

## HOUSE BILL No. 2405

By Representative Tanner

2-7

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AN ACT concerning asset seizure and forfeiture; amending K.S.A. 60-4102, 60-4106, 60-4107, 60-4108, 60-4109, 60-4110, 60-4111, 60-4112, 60-4113, 60-4114, 60-4115, 60-4118, 60-4120 and 60-4122 and K.S.A. 2000 Supp. 60-4104, 60-4116 and 60-4117 and repealing the existing sections.

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

Section 1. K.S.A. 60-4102 is hereby amended to read as follows: 60-4102. As used in this act:

(a) "Contraband" means any property the possession of which is illegal.

(b) "Conveyance" includes any vehicle, trailer, vessel, aircraft or other means of transportation.

(c) "Covered offense" means *a conviction for any crime set forth in K.S.A. 60-4104, and amendments thereto*, or any other offense for which forfeiture is provided by the law relating to a particular offense.

(d) "Facilitate" means any act or omission broadly construed to encompass any use or intended use of property which makes an act giving rise to forfeiture less difficult and laborious.

(e) "Interest holder" means a secured party within the meaning of the uniform commercial code, a mortgagee, lien creditor, judgment creditor or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value. A person who holds property the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

(f) "Law enforcement officer" means any public servant, whether employed by the state of Kansas or subdivisions thereof or by the United States, vested by law with a duty to maintain public order, to make arrests for offenses, or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

(g) "Notice of pending forfeiture" means a written statement by the plaintiff's attorney following a seizure of property but prior to the filing

1 of a judicial complaint against such property allowing for an administrative  
2 resolution to claims or recognition of exemptions.

3 (h) "Notice of seizure for forfeiture" means a written statement by a  
4 law enforcement agency that property has been seized and may be pro-  
5 ceeded against pursuant to this act, and providing information concerning  
6 the property, the seizure, and the law enforcement agency.

7 (i) "Omission" means a failure to perform an act the performance of  
8 which is required by law.

9 (j) "Owner" means a person, other than an interest holder, who has  
10 an interest in property. A person who holds property for the benefit of  
11 or as an agent or nominee for another person, or who is not in substantial  
12 compliance with any statute requiring an interest in property to be re-  
13 corded or reflected in public records in order to perfect the interest  
14 against a good faith purchaser for value, is not an owner. An owner with  
15 power to convey property binds other owners, and a spouse binds the  
16 person's spouse, by any act or omission.

17 (k) "Person" includes any individual or entity capable of holding a  
18 legal or beneficial interest in property.

19 (l) "Personal service" means service as defined by K.S.A. 60-304 and  
20 60-308, and amendments thereto.

21 (m) "Plaintiff's attorney" means a county or district attorney, or the  
22 attorney general, such attorney's assistant, or another attorney approved,  
23 pursuant to subsections (h) and (i) of K.S.A. 60-4107, *and amendments*  
24 *thereto*, employed by ~~a law enforcement agency~~ *the state* to litigate a  
25 forfeiture on behalf of the ~~agency~~ *state*.

26 (n) "Proceeds" means anything of value, derived directly or indirectly  
27 from or realized through unlawful activity, including any monies used or  
28 intended to be used, or facilitate or intended to facilitate, the purchase,  
29 manufacture, cultivation, transportation, storage, distribution, sale, or  
30 possession of controlled substances or contraband.

31 (o) "Property" means anything of value, and includes any interest in  
32 property, including any benefit, privilege, claim or right with respect to  
33 anything of value, whether real or personal, tangible or intangible.

34 (p) "Recognition of exemption" means a written statement by the  
35 plaintiff's attorney stipulating to an interest in property exempt from  
36 forfeiture.

37 (q) "Regulated interest holder" means an interest holder that is a  
38 business authorized to do business in this state and is under the jurisdic-  
39 tion of a state or federal regulatory agency relating to banking, securities,  
40 insurance or real estate.

41 (r) "Seizing agency" means any department or agency of this state or  
42 its political subdivisions which regularly employs law enforcement officers  
43 and which employed the law enforcement officer who seized property for

1 forfeiture, or such other agency as the seizing agency may designate in a  
2 particular case.

3 (s) “Seizure for forfeiture” means seizure of property by a law en-  
4 forcement officer including a constructive seizure coupled with an asser-  
5 tion by the ~~seizing agency~~ *state* or a plaintiff’s attorney that the property  
6 is subject to forfeiture.

7 (t) “Statement of nonexempt interests” means a written statement by  
8 the plaintiff’s attorney refusing to recognize that a particular interest or  
9 interests in property are exempt from forfeiture.

10 (u) *“Conduct giving rise to forfeiture” means conduct that is an ele-*  
11 *ment of the crimes as set forth in K.S.A. 60-4104, and amendments*  
12 *thereto, or any other offense for which forfeiture is provided by the law*  
13 *relating to a particular offense.*

14 (v) *“Conviction” means a verdict or plea of guilty, including a plea*  
15 *of no contest or nolo contendere.*

16 (w) *“Educational institution” means a community college, as defined*  
17 *by K.S.A. 71-701 and amendments thereto, an area vocational school or*  
18 *area vocational-technical school, as defined by K.S.A. 72-4412 and*  
19 *amendments thereto, a university, as defined by K.S.A. 72-6501 and*  
20 *amendments thereto, or a state educational institution, as defined by*  
21 *K.S.A. 76-711 and amendments thereto.*

22 (x) *“Public trustee” means the Kansas state treasurer.*

23 Sec. 2. K.S.A. 2000 Supp. 60-4104 is hereby amended to read as  
24 follows: 60-4104. ~~Conduct and offenses giving~~ *A conviction of any of the*  
25 *following shall give rise to forfeiture under this act, whether or not there*  
26 *is a prosecution or conviction related to the offense, are:*

27 (a) All offenses which statutorily and specifically authorize forfeiture;

28 (b) violations of the uniform controlled substances act, K.S.A. 65-  
29 4101 et seq., and amendments thereto;

30 (c) theft which is classified as a felony violation pursuant to K.S.A.  
31 21-3701, and amendments thereto, in which the property taken was  
32 livestock;

33 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments  
34 thereto;

35 (e) money laundering, K.S.A. 2000 Supp. 65-4142, and amendments  
36 thereto;

37 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-  
38 mercial gambling, K.S.A. 21-4304, and amendments thereto;

39 (g) counterfeiting, K.S.A. 2000 Supp. 21-3763, and amendments  
40 thereto;

41 (h) an act or omission occurring outside this state, which ~~would be~~ *is*  
42 a violation in the place of occurrence and ~~would be~~ *is* described in this  
43 section if the act occurred in this state, ~~whether or not it is prosecuted in~~

1 ~~any state;~~

2 (i) an act or omission committed in furtherance of any act or omission  
3 described in this section including any inchoate or preparatory offense;  
4 ~~whether or not there is a prosecution or conviction related to the act or~~  
5 ~~omission;~~

6 (j) any solicitation or conspiracy to commit any act or omission de-  
7 scribed in this section, ~~whether or not there is a prosecution or conviction~~  
8 ~~related to the act or omission.~~

9 Sec. 3. K.S.A. 60-4106 is hereby amended to read as follows: 60-  
10 4106. (a) All property, including all interests in property, described in  
11 K.S.A. 60-4105, *and amendments thereto* is subject to forfeiture subject  
12 to all mortgages, deeds of trust, financing statements or security agree-  
13 ments properly of record prior to the forfeiture held by an interest holder  
14 except that property specifically exempted hereunder:

15 (1) No real property or conveyance, or an interest therein, may be  
16 forfeited under this act unless the ~~offense or~~ conduct giving rise to for-  
17 feiture constitutes a felony.

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

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

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

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

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

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

40 (B) The state bears the burden of proving that an exemption claimed  
41 under this section is not applicable. Evidence made available by the com-  
42 pelled disclosure of confidential communications between an attorney  
43 and a client other than nonprivileged information relating to attorney fees,

1 is not admissible to satisfy the state's burden of proof.

2 (6) *Property included in the homestead exemption pursuant to K.S.A.*  
3 *60-2301, and amendments thereto.*

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

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

11 (2) owner or interest holder is criminally responsible for the conduct  
12 giving rise to the property's forfeiture, ~~whether or not there is a prose-~~  
13 ~~cution or conviction~~; or

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

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

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

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

26 (3) the extent to which the property actually facilitated the ~~criminal~~  
27 *conduct giving rise to forfeiture*; and

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

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

32 Sec. 4. K.S.A. 60-4107 is hereby amended to read as follows: 60-  
33 4107. (a) Property may be seized for forfeiture by a law enforcement  
34 officer upon process issued by the district court. The court may issue a  
35 seizure warrant on an affidavit under oath demonstrating that probable  
36 cause exists for the property's forfeiture or that the property has been  
37 the subject of a previous final judgment of forfeiture in the courts of any  
38 state or of the United States. The court may order that the property be  
39 seized on such terms and conditions as are reasonable in the discretion  
40 of the court. The order may be made on or in connection with a search  
41 warrant. All real property is to be seized constructively or pursuant to a  
42 preseizure adversarial judicial determination of probable cause, except  
43 that this determination may be done ex parte when the attorney for the

1 state has demonstrated exigent circumstances to the court.

2 (b) Property may be seized for forfeiture by a law enforcement officer  
3 without process on probable cause to believe the property is subject to  
4 forfeiture under this act.

5 (c) Property may be seized constructively by:

6 (1) Posting notice of seizure for forfeiture or notice of pending for-  
7 feiture on the property.

8 (2) Giving notice pursuant to K.S.A. 60-4109, *and amendments*  
9 *thereto*.

10 (3) Filing or recording in the public records relating to that type of  
11 property notice of seizure for forfeiture, notice of pending forfeiture, a  
12 forfeiture lien or a *lis pendens*. Filings or recordings made pursuant to  
13 this act are not subject to a filing fee or other charge.

14 (d) The seizing agency, or the plaintiff's attorney, shall make reason-  
15 able effort to provide notice of the seizure to the person from whose  
16 possession or control the property was seized and any interest holder of  
17 record. If no person is in possession or control, the seizing agency may  
18 attach the notice to the property or to the place of the property's seizure  
19 or may make a reasonable effort to deliver the notice to the owner of the  
20 property. The notice shall contain a general description of the property  
21 seized, the date and place of seizure, *the name and address of the public*  
22 *trustee*, the name of the seizing agency and the address and telephone  
23 number of the seizing officer or other person or agency from whom in-  
24 formation about the seizure may be obtained.

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

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

33 (g)(1) When property is seized for forfeiture under this act, the seiz-  
34 ing agency shall:

35 (A) *As soon as practicable, but within three days of such seizure,*  
36 *notify the public trustee of the seizure; and*

37 (B) within 45 days of such seizure, forward to the county or district  
38 attorney in whose jurisdiction the seizure occurred, a written request for  
39 forfeiture ~~which shall include~~ *if a conviction occurs*.

40 (2) *The seizing agency shall submit to the public trustee and county*  
41 *or district attorney* a statement of facts and circumstances of the seizure,  
42 the estimated value of the property, the owner and lienholder of the  
43 property, the amount of any lien, and a summary of the facts relied on

1 for forfeiture.

2 (h) Upon receipt of a written request for forfeiture from a local law  
3 enforcement agency, the county or district attorney shall have 15 days to  
4 accept the request. Should such county or district attorney decline such  
5 request, or fail to answer, the seizing agency may:

6 (1) Request ~~a the state law enforcement agency which enforces this~~  
7 ~~act~~ to adopt the forfeiture; or

8 (2) engage an attorney, approved by the county or district attorney,  
9 to represent the ~~agency~~ *state* in the forfeiture proceeding.

10 (i) Upon receipt of a written request for forfeiture from a state law  
11 enforcement agency, the county or district attorney shall have 15 days to  
12 accept the request. Should such county or district attorney decline such  
13 request, or fail to answer, the seizing agency may engage an assistant  
14 attorney general or other attorney approved by the attorney general's  
15 office to represent the ~~agency~~ *state* in the forfeiture proceeding.

16 (j) ~~Nothing in this act shall prevent a seizing agency from requesting~~  
17 ~~federal adoption of a seizure. It shall not be necessary to obtain any order~~  
18 ~~pursuant to K.S.A. 22-2512, and amendments thereto, to release any~~  
19 ~~seized property to a federal agency should the county or district attorney~~  
20 ~~approve of such transfer.~~

21 ~~(k)~~ Nothing in this act shall prevent a seizing agency *the state*, or the  
22 plaintiff's attorney on behalf of the ~~seizing agency~~ *state*, from settling any  
23 alleged forfeiture claim against property before or during forfeiture pro-  
24 ceedings. Such settlement shall be in writing and shall be approved, ~~if a~~  
25 ~~local agency~~, by the county or district attorney or, ~~if a state agency~~, by  
26 the attorney general's office and *in either case by* a district court judge.  
27 No hearing or other proceeding shall be necessary. The records of settle-  
28 ments occurring prior to commencement of judicial forfeiture proceed-  
29 ings in the district court shall be retained by the county or district attorney  
30 *or attorney general* for not less than five years.

31 ~~(k)~~ Settlements under this act shall not be conditioned upon any  
32 disposition of criminal charges.

33 (l) *The public trustee may assist the seizing agency in valuing the*  
34 *property, finding the owner and any lien holder of the property, and the*  
35 *amount of any lien.*

36 (m) *If the plaintiff's attorney accepted the request pursuant to this*  
37 *section, upon conviction of the offense, the plaintiff's attorney shall com-*  
38 *mence the forfeiture proceedings pursuant to K.S.A. 60-4109, and amend-*  
39 *ments thereto.*

40 Sec. 5. K.S.A. 60-4108 is hereby amended to read as follows: 60-  
41 4108. (a) Property seized for forfeiture under this act is not subject to  
42 alienation, conveyance, sequestration, or attachment, nor is the property  
43 subject to a motion or order under K.S.A. 22-2512, and amendments

1 thereto. The ~~seizing agency~~ *public trustee* may release the property if  
2 forfeiture or retention is unnecessary, ~~may transfer the property to any~~  
3 ~~other city, county, state or federal agency or may transfer the action to~~  
4 ~~another plaintiff's attorney by discontinuing forfeiture proceedings in fa-~~  
5 ~~vor of forfeiture proceedings initiated by the other agency.~~

6 (b) An owner of property seized pursuant to this act may obtain re-  
7 lease of the property by posting with the plaintiff's attorney or district  
8 court a surety bond or cash in the amount equal to the full fair market  
9 value of the property as determined by the ~~plaintiff's attorney~~ *public trust-*  
10 *tee or the district court.* The ~~seizing agency~~ *public trustee* may refuse to  
11 release the property if the bond tendered is inadequate or if the property  
12 is retained as contraband or as evidence or if it is particularly altered or  
13 designed for use in conduct giving rise to forfeiture. If a surety bond or  
14 cash is posted and the property is forfeited, the court shall forfeit the  
15 surety bond or cash and any accrued interest in lieu of the property. On  
16 motion of either party, the adequacy of the bond or cash tendered may  
17 be reviewed by the court.

18 (c) If property is seized under this act, the seizing agency *shall give*  
19 *physical custody of the property to the public trustee, and the public*  
20 *trustee* may, subject to any need to retain the property as evidence, do  
21 any of the following:

22 (1) Remove the property to an appropriate place *if* designated by the  
23 court;

24 (2) place the property under constructive seizure;

25 (3) remove the property to a storage area for safekeeping or, if the  
26 property is a negotiable instrument or money, deposit it in an interest-  
27 bearing special trust account; or

28 (4) provide for another agency or custodian, including an owner, se-  
29 cured party, mortgagee, or lienholder, to take custody of the property and  
30 service, maintain and operate it as reasonably necessary to maintain the  
31 property's value, in any appropriate location within the jurisdiction of the  
32 court.

33 (d) As soon as practicable after seizure for forfeiture, the seizing  
34 agency, *with the assistance of the public trustee*, shall conduct a written  
35 inventory and estimate the value of the property seized.

36 (e) The court may order property which has been seized for forfeiture  
37 sold, leased, rented or operated to satisfy a specified interest of any in-  
38 terest holder, or to preserve the interests of any party on motion of such  
39 party. Sale may be ordered when the property is liable to perish, to waste,  
40 or to be foreclosed or significantly reduced in value, or when the expenses  
41 of maintaining the property are disproportionate to the property's value.  
42 The court may enter orders under this subsection after notice to persons  
43 known to have an interest in the property, and an opportunity for a hear-



1 ing, on all of the following conditions:

2 (1) That the interest holder has:

3 (A) Timely filed a proper claim; or

4 (B) an interest which the plaintiff's attorney has stipulated is exempt  
5 from forfeiture;

6 (2) that if a sale is necessary, a third party designated by the court  
7 shall dispose of the property by commercially reasonable public sale and  
8 apply the proceeds to the reasonable expenses incurred in connection  
9 with the sale or disposal and then for the satisfaction of exempt interests  
10 in the order of their priority; and

11 (3) that the balance of the proceeds, if any, be preserved in the actual  
12 or constructive custody of the ~~court~~ *public trustee*, in an interest-bearing  
13 account, subject to further proceedings under this act.

14 Sec. 6. K.S.A. 60-4109 is hereby amended to read as follows: 60-  
15 4109. (a) Forfeiture proceedings shall be commenced by filing a notice  
16 of pending forfeiture or a judicial forfeiture action:

17 (1) If the plaintiff's attorney fails to initiate forfeiture proceedings by  
18 notice of pending forfeiture within 90 days *of the conviction* against prop-  
19 erty seized for forfeiture or if the seizing agency fails to pursue forfeiture  
20 of the property upon which a proper claim has been timely filed by filing  
21 a judicial forfeiture proceeding within 90 days after notice of pending  
22 forfeiture, the property shall be released on the request of an owner or  
23 interest holder to such owner's or interest holder's custody, as custodian  
24 for the court, pending further proceedings pursuant to this act. Such  
25 custodianship shall not exceed 90 days following the release to the owner  
26 or interest holder unless an extension is authorized by the court for good  
27 cause shown.

28 (2) If, after notice of pending forfeiture, a claimant files a petition  
29 for recognition of exemption pursuant to K.S.A. 60-4110, *and amend-*  
30 *ments thereto*, the plaintiff's attorney may delay filing the judicial forfei-  
31 ture proceeding for a total of 180 days after the notice of pending forfei-  
32 ture except that if an interest holder timely files a proper petition  
33 documenting the complete nature and extent of such holder's interest,  
34 including all of the contractual terms and current status, the plaintiff's  
35 attorney may delay filing a judicial forfeiture proceeding only if such at-  
36 torney provides each such petitioner with a written recognition of ex-  
37 emption within 60 days after the effective date of the notice of pending  
38 forfeiture, recognizing the interest of such petitioner to the extent of  
39 documented outstanding principal plus interest at the contract rate until  
40 paid and any attorney fees ordered by a court pursuant to such contract.

41 (3) Whenever notice of pending forfeiture or service of an *in rem*  
42 complaint or notice of a recognition of exemption and statement of no-  
43 nexempt interests is required under this act, notice or service shall be

1 given in accordance with one of the following:

2 (A) If the owner's or interest holder's name and current address are  
3 known, by either personal service by any person qualified to serve process  
4 or by any law enforcement officer or by mailing a copy of the notice by  
5 certified mail, return receipt requested, to the known address;

6 (B) if the owner's or interest holder's name and address are required  
7 by law to be on record with a municipal, county, state, or federal agency  
8 to perfect an interest in the property, and the owner's or interest holder's  
9 current address is not known, by mailing a copy of the notice by certified  
10 mail, return receipt requested, to any address of record with any of the  
11 described agencies; or

12 (C) if the owner's or interest holder's address is not known and is not  
13 on record as provided in paragraph (B), or the owner's or interest holder's  
14 interest is not known, by publication in one issue of the official county  
15 newspaper, as defined by K.S.A. 64-101, and amendments thereto, in the  
16 county in which the seizure occurred.

17 (4) Notice is effective upon personal service, publication, or the mail-  
18 ing of a written notice, whichever is earlier, except that notice of pending  
19 forfeiture of real property is not effective until it is recorded. Notice of  
20 pending forfeiture shall include a description of the property, the date  
21 and place of seizure, the conduct giving rise to forfeiture or the violation  
22 of law alleged, and a summary of procedures and procedural rights ap-  
23 plicable to the forfeiture action.

24 (b) The plaintiff's attorney, without a filing fee, may file a lien for the  
25 forfeiture of property upon the initiation of ~~any civil or criminal~~ *a forfei-*  
26 *ture* proceeding relating to conduct giving rise to forfeiture under this act  
27 or upon seizure for forfeiture. A plaintiff's attorney may also file a for-  
28 feiture lien in this state in connection with a proceeding or seizure for  
29 forfeiture in any other state under a state or federal statute substantially  
30 similar to the relevant provisions of this act. The filing constitutes notice  
31 to any person claiming an interest in the seized property or in property  
32 owned by the named person.

33 (1) The lien notice shall set forth the following:

34 (A) The name of the person and, in the discretion of the lienor, any  
35 alias, or the name of any corporation, partnership, trust, or other entity,  
36 including nominees, that are owned entirely or in part, or controlled by  
37 the person; and

38 (B) the description of the seized property, the criminal ~~or civil~~ pro-  
39 ceeding that has been brought relating to conduct giving rise to forfeiture  
40 under this act, the amount claimed by the lienor, the name of the district  
41 court where the proceeding or action has been brought, and the case  
42 number of the proceeding or action if known at the time of filing.

43 (2) A lien filed pursuant to this subsection applies to the described

1 seized property or to one named person, any aliases, fictitious names, or  
2 other names, including the names of any corporation, partnership, trust,  
3 or other entity, owned entirely or in part, or controlled by the named  
4 person, and any interest in real property owned or controlled by the  
5 named person. A separate forfeiture lien shall be filed for each named  
6 person.

7 (3) The notice of lien creates, upon filing, a lien in favor of the lienor  
8 as it relates to the seized property or the named person or related entities.  
9 The lien secures the amount of potential liability for civil judgment, and  
10 if applicable, the fair market value of seized property relating to all pro-  
11 ceedings under this act enforcing the lien. The notice of forfeiture lien  
12 referred to in this subsection shall be filed in accordance with the pro-  
13 visions of the laws of this state relating to the type of property that is  
14 subject to the lien. The validity and priority of the forfeiture lien shall be  
15 determined in accordance with applicable law pertaining to liens. The  
16 lienor may amend or release, in whole or in part, a lien filed under this  
17 subsection at any time by filing, without a filing fee, an amended lien in  
18 accordance with this subsection which identifies the lien amended. The  
19 lienor, as soon as practical after filing the lien, shall furnish to any person  
20 named in the lien a notice of the filing of the lien. Failure to furnish  
21 notice under this subsection shall not invalidate or otherwise affect the  
22 lien.

23 (4) Upon entry of judgment in the ~~seizing agency's~~ *state's* favor, the  
24 ~~seizing agency~~ *public trustee* may proceed to execute on the lien as pro-  
25 vided by law.

26 (5) A trustee, constructive or otherwise, who has notice that a notice  
27 of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture  
28 proceeding has been filed against the property or against any person or  
29 entity for whom the person holds title or appears as record owner, shall  
30 furnish within 15 days, to the ~~seizing agency~~ *public trustee* or the plain-  
31 tiff's attorney all of the following information, unless all of the information  
32 is of record in the public records giving notice of liens on that type of  
33 property:

34 (A) The name and address of each person or entity for whom the  
35 property is held;

36 (B) the description of all other property whose legal title is held for  
37 the benefit of the named person; and

38 (C) a copy of the applicable trust agreement or other instrument, if  
39 any, under which the trustee or other person holds legal title or appears  
40 as record owner of the property.

41 (6) A trustee with notice who knowingly fails to comply with the pro-  
42 visions of this subsection shall be guilty of a class B nonperson  
43 misdemeanor.

1 (7) A trustee with notice who fails to comply with paragraph (5) is  
2 subject to a civil penalty of \$100 for each day of noncompliance. The  
3 court shall enter judgment ordering payment of \$100 for each day of  
4 noncompliance from the effective date of the notice until the required  
5 information is furnished or the ~~seizing agency~~ *public trustee* executes the  
6 ~~seizing agency's state's~~ judgment lien under this section.

7 (8) To the extent permitted by the constitutions of the United States  
8 and the state of Kansas, the duty to comply with paragraph (5) shall not  
9 be excused by any privilege or provision of law of this state or any other  
10 state or country which authorizes or directs that testimony or records  
11 required to be furnished pursuant to paragraph (5) are privileged, con-  
12 fidential and otherwise may not be disclosed.

13 (9) A trustee who furnishes information pursuant to paragraph (5) is  
14 immune from civil liability for the release of the information.

15 (10) An employee of the *public trustee*, seizing agency or the plain-  
16 tiff's attorney who releases the information obtained pursuant to para-  
17 graph (5), except in the proper discharge of official duties, is guilty of a  
18 class B nonperson misdemeanor.

19 (11) If any information furnished pursuant to paragraph (5) is offered  
20 in evidence, the court may seal that portion of the record or may order  
21 that the information be disclosed in a designated way.

22 (12) A judgment or an order of payment entered pursuant to this  
23 section becomes a judgment lien against the property alleged to be sub-  
24 ject to forfeiture.

25 Sec. 7. K.S.A. 60-4110 is hereby amended to read as follows: 60-  
26 4110. (a) The plaintiff's attorney may make an opportunity to file a peti-  
27 tion for recognition of exemption available in the following manner:

28 (1) If the plaintiff's attorney makes an opportunity to file a petition  
29 for recognition of exemption available, the plaintiff's attorney shall so  
30 indicate in the notice of pending forfeiture described in subsection (a) of  
31 K.S.A. 60-4109, *and amendments thereto*.

32 (2) An owner of or an interest holder in the property may elect to  
33 file a claim within 30 days after the effective date of the notice of pending  
34 forfeiture or a petition for recognition of exemption with the plaintiff's  
35 attorney within 30 days after the effective date of the notice, but no  
36 petition may be filed after a court action has been commenced by the  
37 ~~seizing agency state~~. The claim or petition shall comply with the require-  
38 ments for claims in K.S.A. 60-4111, *and amendments thereto*. The effec-  
39 tive date of a notice of pending forfeiture shall be as provided for in K.S.A.  
40 60-4109, *and amendments thereto*.

41 (b) The following shall apply if one or more owners or interest holders  
42 timely petition for recognition of exemption:

43 (1) The plaintiff's attorney shall provide the ~~seizing agency~~ *public*

1 *trustee* and the petitioning party with a written recognition of exemption  
2 and statement of nonexempt interests relating to any or all interests in  
3 the property in response to each petitioning party within 120 days after  
4 the effective date of the notice of pending forfeiture.

5 (2) An owner of or interest holder in any property declared nonex-  
6 empt may file a claim as described in K.S.A. 60-4111, *and amendments*  
7 *thereto*, within 30 days after the effective date of the notice of the rec-  
8 ognition of exemption and statement of nonexempt interests.

9 (3) The plaintiff's attorney may elect to proceed as provided herein  
10 for judicial forfeiture at any time.

11 (4) If no petitioning party files a proper claim within 30 days after  
12 the effective date of notice of the recognition of exemption and statement  
13 of nonexempt interests, the recognition of exemption and statement of  
14 nonexempt interests becomes final, and the plaintiff's attorney shall pro-  
15 ceed as provided in K.S.A. 60-4116 and 60-4117, *and amendments*  
16 *thereto*.

17 (5) If a judicial proceeding follows a notice of pending forfeiture mak-  
18 ing an opportunity to file a petition for recognition of exemption available:

19 (A) No duplicate or repetitive notice is required. If a proper claim  
20 has been timely filed pursuant to subsection (b)(2), the claim shall be  
21 determined in a judicial forfeiture proceeding after the commencement  
22 of such a proceeding under K.S.A. 60-4113, 60-4114 and 60-4115, *and*  
23 *amendments thereto*.

24 (B) The proposed recognition of exemption and statement of nonex-  
25 empt interests responsive to all petitioning parties who subsequently filed  
26 claims are void and will be regarded as rejected offers to compromise.

27 (c) If no proper petition for recognition of exemption or proper claim  
28 is timely filed, the plaintiff's attorney shall proceed as provided in K.S.A.  
29 60-4116 and 60-4117, *and amendments thereto*.

30 Sec. 8. K.S.A. 60-4111 is hereby amended to read as follows: 60-  
31 4111. (a) Only an owner of or interest holder in property seized for for-  
32 feiture may file a claim, and shall do so in the manner provided in this  
33 section. The claim shall be mailed to the ~~seizing agency~~ *public trustee*  
34 and to the plaintiff's attorney by certified mail, return receipt requested,  
35 within 30 days after the effective date of notice of pending forfeiture. No  
36 extension of time for the filing of a claim shall be granted except for good  
37 cause shown.

38 (b) The claim and all supporting documents shall be in affidavit form,  
39 signed by the claimant under oath, and sworn to by the affiant before one  
40 who has authority to administer the oath, under penalty of perjury, K.S.A.  
41 21-3805, and amendments thereto, or making a false writing, K.S.A. 21-  
42 3711, and amendments thereto, and shall set forth all of the following:

43 (1) The caption of the proceedings and identifying number, if any, as

1 set forth on the notice of pending forfeiture or complaint, the name of  
2 the claimant, and the name of the plaintiff's attorney who authorized the  
3 notice of pending forfeiture or complaint.

4 (2) The address where the claimant will accept mail.

5 (3) The nature and extent of the claimant's interest in the property.

6 (4) The date, the identity of the transferor, and a detailed description  
7 of the circumstances of the claimant's acquisition of the interest in the  
8 property.

9 (5) The specific provision of this act relied on in asserting that the  
10 property is not subject to forfeiture.

11 (6) All essential facts supporting each assertion.

12 (7) The specific relief sought.

13 Sec. 9. K.S.A. 60-4112 is hereby amended to read as follows: 60-  
14 4112. (a) A judicial forfeiture proceeding under this act is subject to the  
15 provisions of this section.

16 (b) The court, on application of the plaintiff's attorney, may enter any  
17 restraining order or injunction, require the execution of satisfactory per-  
18 formance bonds, create receiverships, appoint conservators, custodians,  
19 appraisers, accountants, or trustees, or take any other action to seize,  
20 secure, maintain, or preserve the availability of property subject to for-  
21 feiture under this act, including a writ of attachment or a warrant for such  
22 property's seizure, whether before or after the filing of a notice of pending  
23 forfeiture or complaint.

24 (c) If property is seized for forfeiture or a forfeiture lien is filed with-  
25 out a previous judicial determination of probable cause or order of for-  
26 feiture or a hearing under subsection (c) of K.S.A. 60-4114, *and amend-*  
27 *ments thereto*, the court, on an application filed by an owner of or interest  
28 holder in the property within 10 days after notice of the property's seizure  
29 for forfeiture or lien, or actual knowledge of it, whichever is earlier, and  
30 after complying with the requirements for claims in K.S.A. 60-4109, *and*  
31 *amendments thereto*, after five days' notice to the plaintiff's attorney, may  
32 issue an order to show cause to the ~~seizing agency~~ *state*, for a hearing on  
33 the sole issue of whether probable cause for forfeiture of the property  
34 then exists. The hearing shall be held within 30 days of the order to show  
35 cause unless continued for good cause on motion of either party. If the  
36 court finds that there is no probable cause for forfeiture of the property,  
37 or if the ~~seizing agency~~ *state* elects not to contest the issue, the property  
38 shall be released to the custody of the applicant, as custodian for the court,  
39 or from the lien pending the outcome of a judicial proceeding pursuant  
40 to this act. If the court finds that probable cause for the forfeiture of the  
41 property exists, the court shall not order the property released.

42 (d) All applications filed within the 10-day period prescribed by sub-  
43 section (c) shall be consolidated for a single hearing relating to each ap-

1 plicant's interest in the property seized for forfeiture.

2 (e) A person charged with a criminal offense may apply at any time  
3 before final judgment to the court where the forfeiture proceeding is  
4 pending for the release of property seized for forfeiture, that is necessary  
5 for the defense of the person's criminal charge. The application shall  
6 satisfy the requirements under subsection (b) of K.S.A. 60-4111. The  
7 court shall hold a probable cause hearing if the applicant establishes that:

8 (1) The person has not had an opportunity to participate in a previous  
9 adversarial judicial determination of probable cause.

10 (2) The person has no access to other moneys adequate for the pay-  
11 ment of criminal counsel.

12 (3) The interest in property to be released is not subject to any claim  
13 other than the forfeiture.

14 (f) If the court finds that there is no probable cause for forfeiture of  
15 the property, the court shall order the property released pursuant to sub-  
16 section (c). If the seizing agency does not contest the hearing, the court  
17 may release a reasonable amount of property for the payment of the  
18 applicant's criminal defense costs. Property that has been released by the  
19 court and that has been paid for criminal defense services actually ren-  
20 dered is exempt under this act.

21 (g) A defendant convicted in any criminal proceeding is precluded  
22 from later denying the essential allegations of the criminal offense of  
23 which the defendant was convicted in any proceeding pursuant to this  
24 section. ~~For the purposes of this section, a conviction results from a ver-~~  
25 ~~dict or plea of guilty, including a plea of no contest or nolo contendere.~~

26 (h) In any proceeding under this act, if a claim is based on any ex-  
27 emption provided for in this act, the burden of proving the existence of  
28 the exemption is on the claimant, and is not necessary for the ~~seizing~~  
29 ~~agency~~ *public trustee* or plaintiff's attorney to negate the exemption in  
30 any application or complaint.

31 (i) In hearings and determinations pursuant to this section, the court  
32 may receive and consider, in making any determination of probable cause  
33 or reasonable cause, all evidence admissible in determining probable  
34 cause at a preliminary hearing or in the issuance of a search warrant,  
35 together with inferences therefrom.

36 (j) The fact that money, negotiable instruments, precious metals,  
37 communication devices, and weapons were found in close proximity to  
38 contraband or an instrumentality of conduct giving rise to forfeiture shall  
39 give rise to the rebuttable presumption, in the manner provided in sub-  
40 section (a) of K.S.A. 60-414, and amendments thereto, that such item was  
41 the proceeds of conduct giving rise to forfeiture or was used or intended  
42 to be used to facilitate the conduct.

43 (k) There shall be a rebuttable presumption, in the manner provided

1 in subsection (a) K.S.A. 60-414, and amendments thereto, that any prop-  
2 erty of a person is subject to forfeiture under this act if the ~~seizing agency~~  
3 *state* establishes, by the standard of proof applicable to that proceeding,  
4 all of the following:

5 (1) The person has engaged in conduct giving rise to forfeiture;  
6 (2) the property was acquired by the person during that period of the  
7 conduct giving rise to forfeiture or within a reasonable time after the  
8 period; and  
9 (3) there was no likely source for the property other than the conduct  
10 giving rise to forfeiture.

11 (l) A finding that property is the proceeds of conduct giving rise to  
12 forfeiture does not require proof the property is the proceeds of any  
13 particular exchange or transaction.

14 (m) A person who acquires any property subject to forfeiture is a  
15 constructive trustee of the property, and such property's fruits, for the  
16 benefit of the ~~seizing agency~~ *state*, to the extent that such ~~agency's~~ *state's*  
17 interest is not exempt from forfeiture. If property subject to forfeiture  
18 has been commingled with other property, the court shall order the for-  
19 feiture of the mingled property and of any fruits of the mingled property,  
20 to the extent of the property subject to forfeiture, unless an owner or  
21 interest holder proves that specified property does not contain property  
22 subject to forfeiture, or that such owner's or interest holder's interest in  
23 specified property is exempt from forfeiture.

24 (n) All property declared forfeited under this act vests in the ~~law~~  
25 ~~enforcement agency seeking forfeiture~~ *state* on the date of ~~commission~~  
26 ~~of the conduct giving rise to forfeiture~~ *conviction* together with the pro-  
27 ceeds of the property after that time. Any such property or proceeds  
28 subsequently transferred to any person remain subject to forfeiture and  
29 thereafter shall be ordered forfeited unless the transferee acquired the  
30 property in good faith, for value, and was not knowingly taking part in an  
31 illegal transaction, and the transferee's interest is exempt under K.S.A.  
32 60-4106, *and amendments thereto*.

33 (o) An acquittal or dismissal in a criminal proceeding shall ~~not~~ pre-  
34 clude civil proceedings under this act, ~~nor give rise to any presumption~~  
35 ~~adverse or contrary to any fact alleged by the seizing agency with respect~~  
36 ~~to property subject to forfeiture because of conduct included within the~~  
37 ~~acquittal or dismissal~~.

38 (p) ~~On motion by the plaintiff's attorney, the court shall stay discovery~~  
39 ~~against the criminal defendant and against the seizing agency in civil pro-~~  
40 ~~ceedings during a related criminal proceeding alleging the same conduct,~~  
41 ~~after making provision to prevent loss to any party resulting from the~~  
42 ~~delay. Such a stay shall not be available pending any appeal by a~~  
43 ~~defendant.~~



1 ~~(p)~~ Except as otherwise provided by this act, all proceedings here-  
2 under shall be governed by the rules of civil procedure pursuant to K.S.A.  
3 60-101 et seq., and amendments thereto.

4 ~~(q)~~ An action pursuant to this act shall be consolidated with any  
5 other action or proceeding pursuant to this act or to such other foreclo-  
6 sure or trustee sale proceedings relating to the same property on motion  
7 of the plaintiff's attorney, and may be consolidated on motion of an owner  
8 or interest holder.

9 ~~(r)~~ There shall be a rebuttable presumption, in the manner pro-  
10 vided in subsection (a) of K.S.A. 60-414, and amendments thereto, that  
11 any property in or upon which controlled substances are located at the  
12 time of seizure, was being used or intended for use to facilitate ~~an act~~  
13 *conduct* giving rise to forfeiture.

14 Sec. 10. K.S.A. 60-4113 is hereby amended to read as follows: 60-  
15 4113. (a) A judicial *in rem* forfeiture proceeding brought by the plaintiff's  
16 attorney pursuant to a notice of pending forfeiture or verified petition for  
17 forfeiture is also subject to the provisions of this section. If a forfeiture is  
18 authorized by this act, it shall be ordered by the court in the *in rem* action.

19 (b) An action *in rem* may be brought by the plaintiff's attorney in  
20 addition to, or in lieu of, civil *in personam* forfeiture procedures. The  
21 ~~seizing agency may serve the complaint~~ *may be served* in the manner  
22 provided by subsection (a)(3) of K.S.A. 60-4109, ~~and amendments thereto,~~  
23 or as provided by the rules of civil procedure.

24 (c) Only an owner of or an interest holder in the property who has  
25 timely filed a proper claim may file an answer in an action *in rem*. For  
26 the purposes of this section, an owner of or interest holder in property  
27 who has filed a claim and answer shall be referred to as a claimant.

28 (d) The answer shall be in affidavit form, signed by the claimant un-  
29 der oath, and sworn to by the affiant before one who has authority to  
30 administer the oath, under penalty of perjury, K.S.A. 21-3805, and  
31 amendments thereto, or making a false writing, K.S.A. 21-3711, and  
32 amendments thereto, and shall otherwise be in accordance with the rules  
33 of civil procedure on answers and shall also set forth all of the following:

34 (1) The caption of the proceedings and identifying number, if any, as  
35 set forth on the notice of pending forfeiture or complaint and the name  
36 of the claimant.

37 (2) The address where the claimant will accept mail.

38 (3) The nature and extent of the claimant's interest in the property.

39 (4) The date, the identity of the transferor, and the detailed descrip-  
40 tion of the circumstances of the claimant's acquisition of the interest in  
41 the property.

42 (5) The specific provision of this act relied on in asserting that such  
43 property is not subject to forfeiture.

1 (6) All essential facts supporting each assertion.

2 (7) The specific relief sought.

3 (e) The answer shall be filed within 20 days after service of the civil  
4 *in rem* complaint.

5 (f) The ~~seizing agency state~~ and any claimant who has timely an-  
6 swered the complaint, at the time of filing ~~such agency's~~ *the state's* plead-  
7 ings, or at any other time not less than 30 days prior to the hearing, may  
8 serve discovery requests on any other party, the answers or response to  
9 which shall be due within 20 days of service. Discovery may include dep-  
10 osition of any person at any time after the expiration of 15 days after the  
11 filing and service of the complaint. Any party may move for a summary  
12 judgment at any time after an answer or responsive pleading is served  
13 and not less than 30 days prior to the hearing.

14 (g) The issue shall be determined by the court alone, and the hearing  
15 on the claim shall be held within 60 days after service of the petition  
16 unless continued for good cause. The plaintiff's attorney shall have the  
17 initial burden of proving the interest in the property is subject to forfei-  
18 ture by a preponderance of the evidence. If the state proves the interest  
19 in the property is subject to forfeiture, the claimant has the burden of  
20 showing by a preponderance of the evidence that the claimant has an  
21 interest in the property which is not subject to forfeiture.

22 (h) If the plaintiff's attorney fails to meet the burden of proof for  
23 forfeiture, or a claimant establishes by a preponderance of the evidence  
24 that the claimant has an interest that is exempt under the provisions of  
25 K.S.A. 60-4106, *and amendments thereto*, the court shall order the inter-  
26 est in the property returned or conveyed to the claimant. The court shall  
27 order all other property forfeited to the ~~seizing agency state~~ and conduct  
28 further proceedings pursuant to the provision of K.S.A. 60-4116 and 60-  
29 4117, *and amendments thereto*.

30 Sec. 11. K.S.A. 60-4114 is hereby amended to read as follows: 60-  
31 4114. (a) (1) A judicial *in personam* forfeiture proceeding brought by  
32 the plaintiff's attorney pursuant to an *in personam* civil action alleging  
33 conduct giving rise to forfeiture is also subject to the provisions of this  
34 section. If a forfeiture is authorized by this act, it shall be ordered by the  
35 court in the *in personam* action. The action shall be in addition to or in  
36 lieu of *in rem* forfeiture procedures.

37 (2) In any proceeding pursuant to this section, the court, on appli-  
38 cation of the plaintiff's attorney, may enter any order authorized by K.S.A.  
39 60-4112, *and amendments thereto*.

40 (b) The court may issue a temporary restraining order in an action  
41 under this section on application of the plaintiff's attorney, without notice  
42 or an opportunity for a hearing, if the plaintiff's attorney demonstrates  
43 that:

1 (1) There is probable cause to believe that in the event of a final  
2 judgment, the property involved would be subject to forfeiture under the  
3 provisions of this act; and

4 (2) A provision of notice would jeopardize the availability of the prop-  
5 erty for forfeiture.

6 (c) Notice of the issuance of a temporary restraining order and an  
7 opportunity for a hearing shall be given to persons known to have an  
8 interest in the property. A hearing shall be held at the earliest possible  
9 date in accordance with the applicable civil rule and shall be limited to  
10 the issues of whether:

11 (1) There is a probability that the ~~seizing agency~~ *state* will prevail on  
12 the issue of forfeiture and that failure to enter the order could result in  
13 the property being destroyed, conveyed, alienated, encumbered, further  
14 encumbered, disposed of, purchased, received, removed from the juris-  
15 diction of the court, concealed, or otherwise made unavailable for forfei-  
16 ture; and

17 (2) the need to preserve the availability of property through the entry  
18 of the requested order outweighs the hardship on any owner or interest  
19 holder against whom the order is to be entered.

20 (d) On a determination of liability of a person for conduct giving rise  
21 to forfeiture under this act, the court shall enter a judgment of forfeiture  
22 of the property found to be subject to forfeiture described in the com-  
23 plaint and shall also authorize the plaintiff's attorney or any law enforce-  
24 ment officer to seize all property ordered forfeited which was not previ-  
25 ously seized or is not then under seizure. Following the entry of an order  
26 declaring the property forfeited, the court, on application of the plaintiff's  
27 attorney, may enter any appropriate order to protect the interest of the  
28 ~~seizing agency~~ *state* in the property ordered forfeited.

29 (e) Following the entry of an order of forfeiture under subsection (d),  
30 the plaintiff's attorney may give notice of pending forfeiture, in the man-  
31 ner provided in K.S.A. 60-4109, *and amendments thereto*, to all owners  
32 and interest holders who have not previously been given notice.

33 (f) An owner of or interest holder in property that has been forfeited  
34 and whose claim is not precluded may file a claim as described in K.S.A.  
35 60-4111, *and amendments thereto*, within 30 days after initial notice of  
36 pending forfeiture or after notice under subsection (e), whichever is ear-  
37 lier. If the ~~seizing agency~~ *state* does not recognize the claimed exemption,  
38 the plaintiff's attorney shall file a complaint and the court shall hold the  
39 hearing and determine the claim, without a jury, in the manner provided  
40 for *in rem* judicial forfeiture actions in K.S.A. 60-4113, *and amendments*  
41 *thereto*.

42 (g) In accordance with findings made at the hearing, the court may  
43 amend the order of forfeiture if the court determines that any claimant

1 has established by a preponderance of the evidence that the claimant has  
2 an interest in the property and that the claimant's interest is exempt under  
3 the provision of K.S.A. 60-4106, *and amendments thereto*.

4 (h) Except as provided in subsection (c) of K.S.A. 60-4112, *and*  
5 *amendments thereto* no person claiming an interest in property subject  
6 to forfeiture under this act may intervene in a trial or appeal of a criminal  
7 action or in an *in personam* civil action involving the forfeiture of the  
8 property.

9 Sec. 12. K.S.A. 60-4115 is hereby amended to read as follows: 60-  
10 4115. (a) The court shall order the forfeiture of any other property of an  
11 owner or *in personam* defendant, up to the value of that owner's or de-  
12 fendant's property found by the court to be subject to forfeiture under  
13 this act, if any of the owner's or defendant's forfeitable property:

- 14 (1) Cannot be located;
- 15 (2) has been transferred or conveyed to, sold to, or deposited with a  
16 third party;
- 17 (3) is beyond the jurisdiction of the court;
- 18 (4) has been substantially diminished in value while not in the actual  
19 physical custody of the court, *the public trustee*, the seizing agency, the  
20 plaintiff's attorney, or their designee;
- 21 (5) has been commingled with other property that cannot be divided  
22 without difficulty;
- 23 (6) is subject to any interest of another person which interest is ex-  
24 empt from forfeiture under this act; or
- 25 (7) is exempt from forfeiture due to a constitutional or statutory  
26 provision.

27 (b) In addition to any other remedy provided for by law, if a forfeiture  
28 lien or notice of pending forfeiture has been filed and notice given pur-  
29 suant to K.S.A. 60-4109, *and amendments thereto*, or if a complaint al-  
30 leging conduct giving rise to forfeiture has been filed and notice given  
31 pursuant to such K.S.A. 60-4109, *and amendments thereto*, or other ap-  
32 plicable rule of civil procedure, the plaintiff's attorney may institute an  
33 action in the district court against any person with notice or actual knowl-  
34 edge who destroys, conveys, alienates, encumbers, further encumbers,  
35 disposes of, purchases, receives, removes from the jurisdiction of the  
36 court, conceals, or otherwise renders unavailable for forfeiture property  
37 alleged to be subject to forfeiture in the forfeiture lien, notice of pending  
38 forfeiture, or complaint. In such case, the court shall enter a final judg-  
39 ment in an amount equal to the value of the lien not to exceed the fair  
40 market value of the property, or, if the property is alleged to be subject  
41 to forfeiture, in an amount equal to the fair market value of the property,  
42 together with reasonable investigative expenses and attorney fees. If a  
43 civil proceeding under this act is pending in court, the action shall be

1 heard by such court.

2 Sec. 13. K.S.A. 2000 Supp. 60-4116 is hereby amended to read as  
3 follows: 60-4116. (a) If no proper claims are timely filed in an action *in*  
4 *rem*, or if no proper answer is timely filed in response to a complaint, the  
5 plaintiff's attorney may apply for an order of forfeiture and allocation of  
6 forfeited property pursuant to K.S.A. 60-4117, and amendments thereto.  
7 Upon a determination by the court that the ~~seizing agency's~~ *state's* written  
8 application established the court's jurisdiction, the giving of proper notice,  
9 and facts sufficient to show probable cause for forfeiture, the court shall  
10 order the property forfeited to the ~~seizing agency~~ *state*.

11 (b) After final disposition of all claims timely filed in an action *in rem*,  
12 or after final judgment and disposition of all claims timely filed in an  
13 action *in personam*, the court shall enter an order that the ~~seizing agency~~  
14 *state* has clear title to the forfeited property interest. Title to the forfeited  
15 property interest and such property's proceeds shall be deemed to have  
16 vested in the ~~seizing agency on the commission of the conduct giving rise~~  
17 ~~to forfeiture under this act~~ *state upon the conviction*.

18 (c) If, in the discretion of the plaintiff's attorney, such plaintiff's at-  
19 torney has recognized in writing that an interest holder has an interest  
20 that is exempt from forfeiture, the court, on application of the plaintiff's  
21 attorney, may release or convey forfeited personal property to a regulated  
22 interest holder on all of the following conditions:

23 (1) The interest holder has an interest which was acquired in the  
24 regular course of business as an interest holder.

25 (2) The amount of the interest holder's encumbrance is readily de-  
26 terminable and the amount has been reasonably established by proof  
27 made available by the plaintiff's attorney to the court.

28 (3) The encumbrance held by the interest holder seeking possession  
29 is the only interest exempted from forfeiture and the order forfeiting the  
30 property to the ~~seizing agency~~ *state* transferred all of the rights of the  
31 owner prior to forfeiture, including rights of redemption to the ~~seizing~~  
32 ~~agency~~ *state*.

33 (4) After the court's release or conveyance, the interest holder shall  
34 dispose of the property by a commercially reasonable public sale, and  
35 within 10 days of disposition shall tender to the ~~seizing agency~~ *state* the  
36 amount received at disposition less the amount of the interest holder's  
37 encumbrance and reasonable expense incurred by the interest holder in  
38 connection with the sale or disposal.

39 (d) On order of the court forfeiting the subject property, the ~~seizing~~  
40 ~~agency~~ *state* may transfer good and sufficient title to any subsequent pur-  
41 chaser or transferee, unless satisfied and released earlier, subject to all  
42 mortgages, deeds of trust, financing statements or security agreements of  
43 record prior to the forfeiture held by an interest holder and the title shall

1 be recognized by all courts, by this state, and by all agencies of and any  
2 political subdivision. Likewise on entry of judgment in favor of a person  
3 claiming an interest in the property that is subject to proceedings to forfeit  
4 property under this act, the court shall enter an order that the property  
5 or interest in property shall be released or delivered promptly to that  
6 person free of liens and encumbrances under this act and the person's  
7 cost bond shall be discharged.

8 (e) Upon motion by the plaintiff's attorney, if it appears after a hear-  
9 ing there was reasonable cause for the seizure for forfeiture or for the  
10 filing of the notice of pending forfeiture or complaint, the court shall  
11 cause a finding to be entered that reasonable cause existed, or that any  
12 such action was taken under a reasonable good faith belief that it was  
13 proper, and the claimant is not entitled to costs or damages, and the  
14 person or seizing agency who made the seizure, *the public trustee*, and  
15 the plaintiff's attorney, are not liable to suit or judgment on account of  
16 the seizure, suit or prosecution.

17 (f) The court shall order a claimant who fails to establish that a sub-  
18 stantial portion of the claimant's interest is exempt from forfeiture under  
19 K.S.A. 60-4105, and amendments thereto, to pay the reasonable costs and  
20 expenses of any claimant who established such claimant's interest is ex-  
21 empt from forfeiture under K.S.A. 60-4105, *and amendments thereto*, and  
22 to pay the reasonable costs and expenses of the seizing agency, *the public*  
23 *trustee and the plaintiff's attorney* for the investigation and litigation of  
24 the matter, including reasonable attorney fees, in connection with that  
25 claimant.

26 (g) ~~If more than one law enforcement agency is substantially involved~~  
27 ~~in effecting a forfeiture pursuant to this act, and no interagency agree-~~  
28 ~~ment exists, the court shall equitably distribute the proceeds among such~~  
29 ~~agencies.~~

30 ~~(h)~~ Notwithstanding any other provision of law, upon the request of  
31 the intellectual property owner, all seized items bearing a counterfeit  
32 mark shall be released to the intellectual property owner for destruction  
33 or disposition. If the intellectual property owner does not request release  
34 of seized items bearing a counterfeit mark, such items shall be destroyed  
35 unless the intellectual property owner consents to another disposition.

36 Sec. 14. K.S.A. 2000 Supp. 60-4117 is hereby amended to read as  
37 follows: 60-4117. Except as provided in K.S.A. 2000 Supp. 65-7014, and  
38 amendments thereto: (a) When property is forfeited under this act, the  
39 ~~law enforcement agency~~ *state* may:

40 (1) Retain such property for official use or transfer the custody or  
41 ownership to any local, state or federal agency, subject to any lien pre-  
42 served by the court;

43 (2) destroy or use for investigative or training purposes, any illegal or

1 controlled substances and equipment or other contraband, provided that  
2 materials necessary as evidence shall be preserved;

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

5 (A) All property, except real property, designated by the ~~seizing~~  
6 ~~agency state~~ to be sold shall be sold at public sale to the highest bidder  
7 for cash without appraisal. The ~~seizing agency state~~ shall first cause notice  
8 of the sale to be made by publication at least once in an official county  
9 newspaper as defined by K.S.A. 64-101, and amendments thereto. Such  
10 notice shall include the time, place, and conditions of the sale and de-  
11 scription of the property to be sold. Nothing in this subsection shall pre-  
12 vent ~~a the state agency~~ from using the state surplus property system and  
13 such system's procedures shall be sufficient to meet the requirements of  
14 this subsection.

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

19 (C) No employee or public official of any agency involved in the in-  
20 vestigation, seizure or forfeiture of seized property may purchase or at-  
21 tempt to purchase such property; or

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

23 (b) When firearms are forfeited under this act, the firearms in the  
24 discretion of the ~~seizing agency state~~, shall be destroyed, used within the  
25 ~~seizing agency state~~ for official purposes, traded to another law enforce-  
26 ment agency for use within such agency or given to the Kansas bureau  
27 of investigation for law enforcement, testing, comparison or destruction  
28 by the Kansas bureau of investigation forensic laboratory.

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

31 (1) For satisfaction of any court preserved security interest or lien;

32 (2) thereafter, for payment of all proper expenses of the proceedings  
33 for forfeiture and disposition, including expenses of seizure, inventory,  
34 appraisal, maintenance of custody, preservation of availability, advertising,  
35 service of process, sale and court costs;

36 (3) reasonable attorney fees:

37 (A) If the plaintiff's attorney is a county or district attorney, an assis-  
38 tant, or another governmental agency's attorney, fees shall not exceed  
39 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),  
40 in an uncontested forfeiture nor 20% of the total proceeds, less the  
41 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees  
42 shall be deposited in the county or city treasury and credited to the special  
43 prosecutor's trust fund. Moneys in such fund shall not be considered a

1 source of revenue to meet normal operating expenditures, including sal-  
2 ary enhancement. Such fund shall be expended by the county or district  
3 attorney, or other governmental agency's attorney through the normal  
4 county or city appropriation system and shall be used for such additional  
5 law enforcement and prosecutorial purposes as the county or district at-  
6 torney or other governmental agency's attorney deems appropriate, in-  
7 cluding educational purposes. All moneys derived from past or pending  
8 forfeitures shall be expended pursuant to this act. The board of county  
9 commissioners shall provide adequate funding to the county or district  
10 attorney's office to enable such office to enforce this act. Neither future  
11 forfeitures nor the proceeds therefrom shall be used in planning or adopt-  
12 ing a county or district attorney's budget; or

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

15 ~~—(4) repayment of law enforcement funds expended in purchasing of~~  
16 ~~contraband or controlled substances, subject to any interagency agree-~~  
17 ~~ment state.~~

18 (d) Any proceeds remaining shall be credited ~~as follows, subject to~~  
19 ~~any interagency agreement:~~

20 ~~—(1) If the law enforcement agency is a state agency, the entire amount~~  
21 ~~shall be deposited in the state treasury and credited to such agency's state~~  
22 ~~forfeiture fund. There is hereby established in the state treasury the fol-~~  
23 ~~lowing state funds: Kansas bureau of investigation state forfeiture fund,~~  
24 ~~Kansas highway patrol state forfeiture fund, Kansas department of cor-~~  
25 ~~rections state forfeiture fund and Kansas national guard counter drug~~  
26 ~~state forfeiture fund. Expenditures from the Kansas bureau of investi-~~  
27 ~~gation state forfeiture fund shall be made upon warrants of the director~~  
28 ~~of accounts and reports issued pursuant to vouchers approved by the~~  
29 ~~attorney general or by a person or persons designated by the attorney~~  
30 ~~general. Expenditures from the Kansas highway patrol state forfeiture~~  
31 ~~fund shall be made upon warrants of the director of accounts and reports~~  
32 ~~issued pursuant to vouchers approved by the superintendent of the high-~~  
33 ~~way patrol or by a person or persons designated by the superintendent.~~  
34 ~~Expenditures from the Kansas department of corrections state forfeiture~~  
35 ~~fund shall be made upon warrants of the director of accounts and reports~~  
36 ~~issued pursuant to vouchers approved by the secretary of the department~~  
37 ~~of corrections or by a person or persons designated by the secretary.~~  
38 ~~Expenditures from the Kansas national guard counter drug state forfei-~~  
39 ~~ture fund shall be made upon warrants of the director of accounts and~~  
40 ~~reports issued pursuant to vouchers approved by the adjutant general of~~  
41 ~~Kansas or by a person or persons designated by the adjutant general. Each~~  
42 ~~agency shall compile and submit a forfeiture fund report to the legislature~~  
43 ~~on or before February 1 of each year. Such report shall include, but not~~



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

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

19 —(3) Moneys in the Kansas bureau of investigation state forfeiture  
20 fund, Kansas highway patrol state forfeiture fund, Kansas department of  
21 corrections state forfeiture fund, the special law enforcement trust funds  
22 and the Kansas national guard counter drug state forfeiture fund shall not  
23 be considered a source of revenue to meet normal operating expenses.  
24 Such funds shall be expended by the agencies or departments through  
25 the normal city, county or state appropriation system and shall be used  
26 for such special, additional law enforcement purposes as the law enforce-  
27 ment agency head deems appropriate. Neither future forfeitures nor the  
28 proceeds from such forfeitures shall be used in planning or adopting a  
29 law enforcement agency's budget. *to the state general fund. Such proceeds*  
30 *shall be used to fund education in the state of Kansas, and shall include*  
31 *funding for any educational institution or public schools offering any of*  
32 *grades kindergarten through 12.*

33 (e) *Annually, on or before February 1, the state board of education*  
34 *and the board of regents shall report to the legislature, and specifically to*  
35 *the senate and house of representatives education committee, how much*  
36 *forfeiture money was received and how such money was disbursed.*

37 Sec. 15. K.S.A. 60-4118 is hereby amended to read as follows: 60-  
38 4118. (a) A county attorney, district attorney, the attorney general or such  
39 attorney's designee may conduct an investigation of alleged conduct in  
40 violation of this act. Such attorney is authorized, before commencement  
41 of any civil proceeding or action under this act, to subpoena witnesses,  
42 compel such attendance, examine witnesses under oath, and require the  
43 production of documentary evidence for inspection, reproducing or cop-

1 ying. Except as otherwise provided by this section, such attorney shall  
2 proceed under this subsection with the same powers and limitations, and  
3 judicial oversight and enforcement, and in the manner provided by this  
4 act and by K.S.A. 22-3101 *et seq.*, and amendments thereto.

5 (b) The examination of all witnesses under this section shall be con-  
6 ducted by the attorney or such attorney's designee before a person au-  
7 thorized to administer oaths. The testimony shall be taken stenographi-  
8 cally or by a sound recording device and may be transcribed. The attorney  
9 shall exclude from the place where the examination is held all persons  
10 except the person being examined, such person's counsel, if any, the au-  
11 thorized individual or individuals before whom the testimony is to be  
12 taken, law enforcement officials and any stenographer taking such testi-  
13 mony. Prior to oral examination, the person shall be advised of such per-  
14 son's right to refuse to answer any questions on the basis of the privilege  
15 against self-incrimination. The examination shall be conducted in a man-  
16 ner consistent with the taking of depositions under the code of civil  
17 procedure.

18 (c) Except as otherwise provided in this act, no documentary material,  
19 transcripts, oral testimony or copies of it in the possession of the attorney  
20 shall be available, prior to the filing of a civil or criminal proceeding or  
21 action relating to it, for examination by any individual other than a law  
22 enforcement officer or agent of such officer without the consent of the  
23 person who produced the material or transcripts.

24 (d) No person, with intent to avoid, evade, prevent, or obstruct com-  
25 pliance in whole or in part by any person with any duly served subpoena  
26 of the attorney under this section, shall knowingly remove from any place,  
27 conceal, withhold, destroy, mutilate any documentary material that is the  
28 subject of a subpoena. A violation of this subsection shall be a class B  
29 nonperson misdemeanor.

30 (e) Acts or omissions by the attorneys for the ~~seizing agencies~~ *state*  
31 in the course of the attorney's duties in the enforcement of any of the  
32 provisions of this act, including provision of any legal services prior to  
33 charging, complaint or seizure, are prosecutorial and shall not subject the  
34 attorneys or the attorney's principals to civil liability.

35 (f) During the investigation of real property and upon probable cause  
36 to believe the real property is in violation of this act, but before any liens  
37 or other proceedings are initiated under this act, a ~~seizing agency~~ *the state*  
38 may place a notice of potential claim with the register of deeds in the  
39 county in which such real property is located as notification that a forfei-  
40 ture investigation is in progress and that a forfeiture proceeding against  
41 such real property may be initiated by the ~~seizing agency~~ *state*. Such  
42 notice shall automatically expire 180 days after filing, unless renewed, and  
43 shall contain such real property's legal description, the date the investi-

1 gation began, and the name, position, agency, business address, and busi-  
2 ness telephone number of the person filing such notice of potential claim.  
3 The notice shall be sworn to and verified in the manner provided for in  
4 the filing of *lis pendens*. The ~~agency~~ *state* shall not be charged a filing or  
5 release fee.

6 Sec. 16. K.S.A. 60-4120 is hereby amended to read as follows: 60-  
7 4120. A civil action under this act shall be commenced within five years  
8 after the last conduct giving rise to forfeiture or the cause of action be-  
9 came known or should have become known, excluding any time during  
10 which either the property or defendant is out of the state or in confine-  
11 ment, ~~or during which criminal proceedings relating to the same conduct~~  
12 ~~are pending.~~

13 Sec. 17. K.S.A. 60-4122 is hereby amended to read as follows: 60-  
14 4122. No person claiming an interest in property subject to forfeiture  
15 may commence or maintain any action against ~~a seizing agency~~ *the state*  
16 concerning the validity of the alleged interest other than provided in this  
17 act.

18 Sec. 18. K.S.A. 60-4102, 60-4106, 60-4107, 60-4108, 60-4109, 60-  
19 4110, 60-4111, 60-4112, 60-4113, 60-4114, 60-4115, 60-4118, 60-4120  
20 and 60-4122 and K.S.A. 2000 Supp. 60-4104, 60-4116 and 60-4117 are  
21 hereby repealed.

22 Sec. 19. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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