant, and the name of the plaintiff's attorney who authorized the notice
43 of pending forfeiture or complaint.

1 (2) The address where the claimant will accept mail.

2 (3) The nature and extent of the claimant's interest in the property.

3 (4) The date, the identity of the transferor, and a detailed description
4 of the circumstances of the claimant's acquisition of the interest in the
5 property.

6 (5) The specific provision of this act relied on in asserting that the
7 property is not subject to forfeiture.

8 (6) All essential facts supporting each assertion.

9 (7) The specific relief sought.

10 (c) *After a claim is filed pursuant to this section, the state shall be*
11 *required to prove, by clear and convincing evidence, that the claimant is*
12 *not entitled to have the property returned.*

13 Sec. 7. K.S.A. 2016 Supp. 60-4112 is hereby amended to read as
14 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
15 subject to the provisions of this section.

16 (b) The court, on application of the plaintiff's attorney, may enter any
17 restraining order or injunction, require the execution of satisfactory
18 performance bonds, create receiverships, appoint conservators, custodians,
19 appraisers, accountants or trustees, or take any other action to seize,
20 secure, maintain or preserve the availability of property subject to
21 forfeiture under this act, including a writ of attachment or a warrant for
22 such property's seizure, whether before or after the filing of a notice of
23 pending forfeiture or complaint.

24 (c) If property is seized for forfeiture or a forfeiture lien is filed
25 without a previous judicial determination of probable cause or order of
26 forfeiture or a hearing under ~~subsection (c) of K.S.A. 60-4114(c)~~, and
27 amendments thereto, the court, on an application filed by an owner of or
28 interest holder in the property within 14 days after notice of the property's
29 seizure for forfeiture or lien, or actual knowledge of it, whichever is
30 earlier, and after complying with the requirements for claims in K.S.A. 60-
31 4109, and amendments thereto, after seven days' notice to the plaintiff's
32 attorney, may issue an order to show cause to the seizing agency, for a
33 hearing on the sole issue of whether probable cause for forfeiture of the
34 property then exists. The hearing shall be held within 30 days of the order
35 to show cause unless continued for good cause on motion of either party. If
36 the court finds that there is no probable cause for forfeiture of the property,
37 or if the seizing agency elects not to contest the issue, the property shall be
38 released to the custody of the applicant, as custodian for the court, or from
39 the lien pending the outcome of a judicial proceeding pursuant to this act.
40 If the court finds that probable cause for the forfeiture of the property
41 exists, the court shall not order the property released.

42 (d) All applications filed within the 14-day period prescribed by
43 subsection (c) shall be consolidated for a single hearing relating to each

1 applicant's interest in the property seized for forfeiture.

2 (e) A person charged with a criminal offense may apply at any time
3 before final judgment to the court where the forfeiture proceeding is
4 pending for the release of property seized for forfeiture, that is necessary
5 for the defense of the person's criminal charge. The application shall
6 satisfy the requirements under ~~subsection (b) of K.S.A. 60-4111(b)~~, and
7 amendments thereto. The court shall hold a probable cause hearing if the
8 applicant establishes that:

9 (1) The person has not had an opportunity to participate in a previous
10 adversarial judicial determination of probable cause.

11 (2) The person has no access to other moneys adequate for the
12 payment of criminal counsel.

13 (3) The interest in property to be released is not subject to any claim
14 other than the forfeiture.

15 (f) If the court finds that there is no probable cause for forfeiture of
16 the property, the court shall order the property released pursuant to
17 subsection (c). If the seizing agency does not contest the hearing, the court
18 may release a reasonable amount of property for the payment of the
19 applicant's criminal defense costs. Property that has been released by the
20 court and that has been paid for criminal defense services actually
21 rendered is exempt under this act.

22 (g) A defendant convicted in any criminal proceeding is precluded
23 from later denying the essential allegations of the criminal offense of
24 which the defendant was convicted in any proceeding pursuant to this
25 section. ~~For the purposes of this section, a conviction results from a verdict~~
26 ~~or plea of guilty, including a plea of no contest or nolo contendere.~~

27 (h) (1) *At any time following forfeiture pursuant to this act, the*
28 *person from whose possession or control the property was seized may*
29 *petition the court to determine whether such forfeiture is*
30 *unconstitutionally excessive.*

31 (2) *The person from whose possession or control the property was*
32 *seized has the burden of establishing that the forfeiture is disproportional*
33 *to the seriousness of the offense giving rise to the forfeiture by a*
34 *preponderance of the evidence at a hearing conducted by the court*
35 *without a jury. Such hearing may be a component of the associated trial*
36 *and not a separate hearing.*

37 (3) *In determining whether the forfeiture is unconstitutionally*
38 *excessive, the court may consider all relevant factors, including, but not*
39 *limited to:*

40 (A) *The seriousness of the offense;*

41 (B) *the extent to which the person whose possession or control of the*
42 *property was seized participated in the offense;*

43 (C) *the extent to which the property was used in committing the*

1 *offense; and*

2 *(D) the sentence imposed for committing the offense giving rise to*
 3 *forfeiture.*

4 *(i)* In any proceeding under this act, if a claim is based on any
 5 exemption provided for in this act, the burden of proving the existence of
 6 the exemption is on the claimant, and is not necessary for the seizing
 7 agency or plaintiff's attorney to negate the exemption in any application or
 8 complaint.

9 ~~(j)~~ *(j)* In hearings and determinations pursuant to this section, the
 10 court may receive and consider, in making any determination of probable
 11 cause or reasonable cause, all evidence admissible in determining probable
 12 cause at a preliminary hearing or in the issuance of a search warrant,
 13 together with inferences therefrom.

14 ~~(k)~~ *(k)* The fact that money, negotiable instruments, precious metals,
 15 communication devices, and weapons were found in close proximity to
 16 contraband or an instrumentality of conduct giving rise to forfeiture shall
 17 give rise to the rebuttable presumption, in the manner provided in
 18 ~~subsection (a) of~~ K.S.A. 60-414(a), and amendments thereto, that such
 19 item was the proceeds of conduct giving rise to forfeiture or was used or
 20 intended to be used to facilitate the conduct.

21 ~~(l)~~ *(l)* There shall be a rebuttable presumption, in the manner
 22 provided in ~~subsection (a)~~ K.S.A. 60-414(a), and amendments thereto, that
 23 any property of a person is subject to forfeiture under this act if the seizing
 24 agency establishes, by the standard of proof applicable to that proceeding,
 25 all of the following:

- 26 (1) The person has engaged in conduct giving rise to forfeiture;
- 27 (2) the property was acquired by the person during that period of the
 28 conduct giving rise to forfeiture or within a reasonable time after the
 29 period; and
- 30 (3) there was no likely source for the property other than the conduct
 31 giving rise to forfeiture.

32 ~~(m)~~ *(m)* A finding that property is the proceeds of conduct giving rise
 33 to forfeiture does not require proof the property is the proceeds of any
 34 particular exchange or transaction.

35 ~~(n)~~ *(n)* A person who acquires any property subject to forfeiture is a
 36 constructive trustee of the property, and such property's fruits, for the
 37 benefit of the seizing agency, to the extent that such agency's interest is not
 38 exempt from forfeiture. If property subject to forfeiture has been
 39 commingled with other property, the court shall order the forfeiture of the
 40 mingled property and of any fruits of the mingled property, to the extent of
 41 the property subject to forfeiture, unless an owner or interest holder proves
 42 that specified property does not contain property subject to forfeiture, or
 43 that such owner's or interest holder's interest in specified property is

1 exempt from forfeiture.

2 ~~(n)~~ (o) All property declared forfeited under this act vests in the law
3 enforcement agency seeking forfeiture on the date of commission of the
4 conduct giving rise to forfeiture together with the proceeds of the property
5 after that time. Any such property or proceeds subsequently transferred to
6 any person remain subject to forfeiture and thereafter shall be ordered
7 forfeited unless the transferee acquired the property in good faith, for
8 value, and was not knowingly taking part in an illegal transaction, and the
9 transferee's interest is exempt under K.S.A. 60-4106, and amendments
10 thereto.

11 ~~(o) An acquittal or dismissal in a criminal proceeding shall not~~
12 ~~preclude civil proceedings under this act, nor give rise to any presumption~~
13 ~~adverse or contrary to any fact alleged by the seizing agency.~~

14 (p) On motion by the plaintiff's attorney, the court shall stay
15 discovery against the criminal defendant and against the seizing agency in
16 civil proceedings during a related criminal proceeding alleging the same
17 conduct, after making provision to prevent loss to any party resulting from
18 the delay. Such a stay shall not be available pending any appeal by a
19 defendant.

20 (q) Except as otherwise provided by this act, all proceedings
21 hereunder shall be governed by the rules of civil procedure pursuant to
22 K.S.A. 60-101 et seq., and amendments thereto.

23 (r) An action pursuant to this act shall be consolidated with any other
24 action or proceeding pursuant to this act or to such other foreclosure or
25 trustee sale proceedings relating to the same property on motion of the
26 plaintiff's attorney, and may be consolidated on motion of an owner or
27 interest holder.

28 (s) There shall be a rebuttable presumption, in the manner provided in
29 ~~subsection (a) of~~ K.S.A. 60-414(a), and amendments thereto, that any
30 property in or upon which controlled substances are located at the time of
31 seizure, was being used or intended for use to facilitate an act giving rise
32 to forfeiture.

33 Sec. 8. K.S.A. 2016 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 enforcement
36 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
39 preserved 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 cash
4 without appraisal. The seizing agency shall first cause notice of the sale to
5 be made by publication at least once in an official county newspaper as
6 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
7 include the time, place, and conditions of the sale and description of the
8 property to be sold. Nothing in this subsection shall prevent a state agency
9 from using the state surplus property system and such system's procedures
10 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
14 reasonable manner.

15 (C) No employee or public official of any agency involved in the
16 investigation, seizure or forfeiture of seized property may purchase or
17 attempt 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 seizing
21 agency for official purposes, traded to another law enforcement agency for
22 use within such agency or given to the Kansas bureau of investigation for
23 law enforcement, testing, comparison or destruction by the Kansas bureau
24 of investigation forensic laboratory.

25 (c) The proceeds of any sale shall be ~~distributed in the following~~
26 ~~order 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, the proceeds shall be remitted to the state~~
30 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
31 ~~amendments thereto. Upon receipt of such remittance, the state treasurer~~
32 ~~shall deposit the entire amount into the state treasury to the credit of the~~
33 ~~medicaid fraud reimbursement fund;~~

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

38 ~~(3) reasonable attorney fees;~~

39 ~~(A) If the plaintiff's attorney is a county or district attorney, an~~
40 ~~assistant, or another governmental agency's attorney, fees shall not exceed~~
41 ~~15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in~~
42 ~~an uncontested forfeiture nor 20% of the total proceeds, less the amounts~~
43 ~~of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be~~

1 deposited in the county or city treasury and credited to the special
2 prosecutor's trust fund. Moneys in such fund shall not be considered a
3 source of revenue to meet normal operating expenditures, including salary
4 enhancement. Such fund shall be expended by the county or district
5 attorney, or other governmental agency's attorney through the normal
6 county or city appropriation system and shall be used for such additional
7 law enforcement and prosecutorial purposes as the county or district
8 attorney or other governmental agency's attorney deems appropriate,
9 including educational purposes. All moneys derived from past or pending
10 forfeitures shall be expended pursuant to this act. The board of county
11 commissioners shall provide adequate funding to the county or district
12 attorney's office to enable such office to enforce this act. Neither future
13 forfeitures nor the proceeds therefrom shall be used in planning or
14 adopting a county or district attorney's budget;

15 (B) if the plaintiff's attorney is the attorney general and the conduct
16 and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A.
17 60-4104, and amendments thereto, fees shall not exceed 15% of the total
18 proceeds, less the amounts of subsection (e)(1) and (2) in an uncontested
19 forfeiture nor 20% of the total proceeds, less the amounts of subsection (e)
20 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state
21 treasurer in accordance with the provisions of K.S.A. 75-4215, and
22 amendments thereto. Upon receipt of each such remittance, the state
23 treasurer shall deposit the entire amount in the state treasury to the credit
24 of the medicaid fraud prosecution revolving fund. Moneys paid into the
25 medicaid fraud prosecution revolving fund pursuant to this subsection
26 shall be appropriated to the attorney general for use by the attorney general
27 in the investigation and prosecution of medicaid fraud and abuse; or

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

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

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

34 (1) If the law enforcement agency is a state agency, the entire amount
35 shall be deposited in the state treasury and credited to such agency's state
36 forfeiture fund. There is hereby established in the state treasury the
37 following state funds: Kansas bureau of investigation state forfeiture fund,
38 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
39 highway patrol state forfeiture fund, Kansas department of corrections
40 state forfeiture fund and Kansas national guard counter drug state
41 forfeiture fund. Expenditures from the Kansas bureau of investigation state
42 forfeiture fund shall be made upon warrants of the director of accounts and
43 reports issued pursuant to vouchers approved by the attorney general or by

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

29 (2) If the law enforcement agency is a city or county agency, the
30 entire amount shall be deposited in such city or county treasury and
31 credited to a special law enforcement trust fund. Each agency shall
32 compile and submit annually a special law enforcement trust fund report to
33 the entity which has budgetary authority over such agency and such report
34 shall specify, for such period, the type and approximate value of the
35 forfeited property received, the amount of any forfeiture proceeds
36 received, and how any of those proceeds were expended.

37 (3) Moneys in the Kansas bureau of investigation state forfeiture
38 fund, Kansas highway patrol state forfeiture fund, Kansas department of
39 corrections state forfeiture fund, the special law enforcement trust funds
40 and the Kansas national guard counter drug state forfeiture fund shall not
41 be considered a source of revenue to meet normal operating expenses.
42 Such funds shall be expended by the agencies or departments through the
43 normal city, county or state appropriation system and shall be used for

1 such special, additional law enforcement purposes as the law enforcement
2 agency head deems appropriate. Neither future forfeitures nor the proceeds
3 from such forfeitures shall be used in planning or adopting a law
4 enforcement agency's budget.

5 ~~(4) Moneys in the Kansas attorney general's medicaid fraud forfeiture~~
6 ~~fund shall defray costs of the attorney general in connection with the~~
7 ~~duties of investigating and prosecuting medicaid fraud and abuse remitted~~
8 ~~to the state treasurer in accordance with the provisions of K.S.A. 75-4215,~~
9 ~~and amendments thereto. Upon receipt of each such remittance, the state~~
10 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
11 ~~of the state general fund for the purposes of funding education of students~~
12 ~~in kindergarten and grades one through 12.~~

13 *(d) Each agency shall compile and submit annually a report to the*
14 *entity that has budgetary authority over such agency and such report shall*
15 *specify, for such period:*

16 *(1) The total number and aggregate value of seizures of cash;*

17 *(2) the total number of seizures and the number of items in each class*
18 *of property seized;*

19 *(3) the market value of each class of property seized; and*

20 *(4) the total number of occurrences of each offense giving rise to*
21 *asset forfeiture.*

22 Sec. 9. K.S.A. 60-4106 and 60-4117 and K.S.A. 2016 Supp. 60-4104,
23 60-4105, 60-4107, 60-4111 and 60-4112 are hereby repealed.

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