

2012 Kansas Statutes

22-3902. Procedure. (1) Unless otherwise provided by law, proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be governed by the provisions of the Kansas code of civil procedure relating to the abatement of common nuisances.

(2) (A) In addition to the procedure established by this section, if a person is arrested for an unlawful act listed in K.S.A. 22-3901, and amendments thereto, the attorney general, city, county or district attorney may petition the court for a hearing to determine whether an unlawful activity is or has been occurring on such owner's property. The owner of the property on which such person is or was committing an unlawful activity may be given notice of such hearing. Except as provided by paragraph (B), a hearing shall be held before the court within 30 days of the notification. If the court determines by a preponderance of the evidence that an unlawful act occurred, such act shall render void any lease under which a tenant holds possession, and shall cause the right of possession to revert to the owner who may evict the tenant. If the owner does not commence eviction proceedings against the tenant within 30 days of the court determination, the attorney general or the city, county or district attorney may proceed to file a petition pursuant to subsection (3). The provisions of this subsection are in addition to any remedy provided pursuant to the residential landlord and tenant act.

(B) In the case of a violation of subsection (k) of K.S.A. 22-3901, and amendments thereto, a hearing shall be held before the court within seven days of the notification.

(3) Proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be instituted only in the name of the state of Kansas upon the petition of the attorney general or the city, county or district attorney to enjoin a nuisance within the city, county or district.

(4) The petition shall describe any real estate alleged to be used or to have been used as a place where such common nuisance is or was maintained or permitted and shall identify the owner or person in charge of such real estate. It shall describe any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used in such unlawful activity. It shall pray for the particular relief sought with respect to such property.

(5) The petition for injunction may include or be accompanied by an application for an order for the seizure of the effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property described in the petition. If the court finds that there is probable cause to believe that the personal property described is or has been used for any of the unlawful purposes set forth in K.S.A. 22-3901, and amendments thereto, the court may order the sheriff or other law enforcement officer to seize such personalty and to hold it in custody pending further order of the court. An order for seizure shall particularly describe the personal property to be seized.

(6) An order for seizure of materials alleged to be obscene shall not be issued until after a hearing at which evidence in support of the application for such order has been heard. At least seven days notice of such hearing shall be given to the owner or person in possession of such material. Pending such hearing, the court may make an order prohibiting the owner or person in possession from removing such material from the jurisdiction of the court.

(7) No bond or other security shall be required for any restraining order, order for seizure or injunction issued under K.S.A. 22-3901 through 22-3904, and amendments thereto, in an action brought by the attorney general or city, county or district attorney.

(8) The provisions of K.S.A. 22-3901 through 22-3904, and amendments thereto, shall not limit nor otherwise affect proceedings under K.S.A. 60-908, and amendments thereto, but shall be supplemental and in addition to, and not in lieu of, the remedy provided by that statute.

(9) The attorney general or the city, county or district attorney shall give notice of proceedings under K.S.A. 22-3901 through 22-3904, and amendments thereto, by sending a copy of the petition to enjoin a nuisance by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if: (a) The property is of a type for which title, registration or deed is required by law; (b) the owner of the property is known in fact at the time of seizure; or (c) the property is subject to a security interest perfected in accordance with the uniform commercial code. The attorney general or the city, county or district attorney shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the attorney general or city, county or district attorney is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

History: L. 1970, ch. 129, § 22-3902; L. 1990, ch. 114, § 2; L. 1994, ch. 271, § 1; L. 2004, ch. 1, § 5; L. 2010, ch. 135, § 33; July 1.