

Written Testimony in Opposition of House Bill 2648
House Committee on Judiciary

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The Kansas Highway Patrol (KHP) appreciates the opportunity to provide written testimony in opposition of House Bill 2648, and we respectfully request the Committee consider our agency's concerns.

Civil asset forfeiture is a valuable tool that the KHP utilizes to disrupt criminal enterprises of every type and size. This includes illegitimate interstate business involved in the trafficking of drugs or people for labor or sex, and those businesses that involve individuals operating illegally on a much smaller scale. Our law enforcement personnel are highly trained and adept at thwarting the efforts of those individuals who are using Kansas roadways to further businesses based on illegal acts. This includes narcotics trafficking, money laundering, and human trafficking, to name only a few. Because we recognize that someone engaged in a business cannot operate without capital or a means of transportation, seizure and judicial forfeiture of these items can damage those whose businesses are of a criminal nature.

As with any tool, it is important to use it properly, especially when it involves the government's seizure of property. The Kansas Standard Asset Seizure and Forfeiture Act was amended in 2018 and several safeguards were put in place to ensure Constitutional protections existed for anyone whose property was seized. The Constitution requires notice and an opportunity to be heard prior to the government forfeiting any person's interest in property. While many of the practices required by the 2018 amendments were already in use by the Patrol, we refined our notices to potential owners and our pleadings to ensure that we have met or exceeded this standard. We search for possible owners so we can provide notice of the seizure and intended forfeiture, perform extensive investigations, and returned otherwise forfeitable property after a comprehensive investigation when the seizure and forfeiture would not outweigh any potential risk to innocent owners. The current act already requires that the seizure not disproportionately affect the owner or other interested party and additionally protects individuals from government sanctioned bribery by prohibiting plea agreements that permit the use of potentially forfeitable assets to deal with the underlying criminal charges.

Of specific concern to the Patrol as a law enforcement agency is the ability to shut down criminal enterprises which prey upon the vulnerable and spread illegal narcotics across the country but especially to our Kansas communities. Often, individuals who are transporting the funds intended for human trafficking or drugs, are not involved as anything other than the transport mechanism, as they are preyed upon and exploited by the criminal enterprise directing them. The trafficker and criminal enterprise are therefore out of the reach of law enforcement. The seizure and judicially overseen and authorized

forfeiture of the proceeds, or fruits or instrumentalities of these enterprises are another direct way for law enforcement to maximize their efforts in slowing or stopping these individuals from profiting from illegal endeavors. Ideally, this civil forfeiture is coupled with criminal prosecution, and the Patrol refers charges to the appropriate prosecuting entity with every seizure of property it makes. Civil asset forfeiture allows law enforcement to interrupt criminal enterprises by removing the profit that criminals use to further their businesses. The current statutory scheme and associated case law has Constitutional protections in place requiring notice to all potential innocent owners, an easy to fill out form to submit a claim and is overseen by the Courts. Disproportionate forfeitures are not permitted, and the Court is required by current law to review the proportionality of the seizure prior to any forfeiture being granted to law enforcement.

As an example of how the current civil forfeiture process does what it is intended to do, on December 14, 2021, one of our troopers assisted an undersheriff on a roadside currency investigation. The driver was from Mexico and had \$86,000 hidden in the pant legs of a pair of jeans in a duffel bag in the trunk. The driver's story was that he had met with a Chinese company in Kansas City to purchase an item for his business in Mexico; however, the Chinese company didn't have the complete part for the machine, so he was returning home with the currency instead of the part.

The driver claimed the Chinese company only accepted cash and stated he had driven all the way from El Paso where he rented the car, stayed approximately 2 hours and then was returning home. License plate readers confirmed this story. The phone number he gave for the Chinese company was disconnected. The verbal cues and body language from the driver clearly indicated his travel itinerary was false; however, using local and federal resources, our trooper and the undersheriff were unable to establish a criminal nexus between the driver, the currency, and this Chinese company while on the side of the road. Consequently, law enforcement released the driver with the U.S. currency.

Approximately two hours later, the two Kansas law enforcement officers were notified by Homeland Security that the driver was in fact tied into one of the Mexican cartels which operate deep in Mexico. The DEA in El Paso attempted to intercept the driver but were unsuccessful.

In this case, the civil asset forfeiture act worked exactly as it was intended to. Law enforcement was unable to reach probable cause that the currency was the fruits or instrumentalities of or used or intended to be used to further a covered offense. Because that legal standard could not be met, the driver was released after the roadside investigation with the currency. If a nexus could have been shown between illegal activity and the cash to meet that legal standard, it could have been forfeited civilly, but criminal charges may not have been appropriate against the driver due to the higher burden of proof, allowing law enforcement to disrupt a criminal organization, while still protecting individuals from prosecution when legally prohibited.

The Patrol also has concerns regarding the language this bill seeks to strike from K.S.A. 8-116 designating any vehicle with a vehicle identification number (VIN) that has been "destroyed, removed, altered or defaced," and which has been seized, as contraband. The removal of this designation would increase the possibility that any acts of fraud or theft for vehicles could go undetected. Designating a vehicle as contraband where there is clear evidence of illegal activity that removes the ability of the Patrol to identify it risks the introduction of stolen vehicles into the marketplace in Kansas. This statute, as currently written still requires notice and an opportunity to be heard by a Court so the due process rights

of purchasers is Constitutionally protected from arbitrary seizure and destruction. By designating these vehicles whose identity is unknown and undeterminable as contraband, the legislature has created a protection for innocent citizens from predatory sellers and others who would profit from fraud and theft. Removing that protection would leave many citizens open to becoming the victims of predatory criminal practices.

We sincerely thank members of the Committee for their consideration of our testimony.

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