2016 Kansas Statutes

60-4106.   Exemptions. (a)   All property, including all interests in property, described in K.S.A. 60-4105, is subject to forfeiture subject to all mortgages, deeds of trust, financing statements or security agreements properly of record prior to the forfeiture held by an interest holder except that property specifically exempted hereunder:

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

(2)   No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this act unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act.

(3)   No property is subject to forfeiture under this act if the owner or interest holder acquired the property before or during the conduct giving rise to the property's forfeiture, and such owner or interest holder:

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

(B)   acted reasonably to prevent the conduct giving rise to forfeiture.

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

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

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

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

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

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

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

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

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

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

(3)   the extent to which the property actually facilitated the criminal conduct;

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

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

History: L. 1994, ch. 339, § 6; July 1.