

## HOUSE BILL No. 2699

By Committee on Corrections and Juvenile Justice

2-12

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1 AN ACT concerning asset forfeiture; relating to attorneys litigating  
2 forfeiture; attorney fees; amending K.S.A. 2015 Supp. 60-4107 and 60-  
3 4117 and repealing the existing sections.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2015 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 that  
17 this determination may be done ex parte when the attorney for the state has  
18 demonstrated exigent circumstances to the court.

19 (b) Property may be seized for forfeiture by a law enforcement officer  
20 without process on probable cause to believe the property is subject to  
21 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 this  
30 act are not subject to a filing fee or other charge, except that court costs  
31 may be assessed and, if assessed, shall include the amount of the docket  
32 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any  
33 additional court costs accrued in the action.

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

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

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

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

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

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

27 ~~(1) request a state law enforcement agency which enforces this act to~~  
28 ~~adopt the forfeiture; or~~

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

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

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

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

1 of such transfer.

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

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

14 Sec. 2. K.S.A. 2015 Supp. 60-4117 is hereby amended to read as  
15 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments  
16 thereto: (a) When property is forfeited under this act, the law enforcement  
17 agency may:

18 (1) Retain such property for official use or transfer the custody or  
19 ownership to any local, state or federal agency, subject to any lien  
20 preserved by the court;

21 (2) destroy or use for investigative or training purposes, any illegal or  
22 controlled substances and equipment or other contraband, provided that  
23 materials necessary as evidence shall be preserved;

24 (3) sell property which is not required by law to be destroyed and  
25 which is not harmful to the public:

26 (A) All property, except real property, designated by the seizing  
27 agency to be sold shall be sold at public sale to the highest bidder for cash  
28 without appraisal. The seizing agency shall first cause notice of the sale  
29 to be made by publication at least once in an official county newspaper as  
30 defined by K.S.A. 64-101, and amendments thereto. Such notice shall  
31 include the time, place, and conditions of the sale and description of the  
32 property to be sold. Nothing in this subsection shall prevent a state agency  
33 from using the state surplus property system and such system's procedures  
34 shall be sufficient to meet the requirements of this subsection.

35 (B) Real property may be sold pursuant to subsection (A), or the  
36 seizing agency may contract with a real estate company, licensed in this  
37 state, to list, advertise and sell such real property in a commercially  
38 reasonable manner.

39 (C) No employee or public official of any agency involved in the  
40 investigation, seizure or forfeiture of seized property may purchase or  
41 attempt to purchase such property; or

42 (4) salvage the property, subject to any lien preserved by the court.

43 (b) When firearms are forfeited under this act, the firearms in the

1 discretion of the seizing agency, shall be destroyed, used within the seizing  
2 agency for official purposes, traded to another law enforcement agency for  
3 use within such agency or given to the Kansas bureau of investigation for  
4 law enforcement, testing, comparison or destruction by the Kansas bureau  
5 of investigation forensic laboratory.

6 (c) The proceeds of any sale shall be distributed in the following  
7 order of priority:

8 (1) For satisfaction of any court preserved security interest or lien, or  
9 in the case of a violation, as defined by ~~subsection (h)~~ of K.S.A. 60-  
10 4104(i), and amendments thereto, the proceeds shall be remitted to the  
11 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
12 amendments thereto. Upon receipt of such remittance, the state treasurer  
13 shall deposit the entire amount into the state treasury to the credit of the  
14 medicaid fraud reimbursement fund;

15 (2) thereafter, for payment of all proper expenses of the proceedings  
16 for forfeiture and disposition, including expenses of seizure, inventory,  
17 appraisal, maintenance of custody, preservation of availability, advertising,  
18 service of process, sale and court costs;

19 (3) reasonable attorney fees:

20 (A) If the plaintiff's attorney is a county or district attorney, an  
21 assistant, or another governmental agency's attorney, fees shall not exceed  
22 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in  
23 an uncontested forfeiture nor 20% of the total proceeds, less the amounts  
24 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be  
25 deposited in the county or city treasury and credited to the special  
26 prosecutor's trust fund. Moneys in such fund shall not be considered a  
27 source of revenue to meet normal operating expenditures, including salary  
28 enhancement. Such fund shall be expended by the county or district  
29 attorney, or other governmental agency's attorney through the normal  
30 county or city appropriation system and shall be used for such additional  
31 law enforcement and prosecutorial purposes as the county or district  
32 attorney or other governmental agency's attorney deems appropriate,  
33 including educational purposes. All moneys derived from past or pending  
34 forfeitures shall be expended pursuant to this act. The board of county  
35 commissioners shall provide adequate funding to the county or district  
36 attorney's office to enable such office to enforce this act. Neither future  
37 forfeitures nor the proceeds therefrom shall be used in planning or  
38 adopting a county or district attorney's budget; *or*

39 (B) if the plaintiff's attorney is the attorney general and the conduct  
40 and offense giving rise to forfeiture is pursuant to ~~subsection (h)~~ of K.S.A.  
41 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total  
42 proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested  
43 forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)

1 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state  
2 treasurer in accordance with the provisions of K.S.A. 75-4215, and  
3 amendments thereto. Upon receipt of each such remittance, the state  
4 treasurer shall deposit the entire amount in the state treasury to the credit  
5 of the medicaid fraud prosecution revolving fund. Moneys paid into the  
6 medicaid fraud prosecution revolving fund pursuant to this subsection  
7 shall be appropriated to the attorney general for use by the attorney general  
8 in the investigation and prosecution of medicaid fraud and abuse; ~~or~~

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

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

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

15 (1) If the law enforcement agency is a state agency, the entire amount  
16 shall be deposited in the state treasury and credited to such agency's state  
17 forfeiture fund. There is hereby established in the state treasury the  
18 following state funds: Kansas bureau of investigation state forfeiture fund,  
19 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas  
20 highway patrol state forfeiture fund, Kansas department of corrections  
21 state forfeiture fund and Kansas national guard counter drug state  
22 forfeiture fund. Expenditures from the Kansas bureau of investigation state  
23 forfeiture fund shall be made upon warrants of the director of accounts and  
24 reports issued pursuant to vouchers approved by the attorney general or by  
25 a person or persons designated by the attorney general. Expenditures from  
26 the Kansas attorney general's state medicaid fraud forfeiture fund shall be  
27 made upon warrants of the director of accounts and reports issued pursuant  
28 to vouchers approved by the attorney general or by a person or persons  
29 designated by the attorney general. Expenditures from the Kansas highway  
30 patrol state forfeiture fund shall be made upon warrants of the director of  
31 accounts and reports issued pursuant to vouchers approved by the  
32 superintendent of the highway patrol or by a person or persons designated  
33 by the superintendent. Expenditures from the Kansas department of  
34 corrections state forfeiture fund shall be made upon warrants of the  
35 director of accounts and reports issued pursuant to vouchers approved by  
36 the secretary of the department of corrections or by a person or persons  
37 designated by the secretary. Expenditures from the Kansas national guard  
38 counter drug state forfeiture fund shall be made upon warrants of the  
39 director of accounts and reports issued pursuant to vouchers approved by  
40 the adjutant general of Kansas or by a person or persons designated by the  
41 adjutant general. Each agency shall compile and submit a forfeiture fund  
42 report to the legislature on or before February 1 of each year. Such report  
43 shall include, but not be limited to: (A) The fund balance on December 1;

1 (B) the deposits and expenditures for the previous 12-month period ending  
2 December 1. Upon the effective date of this act, the director of accounts  
3 and reports is directed to transfer each agency's balance in the state special  
4 asset forfeiture fund to the agency's new, state forfeiture fund. All  
5 liabilities of the state special asset forfeiture fund existing prior to such  
6 date are hereby imposed on the Kansas bureau of investigation state  
7 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas  
8 department of corrections state forfeiture fund. The state special asset  
9 forfeiture fund is hereby abolished.

10 (2) (A) If the law enforcement agency is a city or county agency, ~~the~~  
11 ~~entire amount~~ 50% shall be deposited in such city or county treasury and  
12 credited to a special law enforcement trust fund. Each agency shall  
13 compile and submit annually a special law enforcement trust fund report to  
14 the entity which has budgetary authority over such agency and such report  
15 shall specify, for such period, the type and approximate value of the  
16 forfeited property received, the amount of any forfeiture proceeds  
17 received, and how any of those proceeds were expended.

18 (B) *The remaining 50% shall be deposited in the state treasury and*  
19 *credited to the city and county forfeiture fund. There is hereby established*  
20 *in the state treasury the city and county forfeiture fund. Expenditures from*  
21 *the city and county forfeiture fund shall be made upon warrants of the*  
22 *director of accounts and reports issued pursuant to vouchers approved by*  
23 *the attorney general or by a person designated by the attorney general.*  
24 *Such moneys shall be used for city and county law enforcement purposes.*  
25 *The attorney general shall adopt rules and regulations providing*  
26 *guidelines for city and county law enforcement agencies seeking moneys.*

27 (3) Moneys in the Kansas bureau of investigation state forfeiture  
28 fund, Kansas highway patrol state forfeiture fund, Kansas department of  
29 corrections state forfeiture fund, the special law enforcement trust funds  
30 and the Kansas national guard counter drug state forfeiture fund shall not  
31 be considered a source of revenue to meet normal operating expenses.  
32 Such funds shall be expended by the agencies or departments through the  
33 normal city, county or state appropriation system and shall be used for  
34 such special, additional law enforcement purposes as the law enforcement  
35 agency head deems appropriate. Neither future forfeitures nor the proceeds  
36 from such forfeitures shall be used in planning or adopting a law  
37 enforcement agency's budget.

38 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture  
39 fund shall defray costs of the attorney general in connection with the  
40 duties of investigating and prosecuting medicaid fraud and abuse.

41 Sec. 3. K.S.A. 2015 Supp. 60-4107 and 60-4117 are hereby repealed.

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