

HOUSE BILL No. 2004

By Legislative Post Audit Committee

12-5

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to expenditure of proceeds; amending K.S.A. 2016 Supp. 60-
3 4117 and repealing the existing section.

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

6 Section 1. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
7 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
8 thereto: (a) When property is forfeited under this act, the law enforcement
9 agency may:

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

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

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

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

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

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

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

35 (b) When firearms are forfeited under this act, the firearms in the
36 discretion of the seizing agency, shall be destroyed, used within the seizing

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

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

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

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

18 (3) reasonable attorney fees:

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

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

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

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

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

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

14 (1) If the law enforcement agency is a state agency, the entire amount
15 shall be deposited in the state treasury and credited to such agency's state
16 forfeiture fund. There is hereby established in the state treasury the
17 following state funds: Kansas bureau of investigation state forfeiture fund,
18 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
19 highway patrol state forfeiture fund, Kansas department of corrections
20 state forfeiture fund and Kansas national guard counter drug state
21 forfeiture fund. Expenditures from the Kansas bureau of investigation state
22 forfeiture fund shall be made upon warrants of the director of accounts and
23 reports issued pursuant to vouchers approved by the attorney general or by
24 a person or persons designated by the attorney general. Expenditures from
25 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
26 made upon warrants of the director of accounts and reports issued pursuant
27 to vouchers approved by the attorney general or by a person or persons
28 designated by the attorney general. Expenditures from the Kansas highway
29 patrol state forfeiture fund shall be made upon warrants of the director of
30 accounts and reports issued pursuant to vouchers approved by the
31 superintendent of the highway patrol or by a person or persons designated
32 by the superintendent. Expenditures from the Kansas department of
33 corrections state forfeiture fund shall be made upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the secretary of the department of corrections or by a person or persons
36 designated by the secretary. Expenditures from the Kansas national guard
37 counter drug state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the adjutant general of Kansas or by a person or persons designated by the
40 adjutant general. Each agency shall compile and submit a forfeiture fund
41 report to the legislature on or before February 1 of each year. Such report
42 shall include, but not be limited to: (A) The fund balance on December 1;
43 *and* (B) the deposits and expenditures for the previous 12-month period

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

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

17 (3) Moneys in the Kansas bureau of investigation state forfeiture
18 fund, Kansas highway patrol state forfeiture fund, Kansas department of
19 corrections state forfeiture fund, the special law enforcement trust funds
20 and the Kansas national guard counter drug state forfeiture fund shall not
21 be considered a source of revenue to meet normal operating expenses,
22 *including salaries, benefits or salary enhancements for permanent*
23 *employees*. Such funds shall be expended by the agencies or departments
24 through the normal city, county or state appropriation system and shall be
25 used for such special, additional law enforcement purposes as the law
26 enforcement agency head deems appropriate. Neither future forfeitures nor
27 the proceeds from such forfeitures shall be used in planning or adopting a
28 law enforcement agency's budget.

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

32 Sec. 2. K.S.A. 2016 Supp. 60-4117 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.