

SENATE BILL No. 62

By Committee on Judiciary

1-26

1 AN ACT concerning civil procedure; relating to the Kansas standard asset
2 seizure and forfeiture act; court costs; amending K.S.A. 2010 Supp.
3 60-4107 and 60-4109 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 60-4107 is hereby amended to read as
7 follows: 60-4107. (a) Property may be seized for forfeiture by a law
8 enforcement officer upon process issued by the district court. The court
9 may issue a seizure warrant on an affidavit under oath demonstrating that
10 probable cause exists for the property's forfeiture or that the property has
11 been the subject of a previous final judgment of forfeiture in the courts of
12 any state or of the United States. The court may order that the property be
13 seized on such terms and conditions as are reasonable in the discretion of
14 the court. The order may be made on or in connection with a search
15 warrant. All real property is to be seized constructively or pursuant to a
16 preseizure adversarial judicial determination of probable cause, except
17 that this determination may be done ex parte when the attorney for the
18 state has demonstrated exigent circumstances to the court.

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

22 (c) Property may be seized constructively by:

23 (1) Posting notice of seizure for forfeiture or notice of pending
24 forfeiture on the property.

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

27 (3) Filing or recording in the public records relating to that type of
28 property notice of seizure for forfeiture, notice of pending forfeiture, a
29 forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to
30 this act are not subject to a filing fee or other charge, *except that court*
31 *costs may be assessed and, if assessed, shall include the amount of the*
32 *docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and*
33 *any additional court costs accrued in the action.*

34 (d) The seizing agency shall make reasonable effort to provide
35 notice of the seizure to the person from whose possession or control the
36 property was seized and any interest holder of record within 30 days of

1 seizing the property. If no person is in possession or control, the seizing
2 agency may attach the notice to the property or to the place of the
3 property's seizure or may make a reasonable effort to deliver the notice to
4 the owner of the property. The notice shall contain a general description
5 of the property seized, the date and place of seizure, the name of the
6 seizing agency and the address and telephone number of the seizing
7 officer or other person or agency from whom information about the
8 seizure may be obtained.

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

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

17 (g) When property is seized for forfeiture under this act, the seizing
18 agency shall, within 45 days of such seizure, forward to the county or
19 district attorney in whose jurisdiction the seizure occurred, a written
20 request for forfeiture which shall include a statement of facts and
21 circumstances of the seizure, the estimated value of the property, the
22 owner and lienholder of the property, the amount of any lien, and a
23 summary of the facts relied on for forfeiture.

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

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

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

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

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

41 (k) Nothing in this act shall prevent a seizing agency from
42 requesting federal adoption of a seizure. It shall not be necessary to
43 obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to

1 release any seized property to a federal agency should the county or
2 district attorney approve of such transfer.

3 (l) Nothing in this act shall prevent a seizing agency, or the
4 plaintiff's attorney on behalf of the seizing agency, from settling any
5 alleged forfeiture claim against property before or during forfeiture
6 proceedings. Such settlement shall be in writing and shall be approved, if
7 a local agency, by the county or district attorney or, if a state agency, by
8 the attorney general's office and a district court judge. No hearing or other
9 proceeding shall be necessary. The records of settlements occurring prior
10 to commencement of judicial forfeiture proceedings in the district court
11 shall be retained by the county or district attorney for not less than five
12 years.

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

15 Sec. 2. K.S.A. 2010 Supp. 60-4109 is hereby amended to read as
16 follows: 60-4109. (a) Forfeiture proceedings shall be commenced by
17 filing a notice of pending forfeiture or a judicial forfeiture action:

18 (1) If the plaintiff's attorney fails to initiate forfeiture proceedings by
19 notice of pending forfeiture within 90 days against property seized for
20 forfeiture or if the seizing agency fails to pursue forfeiture of the property
21 upon which a proper claim has been timely filed by filing a judicial
22 forfeiture proceeding within 90 days after notice of pending forfeiture,
23 the property shall be released on the request of an owner or interest
24 holder to such owner's or interest holder's custody, as custodian for the
25 court, pending further proceedings pursuant to this act. Such
26 custodianship shall not exceed 90 days following the release to the owner
27 or interest holder unless an extension is authorized by the court for good
28 cause shown.

29 (2) If, after notice of pending forfeiture, a claimant files a petition
30 for recognition of exemption pursuant to K.S.A. 60-4110, and
31 amendments thereto, the plaintiff's attorney may delay filing the judicial
32 forfeiture proceeding for a total of 180 days after the notice of pending
33 forfeiture except that if an interest holder timely files a proper petition
34 documenting the complete nature and extent of such holder's interest,
35 including all of the contractual terms and current status, the plaintiff's
36 attorney may delay filing a judicial forfeiture proceeding only if such
37 attorney provides each such petitioner with a written recognition of
38 exemption within 60 days after the effective date of the notice of pending
39 forfeiture, recognizing the interest of such petitioner to the extent of
40 documented outstanding principal plus interest at the contract rate until
41 paid and any attorney fees ordered by a court pursuant to such contract.

42 (3) Whenever notice of pending forfeiture or service of an *in rem*
43 complaint or notice of a recognition of exemption and statement of

1 nonexempt interests is required under this act, notice or service shall be
2 given in accordance with one of the following:

3 (A) If the owner's or interest holder's name and current address are
4 known, by either personal service by any person qualified to serve
5 process or by any law enforcement officer or by mailing a copy of the
6 notice by certified mail, return receipt requested, to the known address;

7 (B) if the owner's or interest holder's name and address are required
8 by law to be on record with a municipal, county, state or federal agency to
9 perfect an interest in the property, and the owner's or interest holder's
10 current address is not known, by mailing a copy of the notice by certified
11 mail, return receipt requested, to any address of record with any of the
12 described agencies; or

13 (C) if the owner's or interest holder's address is not known and is not
14 on record as provided in paragraph (B), or the owner's or interest holder's
15 interest is not known, by publication in one issue of the official county
16 newspaper, as defined by K.S.A. 64-101, and amendments thereto, in the
17 county in which the seizure occurred.

18 (4) Notice is effective upon personal service, publication or the
19 mailing of a written notice, whichever is earlier, except that notice of
20 pending forfeiture of real property is not effective until it is recorded.
21 Notice of pending forfeiture shall include a description of the property,
22 the date and place of seizure, the conduct giving rise to forfeiture or the
23 violation of law alleged and a summary of procedures and procedural
24 rights applicable to the forfeiture action.

25 (b) The plaintiff's attorney, without a filing fee, may file a lien for
26 the forfeiture of property upon the initiation of any civil or criminal
27 proceeding relating to conduct giving rise to forfeiture under this act or
28 upon seizure for forfeiture. *Court costs may be assessed and, if assessed,*
29 *shall include the amount of the docket fee prescribed by K.S.A. 60-2001,*
30 *and amendments thereto, and any additional court costs accrued in the*
31 *action.* A plaintiff's attorney may also file a forfeiture lien in this state in
32 connection with a proceeding or seizure for forfeiture in any other state
33 under a state or federal statute substantially similar to the relevant
34 provisions of this act. The filing constitutes notice to any person
35 claiming an interest in the seized property or in property owned by the
36 named person.

37 (1) The lien notice shall set forth the following:

38 (A) The name of the person and, in the discretion of the lienor, any
39 alias, or the name of any corporation, partnership, trust or other entity,
40 including nominees, that are owned entirely or in part or controlled by the
41 person; and

42 (B) the description of the seized property, the criminal or civil
43 proceeding that has been brought relating to conduct giving rise to

1 forfeiture under this act, the amount claimed by the lienor, the name of
2 the district court where the proceeding or action has been brought, and
3 the case number of the proceeding or action if known at the time of filing.

4 (2) A lien filed pursuant to this subsection applies to the described
5 seized property or to one named person, any aliases, fictitious names, or
6 other names, including the names of any corporation, partnership, trust,
7 or other entity, owned entirely or in part, or controlled by the named
8 person, and any interest in real property owned or controlled by the
9 named person. A separate forfeiture lien shall be filed for each named
10 person.

11 (3) The notice of lien creates, upon filing, a lien in favor of the
12 lienor as it relates to the seized property or the named person or related
13 entities. The lien secures the amount of potential liability for civil
14 judgment, and if applicable, the fair market value of seized property
15 relating to all proceedings under this act enforcing the lien. The notice of
16 forfeiture lien referred to in this subsection shall be filed in accordance
17 with the provisions of the laws of this state relating to the type of
18 property that is subject to the lien. The validity and priority of the
19 forfeiture lien shall be determined in accordance with applicable law
20 pertaining to liens. The lienor may amend or release, in whole or in part,
21 a lien filed under this subsection at any time by filing, without a filing
22 fee, an amended lien in accordance with this subsection which identifies
23 the lien amended. The lienor, as soon as practical after filing the lien,
24 shall furnish to any person named in the lien a notice of the filing of the
25 lien. Failure to furnish notice under this subsection shall not invalidate or
26 otherwise affect the lien.

27 (4) Upon entry of judgment in the seizing agency's favor, the seizing
28 agency may proceed to execute on the lien as provided by law.

29 (5) A trustee, constructive or otherwise, who has notice that a notice
30 of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture
31 proceeding has been filed against the property or against any person or
32 entity for whom the person holds title or appears as record owner, shall
33 furnish within 14 days, to the seizing agency or the plaintiff's attorney all
34 of the following information, unless all of the information is of record in
35 the public records giving notice of liens on that type of property:

36 (A) The name and address of each person or entity for whom the
37 property is held;

38 (B) the description of all other property whose legal title is held for
39 the benefit of the named person; and

40 (C) a copy of the applicable trust agreement or other instrument, if
41 any, under which the trustee or other person holds legal title or appears as
42 record owner of the property.

43 (6) A trustee with notice who knowingly fails to comply with the

1 provisions of this subsection shall be guilty of a class B nonperson
2 misdemeanor.

3 (7) A trustee with notice who fails to comply with paragraph (5) is
4 subject to a civil penalty of \$100 for each day of noncompliance. The
5 court shall enter judgment ordering payment of \$100 for each day of
6 noncompliance from the effective date of the notice until the required
7 information is furnished or the seizing agency executes the seizing
8 agency's judgment lien under this section.

9 (8) To the extent permitted by the constitutions of the United States
10 and the state of Kansas, the duty to comply with paragraph (5) shall not
11 be excused by any privilege or provision of law of this state or any other
12 state or country which authorizes or directs that testimony or records
13 required to be furnished pursuant to paragraph (5) are privileged,
14 confidential and otherwise may not be disclosed.

15 (9) A trustee who furnishes information pursuant to paragraph (5) is
16 immune from civil liability for the release of the information.

17 (10) An employee of the seizing agency or the plaintiff's attorney
18 who releases the information obtained pursuant to paragraph (5), except
19 in the proper discharge of official duties, is guilty of a class B nonperson
20 misdemeanor.

21 (11) If any information furnished pursuant to paragraph (5) is
22 offered in evidence, the court may seal that portion of the record or may
23 order that the information be disclosed in a designated way.

24 (12) A judgment or an order of payment entered pursuant to this
25 section becomes a judgment lien against the property alleged to be
26 subject to forfeiture.

27 Sec. 3. K.S.A. 2010 Supp. 60-4107 and 60-4109 are hereby
28 repealed.

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

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