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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 15, 2023
Subject: Bill Brief on HB 2380

HB 2380 requires a criminal conviction for civil asset forfeiture, remits proceeds from civil asset forfeiture to the state general fund, increases the burden of proof required to forfeit property, makes certain property ineligible for forfeiture, provides persons involved in forfeiture proceedings representation by counsel and the ability to demand a jury trial and allows a person to request a hearing on whether forfeiture is excessive

Section 1 amends K.S.A. 60-4104, which is the statute that provides the list of conduct giving rise to asset forfeiture. The section is amended to provide that such conduct only gives rise to forfeiture after a conviction related to the offense. A criminal conviction would not be required when property is forfeited pursuant to a plea agreement or an agreement for a grant of immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution.

Section 2 amends K.S.A. 60-4105 which is the statute that provides what property is subject to forfeiture. This section is amended to conform with the conviction requirement that would now be in place in K.S.A. 60-4104. The section also provides that (1) cash or negotiable instruments less than \$1,000, (2) property other than cash or negotiable instruments with a market value of less than \$2,500, and (3) property owned by a person who is not convicted of an offense giving rise to forfeiture is not subject to forfeiture.

Section 3 amends K.S.A. 60-4106, the statute providing for exemptions to asset forfeiture, to conform with the conviction requirement that would now be in place in K.S.A. 60-4104.

Section 4 amends K.S.A. 60-4107, which is the statute that provides for seizure of property under the act. The section is amended to require a seizing law enforcement agency to

forward a request for forfeiture to the county or district attorney within 14 days instead of 45 days. If the county or district attorney declines such request and the seizing agency doesn't request adoption or engage an attorney to represent the agency, then the property has to be returned to the person within 30 days. The section is also amended to provide that no law enforcement agency shall request federal adoption of a seizure under the act and to add a new subsection providing that when property is seized for forfeiture under this act, the seizing agency shall not request or induce any person who asserts ownership of property to waive their interest in property until forfeiture proceedings are commenced.

Section 5 amends K.S.A. 60-4109, the statute that governs commencement of proceedings under the act, to conform with the conviction requirement that would now be in place in K.S.A. 60-4104.

Section 6 amends K.S.A. 60-4112, which governs the judicial proceedings under this act. A new subsection (h) is added to provide that following seizure, the person from whom the property was seized may petition the court to determine whether the forfeiture was unconstitutionally excessive. The plaintiff's attorney has the burden of establishing that the forfeiture is proportional to the seriousness of the offense beyond a reasonable doubt. The bill provides a list of factors the court may consider when determining whether forfeiture is unconstitutionally excessive. It also provides that an owner or interest holder in property shall be entitled to assistance of counsel, and if such person cannot afford to retain counsel, the court shall appoint an attorney. In a proceeding where an owner or interest holder prevails by recovering at least half of the property, the court shall order the seizing agency to pay reasonable costs and attorney fees and interest when the case involves money or other negotiable instruments or proceeds from a sale. An owner or interest holder would have the right to appeal an order under the act.

Section 7 amends K.S.A. 60-4113, which governs in rem proceedings under the act. The section is amended to allow claimants to demand a jury trial and provide claimants with the assistance of counsel. If the person cannot afford to retain counsel, the court shall appoint an attorney. The sections requires the plaintiff's attorney to prove the interest in property is subject to forfeiture beyond a reasonable doubt instead of the current law standard of by a preponderance of the evidence. Finally, the claimant shall not be assessed a fee for storage, or any other fee related to the property.

Section 8 amends K.S.A. 60-4114, which governs in personam proceedings under the act. This section is amended to provide persons with a known interest in property the assistance of

counsel, and if the person cannot afford to retain counsel, the court shall appoint an attorney. If no determination of liability is made under the section, then the property that was seized shall be returned to the person within 7 days and such person shall not be charged a storage fee or any other fee related to the property. An interest holder may demand a jury trial for such proceedings.

Section 9 amends K.S.A. 60-4117, which provides for the disposition of property forfeited under this act. Current law allows the transfer of property to any federal agency. This bill would allow transfer of the property to a federal agency when the property was seized and forfeited under federal law. It also provides that all seized cash and negotiable instruments and proceeds from the disposition of property forfeited under the act shall be remitted to the state general fund.

Section 10 amends K.S.A. 60-4127, which requires certain reporting related to asset forfeiture. The section is amended to conform with the conviction requirement that would now be in place in K.S.A. 60-4104. Current law also requires reporting of how law enforcement spent the proceeds from the disposition of forfeited property. These reporting provisions are removed because the agencies will now remit proceeds to the state general fund.

HOUSE BILL No. 2380

By Committee on Judiciary

2-9

1 AN ACT concerning seizure and forfeiture of property; relating to property
2 seized by law enforcement; requiring a conviction of an offense giving
3 rise to forfeiture under the Kansas standard asset seizure and forfeiture
4 act; remitting proceeds to the state general fund; increasing the burden
5 of proof required to forfeit property; making certain property ineligible
6 for forfeiture; providing persons involved in forfeiture proceedings
7 representation by counsel and the ability to demand a jury trial;
8 allowing a person to request a hearing on whether forfeiture is
9 excessive; amending K.S.A. 2022 Supp. 60-4104, 60-4105, 60-4106,
10 60-4107, 60-4109, 60-4112, 60-4113, 60-4114, 60-4117 and 60-4127
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2022 Supp. 60-4104 is hereby amended to read as
15 follows: 60-4104. ~~Conduct and~~ (a) *Except as provided in subsection (b),*
16 offenses giving rise to forfeiture under this act, ~~whether or not there is a~~
17 ~~prosecution or only after~~ a conviction related to the offense, are:

18 (a)(1) All offenses ~~which~~ that statutorily and specifically authorize
19 forfeiture;

20 (b)(2) violations involving controlled substances, as described in
21 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto;

22 (c)(3) theft, as defined in K.S.A. 2022 Supp. 21-5801, and
23 amendments thereto;

24 (d)(4) criminal discharge of a firearm, as defined in K.S.A. 2022
25 Supp. 21-6308(a)(1) and (a)(2), and amendments thereto;

26 (e)(5) gambling, as defined in K.S.A. 2022 Supp. 21-6404, and
27 amendments thereto, and commercial gambling, as defined in K.S.A. 2022
28 Supp. 21-6406(a)(1), and amendments thereto;

29 (f)(6) counterfeiting, as defined in K.S.A. 2022 Supp. 21-5825, and
30 amendments thereto;

31 (g)(7) unlawful possession or use of a scanning device or reencoder,
32 as described in K.S.A. 2022 Supp. 21-6108, and amendments thereto;

33 (h)(8) medicaid fraud, as described in K.S.A. 2022 Supp. 21-5925
34 through 21-5934, and amendments thereto;

35 (i) ~~an act or omission occurring outside this state, which would be a~~
36 ~~violation in the place of occurrence and would be described in this section~~

1 if the act occurred in this state, whether or not it is prosecuted in any state;

2 ~~(j) 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 ~~(k) any solicitation or conspiracy to commit any act or omission~~
7 ~~described in this section, whether or not there is a prosecution or~~
8 ~~conviction related to the act or omission;~~

9 ~~(h)(9)~~ terrorism, as defined in K.S.A. 2022 Supp. 21-5421, and
10 amendments thereto, illegal use of weapons of mass destruction, as
11 defined in K.S.A. 2022 Supp. 21-5422, and amendments thereto, and
12 furtherance of terrorism or illegal use of weapons of mass destruction, as
13 described in K.S.A. 2022 Supp. 21-5423, and amendments thereto;

14 ~~(m)(10)~~ unlawful conduct of dog fighting and unlawful possession of
15 dog fighting paraphernalia, as defined in K.S.A. 2022 Supp. 21-6414(a)
16 and (b), and amendments thereto;

17 ~~(n)(11)~~ unlawful conduct of cockfighting and unlawful possession of
18 cockfighting paraphernalia, as defined in K.S.A. 2022 Supp. 21-6417(a)
19 and (b), and amendments thereto;

20 ~~(o)(12)~~ selling sexual relations, as defined in K.S.A. 2022 Supp. 21-
21 6419, and amendments thereto, promoting the sale of sexual relations, as
22 defined in K.S.A. 2022 Supp. 21-6420, and amendments thereto, and
23 buying sexual relations, as defined in K.S.A. 2022 Supp. 21-6421, and
24 amendments thereto;

25 ~~(p)(13)~~ human trafficking and aggravated human trafficking, as
26 defined in K.S.A. 2022 Supp. 21-5426, and amendments thereto;

27 ~~(q)(14)~~ violations of the banking code, as described in K.S.A. 9-2012,
28 and amendments thereto;

29 ~~(r)(15)~~ mistreatment of a dependent adult, as defined in K.S.A. 2022
30 Supp. 21-5417, and amendments thereto;

31 ~~(s)(16)~~ giving a worthless check, as defined in K.S.A. 2022 Supp. 21-
32 5821, and amendments thereto;

33 ~~(t)(17)~~ forgery, as defined in K.S.A. 2022 Supp. 21-5823, and
34 amendments thereto;

35 ~~(u)(18)~~ making false information, as defined in K.S.A. 2022 Supp.
36 21-5824, and amendments thereto;

37 ~~(v)(19)~~ criminal use of a financial card, as defined in K.S.A. 2022
38 Supp. 21-5828, and amendments thereto;

39 ~~(w)(20)~~ unlawful acts concerning computers, as described in K.S.A.
40 2022 Supp. 21-5839, and amendments thereto;

41 ~~(x)(21)~~ identity theft and identity fraud, as defined in K.S.A. 2022
42 Supp. 21-6107(a) and (b), and amendments thereto;

43 ~~(y)(22)~~ electronic solicitation, as defined in K.S.A. 2022 Supp. 21-

1 5509, and amendments thereto;
2 ~~(z)~~(23) felony violations of fleeing or attempting to elude a police
3 officer, as described in K.S.A. 8-1568, and amendments thereto;
4 ~~(aa)~~(24) commercial sexual exploitation of a child, as defined in
5 K.S.A. 2022 Supp. 21-6422, and amendments thereto;
6 ~~(bb)~~(25) violations of the Kansas racketeer influenced and corrupt
7 organization act, as described in K.S.A. 2022 Supp. 21-6329, and
8 amendments thereto;
9 ~~(ee)~~(26) indecent solicitation of a child and aggravated indecent
10 solicitation of a child, as defined in K.S.A. 2022 Supp. 21-5508, and
11 amendments thereto;
12 ~~(dd)~~(27) sexual exploitation of a child, as defined in K.S.A. 2022
13 Supp. 21-5510, and amendments thereto; and
14 ~~(ee)~~(28) violation of a consumer protection order as defined in K.S.A.
15 2022 Supp. 21-6423, and amendments thereto.
16 *(b) A conviction for an offense giving rise to forfeiture shall not be*
17 *required when property is forfeited pursuant to:*
18 *(1) A plea agreement; or*
19 *(2) an agreement for a grant of immunity or reduced punishment in*
20 *exchange for testifying or assisting a law enforcement investigation or*
21 *prosecution.*
22 Sec. 2. K.S.A. 2022 Supp. 60-4105 is hereby amended to read as
23 follows: 60-4105. *(a) Except as provided in subsection (b), the following*
24 *property is subject to forfeiture:*
25 ~~(a)~~(1) Property described in a statute authorizing forfeiture;
26 ~~(b)~~(2) except as otherwise provided by law, all property, of every
27 kind, including, but not limited to, cash and negotiable instruments and the
28 whole of any lot or tract of land and any appurtenances or improvements
29 to real property that is either:
30 ~~(+)~~(A) Furnished or intended to be furnished by any person in an
31 exchange that constitutes ~~conduct~~ *an offense* giving rise to forfeiture; or
32 ~~(-)~~(B) used or intended to be used in any manner to facilitate ~~conduct~~
33 *an offense* giving rise to forfeiture, including, but not limited to, any
34 electronic device, computer, computer system, computer network or any
35 software or data owned by the defendant which is used during the
36 commission of an offense listed in K.S.A. 60-4104, and amendments
37 thereto;
38 ~~(e)~~(3) all proceeds of ~~any conduct~~ *an offense* giving rise to forfeiture;
39 ~~(d)~~(4) all property of every kind, including, but not limited to, cash
40 and negotiable instruments derived from or realized through any proceeds
41 which were obtained directly or indirectly from the commission of an
42 offense listed in K.S.A. 60-4104, and amendments thereto;
43 ~~(e)~~(5) all weapons possessed, used, or available for use in any manner

- 1 to facilitate ~~conduct~~ *an offense* giving rise to forfeiture;
- 2 ~~(f)~~(6) ownership or interest in real property that is a homestead, to the
- 3 extent the homestead was acquired with proceeds from conduct giving rise
- 4 to forfeiture;
- 5 ~~(g)~~(7) contraband, which shall be seized and summarily forfeited to
- 6 the state without regard to the procedures set forth in this act;
- 7 ~~(h)~~(8) all controlled substances, raw materials, controlled substance
- 8 analogs, counterfeit substances; or imitation controlled substances that
- 9 have been manufactured, distributed, dispensed, possessed; or acquired in
- 10 violation of the laws of this state; and
- 11 ~~(i)~~(9) any items bearing a counterfeit mark.

- 12 *(b) The following property shall not be subject to forfeiture:*
- 13 *(1) Cash or negotiable instruments in an amount of less than \$1,000;*
- 14 *(2) property of every kind other than cash or negotiable instruments*
- 15 *that has a market value of less than \$2,500;*
- 16 *(3) property owned, in whole or in part, by a person who is not*
- 17 *convicted of an offense giving rise to forfeiture as defined in K.S.A. 60-*
- 18 *4104, and amendments thereto.*

19 Sec. 3. K.S.A. 2022 Supp. 60-4106 is hereby amended to read as
 20 follows: 60-4106. (a) All property, including all interests in property,
 21 described in K.S.A. 60-4105, and amendments thereto, is subject to
 22 forfeiture subject to all mortgages, deeds of trust, financing statements or
 23 security agreements properly of record prior to the forfeiture held by an
 24 interest holder except that property specifically exempted hereunder:

- 25 (1) No real property or conveyance, or an interest therein, may be
- 26 forfeited under this act unless the offense or conduct giving rise to
- 27 forfeiture constitutes a felony.
- 28 (2) No conveyance used by any person as a common carrier in the
- 29 transaction of business as a common carrier is subject to forfeiture under
- 30 this act unless the owner or other person in charge of the conveyance is a
- 31 consenting party or privy to ~~a violation of this act~~ *the offense giving rise to*
- 32 *forfeiture.*

33 (3) No property is subject to forfeiture under this act if the owner or
 34 interest holder acquired the property before or during the ~~conduct~~
 35 *commission of the offense* giving rise to the property's forfeiture, and such
 36 owner or interest holder:

- 37 (A) Did not know and could not have reasonably known of the act or
- 38 omission or that it was likely to occur; or
- 39 (B) acted reasonably to prevent the ~~conduct~~ *offense* giving rise to
- 40 forfeiture.

41 (4) No property is subject to forfeiture if the owner or interest holder
 42 acquired the property after the ~~conduct~~ *commission of the offense* giving
 43 rise to the property's forfeiture, including acquisition of proceeds of

1 ~~conduct~~ *an offense* giving rise to forfeiture, and such owner or interest
2 holder:

3 (A) Acquired the property in good faith, for value; and

4 (B) was not knowingly taking part in an illegal transaction.

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

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

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

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

23 (2) owner or interest holder is ~~criminally responsible for the conduct~~
24 *convicted of the offense* giving rise to the property's forfeiture, ~~whether or~~
25 ~~not there is a prosecution or conviction~~; or

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

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

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

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

38 (3) the extent to which the property actually facilitated the ~~criminal~~
39 ~~conduct~~ *offense giving rise to forfeiture*;

40 (4) the nature and extent of the owner's knowledge of the role of
41 others in the ~~conduct~~ *offense* that allows forfeiture of the property and
42 efforts of the owner to prevent the ~~conduct~~ *such offense*; and

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

1 Sec. 4. K.S.A. 2022 Supp. 60-4107 is hereby amended to read as
2 follows: 60-4107. (a) Property may be seized for forfeiture by a law
3 enforcement officer upon process issued by the district court. The court
4 may issue a seizure warrant on an affidavit under oath demonstrating that
5 probable cause exists for the property's forfeiture or that the property has
6 been the subject of a previous final judgment of forfeiture in the courts of
7 any state or of the United States. The court may order that the property be
8 seized on such terms and conditions as are reasonable in the discretion of
9 the court. The order may be made on or in connection with a search
10 warrant. All real property is to be seized constructively or pursuant to a
11 pre-seizure adversarial judicial determination of probable cause, except
12 that this determination may be done ex parte when the attorney for the
13 state has demonstrated exigent circumstances to the court.

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

17 (c) Property may be seized constructively by:

18 (1) Posting notice of seizure for forfeiture or notice of pending
19 forfeiture on the property.

20 (2) Giving notice pursuant to K.S.A. 60-4109, and amendments
21 thereto.

22 (3) Filing or recording in the public records relating to that type of
23 property notice of seizure for forfeiture, notice of pending forfeiture, a
24 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
25 act are not subject to a filing fee or other charge, except that court costs
26 may be assessed and, if assessed, shall include the amount of the docket
27 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
28 additional court costs accrued in the action.

29 (d) The seizing agency shall make reasonable effort to provide notice
30 of the seizure to the person from whose possession or control the property
31 was seized and any interest holder of record within 30 days of seizing the
32 property. If no person is in possession or control, the seizing agency may
33 attach the notice to the property or to the place of the property's seizure or
34 may make a reasonable effort to deliver the notice to the owner of the
35 property. The notice shall contain a general description of the property
36 seized, the date and place of seizure, the name of the seizing agency and
37 the address and telephone number of the seizing officer or other person or
38 agency from whom information about the seizure may be obtained.

39 (e) A person who acts in good faith and in a reasonable manner to
40 comply with an order of the court or a request of a law enforcement officer
41 is not liable to any person on account of acts done in reasonable
42 compliance with the order or request. No liability may attach from the fact
43 that a person declines a law enforcement officer's request to deliver

1 property.

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

4 (g) When property is seized for forfeiture under this act, the seizing
5 agency shall, within ~~45~~ 14 days of such seizure, forward to the county or
6 district attorney in whose jurisdiction the seizure occurred, a written
7 request for forfeiture which shall include a statement of facts and
8 circumstances of the seizure, the estimated value of the property, the
9 owner and lienholder of the property, the amount of any lien, and a
10 summary of the facts relied on for forfeiture.

11 (h) (1) Upon receipt of a written request for forfeiture from a local
12 law enforcement agency, the county or district attorney shall accept or
13 decline the request within 14 days. If the county or district attorney
14 declines such request, or fails to answer, the seizing agency may, *within 14*
15 *days after the county or district attorney declines such request:*

16 ~~(A)~~ Request a state law enforcement agency that enforces this act
17 to adopt the forfeiture; or

18 ~~(B)~~ engage an attorney, approved by the county or district attorney,
19 to represent the agency in the forfeiture proceeding, but in no event shall
20 the county or district attorney approve an attorney with whom the county
21 or district attorney has a financial interest, either directly or indirectly.

22 (2) *If the county or district attorney declines such request, or fails to*
23 *answer, and the seizing agency does not request a state law enforcement*
24 *agency to adopt the forfeiture or engage an attorney to represent the*
25 *agency, the property that was seized for forfeiture shall be returned to the*
26 *person from whom possession or control of the property was seized within*
27 *30 days.*

28 (i) (1) Upon receipt of a written request for forfeiture from a state law
29 enforcement agency, the county or district attorney shall accept or decline
30 the request within 14 days. If the county or district attorney declines such
31 request, or fails to answer, the seizing agency may engage an assistant
32 attorney general or other attorney approved by the attorney general to
33 represent the agency in the forfeiture proceeding, but in no event shall the
34 attorney general approve an attorney with whom the attorney general has a
35 financial interest, either directly or indirectly.

36 (2) *If the county or district attorney declines such request, or fails to*
37 *answer, and the seizing agency does not request an assistant attorney*
38 *general or other attorney approved by the attorney general to represent*
39 *the agency, the property that was seized for forfeiture shall be returned to*
40 *the person from whom possession or control of the property was seized*
41 *within 30 days.*

42 (j) A county or district attorney or the attorney general shall not
43 request or receive any referral fee or personal financial benefit, either

1 directly or indirectly, in any proceeding conducted under this act.

2 (k) Nothing in this act shall prevent the attorney general, an employee
3 of the attorney general or an authorized representative of the attorney
4 general from conducting forfeiture proceedings under this act.

5 ~~(l) Nothing in this act shall prevent a seizing agency from requesting
6 federal adoption of a seizure. It shall not be necessary to obtain any order
7 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
8 property to a federal agency if the county or district attorney approves of
9 such transfer. No law enforcement agency shall request federal adoption of
10 a seizure pursuant to this act.~~

11 (m) Nothing in this act shall prevent a seizing agency, or the
12 plaintiff's attorney on behalf of the seizing agency, from settling any
13 alleged forfeiture claim against property before or during forfeiture
14 proceedings. Such settlement shall be in writing and shall be approved, if a
15 local agency, by the county or district attorney or, if a state agency, by the
16 attorney general's office and a district court judge. No hearing or other
17 proceeding shall be necessary. The records of settlements occurring prior
18 to commencement of judicial forfeiture proceedings in the district court
19 shall be retained by the county or district attorney for not less than five
20 years.

21 ~~(n) Settlements under this act shall not be conditioned upon any
22 disposition of criminal charges. When property is seized for forfeiture
23 under this act, the seizing agency shall not request or induce any person
24 who asserts ownership or possession of or any lawful right to the property
25 to waive such interest in such property until forfeiture proceedings are
26 commenced pursuant to K.S.A. 60-4109, and amendments thereto.~~

27 Sec. 5. K.S.A. 2022 Supp. 60-4109 is hereby amended to read as
28 follows: 60-4109. (a) Forfeiture proceedings shall be commenced *only*
29 *after a conviction for the offense giving rise to forfeiture* by filing a notice
30 of pending forfeiture or a judicial forfeiture action:

31 (1) If the plaintiff's attorney fails to initiate forfeiture proceedings by
32 notice of pending forfeiture within 90 days against property seized for
33 forfeiture or if the seizing agency fails to pursue forfeiture of the property
34 upon which a proper claim has been timely filed by filing a judicial
35 forfeiture proceeding within 90 days after notice of pending forfeiture, the
36 property shall be released on the request of an owner or interest holder to
37 such owner's or interest holder's custody, as custodian for the court,
38 pending further proceedings pursuant to this act. Such custodianship shall
39 not exceed 90 days following the release to the owner or interest holder
40 unless an extension is authorized by the court for good cause shown.

41 (2) If, after notice of pending forfeiture, a claimant files a petition for
42 recognition of exemption pursuant to K.S.A. 60-4110, and amendments
43 thereto, the plaintiff's attorney may delay filing the judicial forfeiture

1 proceeding for a total of 180 days after the notice of pending forfeiture
2 except that if an interest holder timely files a proper petition documenting
3 the complete nature and extent of such holder's interest, including all of the
4 contractual terms and current status, the plaintiff's attorney may delay
5 filing a judicial forfeiture proceeding only if such attorney provides each
6 such petitioner with a written recognition of exemption within 60 days
7 after the effective date of the notice of pending forfeiture, recognizing the
8 interest of such petitioner to the extent of documented outstanding
9 principal plus interest at the contract rate until paid and any attorney fees
10 ordered by a court pursuant to such contract.

11 (3) Whenever notice of pending forfeiture or service of an in rem
12 complaint or notice of a recognition of exemption and statement of
13 nonexempt interests is required under this act, notice or service shall be
14 given in accordance with one of the following:

15 (A) If the owner's or interest holder's name and current address are
16 known, by either personal service by any person qualified to serve process
17 or by any law enforcement officer or by mailing a copy of the notice by
18 certified mail, return receipt requested, to the known address, pursuant to
19 the code of civil procedure;

20 (B) if the owner's or interest holder's name and address are required
21 by law to be on record with a municipal, county, state or federal agency to
22 perfect an interest in the property, and the owner's or interest holder's
23 current address is not known, by mailing a copy of the notice by certified
24 mail, return receipt requested, to any address of record with any of the
25 described agencies, pursuant to the code of civil procedure; or

26 (C) if the owner's or interest holder's address is not known and is not
27 on record as provided in subparagraph (B), or the owner's or interest
28 holder's interest is not known, or if service by certified mail was attempted
29 pursuant to subparagraph (A) or (B) and was not effective, by publication
30 in one issue of the official county newspaper, as defined by K.S.A. 64-101,
31 and amendments thereto, in the county in which the seizure occurred.

32 (4) Notice is effective pursuant to the code of civil procedure, except
33 that notice of pending forfeiture of real property is not effective until it is
34 recorded. Notice of pending forfeiture shall include a description of the
35 property, the date and place of seizure, the conduct giving rise to forfeiture
36 or the violation of law alleged and a summary of procedures and
37 procedural rights applicable to the forfeiture action. An affidavit describing
38 the essential facts supporting forfeiture shall be included with the notice.
39 Copies of judicial council forms for petitioning for recognition of an
40 exemption pursuant to K.S.A. 60-4110, and amendments thereto, and for
41 making a claim pursuant to K.S.A. 60-4111, and amendments thereto, shall
42 be provided with the notice.

43 (b) The plaintiff's attorney, without a filing fee, may file a lien for the

1 forfeiture of property upon the initiation of any civil or criminal
2 proceeding relating to conduct giving rise to forfeiture under this act or
3 upon seizure for forfeiture. Court costs may be assessed and, if assessed,
4 shall include the amount of the docket fee prescribed by K.S.A. 60-2001,
5 and amendments thereto, and any additional court costs accrued in the
6 action. A plaintiff's attorney may also file a forfeiture lien in this state in
7 connection with a proceeding or seizure for forfeiture in any other state
8 under a state or federal statute substantially similar to the relevant
9 provisions of this act. The filing constitutes notice to any person claiming
10 an interest in the seized property or in property owned by the named
11 person.

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

13 (A) The name of the person and, in the discretion of the lienor, any
14 alias, or the name of any corporation, partnership, trust or other entity,
15 including nominees, that are owned entirely or in part or controlled by the
16 person; and

17 (B) the description of the seized property, the criminal or civil
18 proceeding that has been brought relating to conduct giving rise to
19 forfeiture under this act, the amount claimed by the lienor, the name of the
20 district court where the proceeding or action has been brought, and the
21 case number of the proceeding or action if known at the time of filing.

22 (2) A lien filed pursuant to this subsection applies to the described
23 seized property or to one named person, any aliases, fictitious names, or
24 other names, including the names of any corporation, partnership, trust, or
25 other entity, owned entirely or in part, or controlled by the named person,
26 and any interest in real property owned or controlled by the named person.
27 A separate forfeiture lien shall be filed for each named person.

28 (3) The notice of lien creates, upon filing, a lien in favor of the lienor
29 as it relates to the seized property or the named person or related entities.
30 The lien secures the amount of potential liability for civil judgment, and if
31 applicable, the fair market value of seized property relating to all
32 proceedings under this act enforcing the lien. The notice of forfeiture lien
33 referred to in this subsection shall be filed in accordance with the
34 provisions of the laws of this state relating to the type of property that is
35 subject to the lien. The validity and priority of the forfeiture lien shall be
36 determined in accordance with applicable law pertaining to liens. The
37 lienor may amend or release, in whole or in part, a lien filed under this
38 subsection at any time by filing, without a filing fee, an amended lien in
39 accordance with this subsection which identifies the lien amended. The
40 lienor, as soon as practical after filing the lien, shall furnish to any person
41 named in the lien a notice of the filing of the lien. Failure to furnish notice
42 under this subsection shall not invalidate or otherwise affect the lien.

43 (4) Upon entry of judgment in the seizing agency's favor, the seizing

1 agency may proceed to execute on the lien as provided by law.

2 (5) A trustee, constructive or otherwise, who has notice that a notice
3 of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture
4 proceeding has been filed against the property or against any person or
5 entity for whom the person holds title or appears as record owner, shall
6 furnish within 14 days, to the seizing agency or the plaintiff's attorney all
7 of the following information, unless all of the information is of record in
8 the public records giving notice of liens on that type of property:

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

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

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

16 (6) A trustee with notice who knowingly fails to comply with the
17 provisions of this subsection shall be guilty of a class B nonperson
18 misdemeanor.

19 (7) A trustee with notice who fails to comply with paragraph (5) is
20 subject to a civil penalty of \$100 for each day of noncompliance. The court
21 shall enter judgment ordering payment of \$100 for each day of
22 noncompliance from the effective date of the notice until the required
23 information is furnished or the seizing agency executes the seizing
24 agency's judgment lien under this section.

25 (8) To the extent permitted by the constitutions of the United States
26 and the state of Kansas, the duty to comply with paragraph (5) shall not be
27 excused by any privilege or provision of law of this state or any other state
28 or country which authorizes or directs that testimony or records required to
29 be furnished pursuant to paragraph (5) are privileged, confidential and
30 otherwise may not be disclosed.

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

33 (10) An employee of the seizing agency or the plaintiff's attorney
34 who releases the information obtained pursuant to paragraph (5), except in
35 the proper discharge of official duties, is guilty of a class B nonperson
36 misdemeanor.

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

40 (12) A judgment or an order of payment entered pursuant to this
41 section becomes a judgment lien against the property alleged to be subject
42 to forfeiture.

43 Sec. 6. K.S.A. 2022 Supp. 60-4112 is hereby amended to read as

1 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
2 subject to the provisions of this section.

3 (b) The court, on application of the plaintiff's attorney, may enter any
4 restraining order or injunction, require the execution of satisfactory
5 performance bonds, create receiverships, appoint conservators, custodians,
6 appraisers, accountants or trustees, or take any other action to seize,
7 secure, maintain or preserve the availability of property subject to
8 forfeiture under this act, including a writ of attachment or a warrant for
9 such property's seizure, whether before or after the filing of a notice of
10 pending forfeiture or complaint.

11 (c) If property is seized for forfeiture or a forfeiture lien is filed
12 without a previous judicial determination of probable cause or order of
13 forfeiture or a hearing under K.S.A. 60-4114(c), and amendments thereto,
14 the court, on an application filed by an owner of or interest holder in the
15 property within 14 days after notice of the property's seizure for forfeiture
16 or lien, or actual knowledge of it, whichever is earlier, and after complying
17 with the requirements for claims in K.S.A. 60-4109, and amendments
18 thereto, after seven days' notice to the plaintiff's attorney, may issue an
19 order to show cause to the seizing agency, for a hearing on the sole issue
20 of whether probable cause for forfeiture of the property then exists. The
21 hearing shall be held within 30 days of the order to show cause unless
22 continued for good cause on motion of either party. If the court finds that
23 there is no probable cause for forfeiture of the property, or if the seizing
24 agency elects not to contest the issue, the property shall be released to the
25 custody of the applicant, as custodian for the court, or from the lien
26 pending the outcome of a judicial proceeding pursuant to this act. If the
27 court finds that probable cause for the forfeiture of the property exists, the
28 court shall not order the property released.

29 (d) All applications filed within the 14-day period prescribed by
30 subsection (c) shall be consolidated for a single hearing relating to each
31 applicant's interest in the property seized for forfeiture.

32 (e) A person charged with a criminal offense may apply at any time
33 before final judgment to the court where the forfeiture proceeding is
34 pending for the release of property seized for forfeiture, that is necessary
35 for the defense of the person's criminal charge. The application shall
36 satisfy the requirements under K.S.A. 60-4111(b), and amendments
37 thereto. The court shall hold a probable cause hearing if the applicant
38 establishes that:

39 (1) The person has not had an opportunity to participate in a previous
40 adversarial judicial determination of probable cause;

41 (2) the person has no access to other moneys adequate for the
42 payment of criminal counsel; and

43 (3) the interest in property to be released is not subject to any claim

1 other than the forfeiture.

2 (f) If the court finds that there is no probable cause for forfeiture of
3 the property, the court shall order the property released pursuant to
4 subsection (c). If the seizing agency does not contest the hearing, the court
5 may release a reasonable amount of property for the payment of the
6 applicant's criminal defense costs. Property that has been released by the
7 court and that has been paid for criminal defense services actually
8 rendered is exempt under this act.

9 (g) A defendant convicted in any criminal proceeding is precluded
10 from later denying the elements of the criminal offense of which the
11 defendant was convicted in any proceeding pursuant to this section. For
12 the purposes of this section, a conviction results from a verdict or plea of
13 guilty, including a plea of no contest or nolo contendere.

14 (h) (1) *At any time following seizure pursuant to this act, the person*
15 *from whose possession or control the property was seized may petition the*
16 *court to determine whether such forfeiture is unconstitutionally excessive.*

17 (2) *The plaintiff's attorney has the burden of establishing that the*
18 *forfeiture is proportional to the seriousness of the offense giving rise to the*
19 *forfeiture beyond a reasonable doubt at a hearing conducted by the court*
20 *without a jury. Such hearing may be a component of the associated trial*
21 *and not a separate hearing.*

22 (3) *In determining whether the forfeiture is unconstitutionally*
23 *excessive, the court may consider all relevant factors, including, but not*
24 *limited to:*

25 (A) *The seriousness of the offense;*

26 (B) *the extent to which the person whose possession or control of the*
27 *property was seized participated in the offense;*

28 (C) *the extent to which the property was used in committing the*
29 *offense;*

30 (D) *the sentence imposed for committing the offense giving rise to*
31 *forfeiture;*

32 (E) *the punitive nature of the forfeiture; and*

33 (F) *the fair market value of the property compared to the property*
34 *owner's net worth.*

35 (i) In any proceeding under this act, if a claim is based on any
36 exemption provided for in this act, the burden of proving the existence of
37 the exemption is on the claimant, and is not necessary for the seizing
38 agency or plaintiff's attorney to negate the exemption in any application or
39 complaint.

40 (j) In hearings and determinations pursuant to this section, the court
41 may receive and consider, in making any determination of probable cause
42 or reasonable cause, all evidence admissible in determining probable cause
43 at a preliminary hearing or in the issuance of a search warrant, together

1 with inferences therefrom.

2 ~~(j)~~(k) The totality of the circumstances shall determine if the property
3 of a person is subject to forfeiture under this act. Factors that may be
4 considered include, but are not limited to, 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;

9 (3) there was no likely source for the property other than the conduct
10 giving rise to forfeiture; and

11 (4) the proximity to contraband or an instrumentality giving rise to
12 forfeiture.

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

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

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

35 ~~(n)~~ An acquittal or dismissal in a criminal proceeding shall not
36 preclude civil proceedings under this act, nor give rise to any presumption
37 adverse or contrary to any fact alleged by the seizing agency.

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

43 (p) *An owner or interest holder in property shall be entitled to the*

1 *assistance of counsel during proceedings conducted pursuant to this act.*

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

5 (r) *In any proceeding where an owner or interest holder in property*
6 *prevails by recovering at least half, by value, of the property, the court*
7 *shall order the seizing agency or prosecuting attorney to pay:*

8 (1) *Reasonable attorney fees and other litigation costs incurred by*
9 *the owner; and*

10 (2) *in cases involving money or other negotiable instruments or the*
11 *proceeds from a sale of property, interest at the rate established by K.S.A.*
12 *16-204, and amendments thereto, from the date of the seizure.*

13 (s) *An owner or interest holder in property shall have the right to*
14 *appeal an order of the district court in a proceeding pursuant to this act. If*
15 *it is determined that the owner or interest holder is not able to employ*
16 *counsel, the court shall appoint an attorney from the panel for indigents'*
17 *defense services or otherwise in accordance with the applicable system for*
18 *providing legal defense services for indigent persons prescribed by the*
19 *state board of indigents' defense services.*

20 ~~(t)~~(t) An action pursuant to this act shall be consolidated with any
21 other action or proceeding pursuant to this act or to such other foreclosure
22 or trustee sale proceedings relating to the same property on motion of the
23 plaintiff's attorney, and may be consolidated on motion of an owner or
24 interest holder.

25 Sec. 7. K.S.A. 2022 Supp. 60-4113 is hereby amended to read as
26 follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by
27 the plaintiff's attorney pursuant to a notice of pending forfeiture or verified
28 petition for forfeiture is also subject to the provisions of this section. If a
29 forfeiture is authorized by this act, it shall be ordered by the court in the in
30 rem action.

31 (b) An action in rem may be brought by the plaintiff's attorney in
32 addition to, or in lieu of, civil in personam forfeiture procedures. The
33 seizing agency may serve the complaint in the manner provided by K.S.A.
34 60-4109(a)(3), and amendments thereto, or as provided by the rules of
35 civil procedure.

36 (c) Only an owner of or an interest holder in the property who has
37 timely filed a proper claim may file an answer in an action in rem. For the
38 purposes of this section, an owner of or interest holder in property who has
39 filed a claim and answer shall be referred to as a claimant. *A claimant may*
40 *demand a jury trial pursuant to K.S.A. 60-238, and amendments thereto,*
41 *and shall be entitled to assistance of counsel. If it is determined that the*
42 *claimant is not able to employ counsel, the court shall appoint an attorney*
43 *from the panel for indigents' defense services or otherwise in accordance*

1 *with the applicable system for providing legal defense services for*
2 *indigent persons prescribed by the state board of indigents' defense*
3 *services.*

4 (d) The answer shall be signed by the claimant under penalty of
5 perjury, K.S.A. 2021 Supp. 21-5903, and amendments thereto, shall
6 otherwise be in accordance with the rules of civil procedure on answers
7 and shall also set forth the following:

8 (1) The caption of the proceedings and identifying number, if any, as
9 set forth on the notice of pending forfeiture or complaint and the name of
10 the claimant;

11 (2) the address where the claimant will accept mail;

12 (3) the nature and extent of the claimant's interest in the property; and

13 (4) a detailed description of when and how the claimant obtained an
14 interest in the property.

15 (e) Substantial compliance with subsection (d) shall be deemed
16 sufficient.

17 (f) It is permissible to assert the right against self-incrimination in an
18 answer. If a claimant asserts the right, the court, in the court's discretion,
19 may draw an adverse inference from the assertion against the claimant.
20 The adverse inference shall not, by itself, be the basis of a judgment
21 against the claimant.

22 (g) The answer shall be filed within 21 days after service of the civil
23 in rem complaint.

24 (h) ~~The issue shall be determined by the court alone.~~ The plaintiff's
25 attorney shall have the initial burden of proving the interest in the property
26 is subject to forfeiture ~~by a preponderance of the evidence beyond a~~
27 *reasonable doubt*. If the state proves the interest in the property is subject
28 to forfeiture, the claimant has the burden of showing by a preponderance
29 of the evidence that the claimant has an interest in the property which is
30 not subject to forfeiture.

31 (i) If the plaintiff's attorney fails to meet the burden of proof for
32 forfeiture, or a claimant establishes by a preponderance of the evidence
33 that the claimant has an interest that is exempt under the provisions of
34 K.S.A. 60-4106, and amendments thereto, the court shall order the interest
35 in the property returned or conveyed to the claimant. *The claimant shall*
36 *not be assessed a fee for storage or any other fee related to the property.*
37 The court shall order all other property forfeited to the seizing agency and
38 conduct further proceedings pursuant to K.S.A. 60-4116 and 60-4117, and
39 amendments thereto.

40 Sec. 8. K.S.A. 2022 Supp. 60-4114 is hereby amended to read as
41 follows: 60-4114. (a) (1) A judicial in personam forfeiture proceeding
42 brought by the plaintiff's attorney pursuant to an in personam civil action
43 alleging conduct giving rise to forfeiture is also subject to the provisions of

1 this section. If a forfeiture is authorized by this act, it shall be ordered by
2 the court in the in personam action. The action shall be in addition to or in
3 lieu of in rem forfeiture procedures.

4 (2) In any proceeding pursuant to this section, the court, on
5 application of the plaintiff's attorney, may enter any order authorized by
6 K.S.A. 60-4112, and amendments thereto.

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

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

13 (2) a provision of notice would jeopardize the availability of the
14 property for forfeiture.

15 (c) Notice of the issuance of a temporary restraining order and an
16 opportunity for a hearing shall be given to persons known to have an
17 interest in the property. *Such persons shall be entitled to assistance of*
18 *counsel. If it is determined that a person is not able to employ counsel, the*
19 *court shall appoint an attorney from the panel for indigents' defense*
20 *services or otherwise in accordance with the applicable system for*
21 *providing legal defense services for indigent persons prescribed by the*
22 *state board of indigents' defense services. A hearing shall be held at the*
23 *earliest possible date in accordance with the applicable civil rule and shall*
24 *be limited to the issues of whether:*

25 (1) There is a probability that the seizing agency will prevail on the
26 issue of forfeiture and that failure to enter the order could result in the
27 property being destroyed, conveyed, alienated, encumbered, further
28 encumbered, disposed of, purchased, received, removed from the
29 jurisdiction of the court, concealed, or otherwise made unavailable for
30 forfeiture; and

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

34 (d) On a determination of liability of a person for conduct giving rise
35 to forfeiture under this act, the court shall enter a judgment of forfeiture of
36 the property found to be subject to forfeiture described in the complaint
37 and shall also authorize the plaintiff's attorney or any law enforcement
38 officer to seize all property ordered forfeited which was not previously
39 seized or is not then under seizure. Following the entry of an order
40 declaring the property forfeited, the court, on application of the plaintiff's
41 attorney, may enter any appropriate order to protect the interest of the
42 seizing agency in the property ordered forfeited. *If no determination of*
43 *liability is made pursuant to this subsection, the property that was seized*

1 *shall be returned to the person known to have an interest in the property*
 2 *within 7 days. Such person shall not be assessed a fee for storage or any*
 3 *other fee related to the property.*

4 (e) Following the entry of an order of forfeiture under subsection (d),
 5 the plaintiff's attorney may give notice of pending forfeiture, in the manner
 6 provided in K.S.A. 60-4109, and amendments thereto, to all owners and
 7 interest holders who have not previously been given notice.

8 (f) An owner of or interest holder in property that has been forfeited
 9 and whose claim is not precluded may file a claim as described in K.S.A.
 10 60-4111, and amendments thereto, within 60 days after initial notice of
 11 pending forfeiture or after notice under subsection (e), whichever is earlier.
 12 *An owner of or interest holder in property may demand a jury trial*
 13 *pursuant to K.S.A. 60-238, and amendments thereto, and shall be entitled*
 14 *to assistance of counsel.* If the seizing agency does not recognize the
 15 claimed exemption, the plaintiff's attorney shall file a complaint and the
 16 court shall hold the hearing and determine the claim, without a jury, in the
 17 manner provided for in rem judicial forfeiture actions in K.S.A. 60-4113,
 18 and amendments thereto.

19 (g) In accordance with findings made at the hearing, the court may
 20 amend the order of forfeiture if the court determines that any claimant has
 21 established by a preponderance of the evidence that the claimant has an
 22 interest in the property and that the claimant's interest is exempt under
 23 K.S.A. 60-4106, and amendments thereto.

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

28 Sec. 9. K.S.A. 2022 Supp. 60-4117 is hereby amended to read as
 29 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
 30 thereto: (a) When property is forfeited under this act, the law enforcement
 31 agency may:

32 (1) Retain such property for official use or transfer the custody or
 33 ownership to any local; ~~or state or federal~~ agency, subject to any lien
 34 preserved by the court;

35 (2) *transfer the custody or ownership to any federal agency if the*
 36 *property was seized and forfeited pursuant to federal law;*

37 (3) destroy or use for investigative or training purposes, any illegal or
 38 controlled substances and equipment or other contraband, provided that
 39 materials necessary as evidence shall be preserved;

40 ~~(3)~~(4) sell property which is not required by law to be destroyed and
 41 which is not harmful to the public:

42 (A) All property, except real property, designated by the seizing
 43 agency to be sold shall be sold at public sale to the highest bidder for cash

1 without appraisal. The seizing agency shall first cause notice of the sale to
2 be made by publication at least once in an official county newspaper as
3 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
4 include the time, place, and conditions of the sale and description of the
5 property to be sold. Nothing in this subsection shall prevent a state agency
6 from using the state surplus property system and such system's procedures
7 shall be sufficient to meet the requirements of this subsection.

8 (B) Real property may be sold pursuant to subsection (a)(3)(A), or
9 the seizing agency may contract with a real estate company, licensed in
10 this state, to list, advertise and sell such real property in a commercially
11 reasonable manner.

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

15 ~~(4)(5)~~ salvage the property, subject to any lien preserved by the court.

16 (b) When firearms are forfeited under this act, the firearms in the
17 discretion of the seizing agency, shall be destroyed, used within the seizing
18 agency for official purposes, traded to another law enforcement agency for
19 use within such agency or given to the Kansas bureau of investigation for
20 law enforcement, testing, comparison or destruction by the Kansas bureau
21 of investigation forensic laboratory.

22 (c) *Any cash or negotiable instruments forfeited under this act and*
23 *the proceeds of any sale shall be distributed in the following order of*
24 *priority:*

25 ~~(1) For satisfaction of any court preserved security interest or lien, or~~
26 ~~in the case of a violation, as defined by K.S.A. 60-4104(i), and~~
27 ~~amendments thereto, the proceeds shall be remitted to the state treasurer in~~
28 ~~accordance with the provisions of K.S.A. 75-4215, and amendments~~
29 ~~thereto. Upon receipt of such remittance, the state treasurer shall deposit~~
30 ~~the entire amount into the state treasury to the credit of the medicaid fraud~~
31 ~~reimbursement fund;~~

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~~
38 ~~assistant, 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), in~~
40 ~~an uncontested forfeiture nor 20% of the total proceeds, less the amounts~~
41 ~~of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be~~
42 ~~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 salary
2 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
6 attorney or other governmental agency's attorney deems appropriate,
7 including 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
12 adopting a county or district attorney's budget;

13 (B) if the plaintiff's attorney is the attorney general and the conduct
14 and offense giving rise to forfeiture is pursuant to K.S.A. 60-4104(i), and
15 amendments thereto, fees shall not exceed 15% of the total proceeds, less
16 the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor
17 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in
18 a contested forfeiture. Such fees shall be remitted to the state treasurer in
19 accordance with the provisions of K.S.A. 75-4215, and amendments
20 thereto. Upon receipt of each such remittance, the state treasurer shall
21 deposit the entire amount in the state treasury to the credit of the medicaid
22 fraud prosecution revolving fund. Moneys paid into the medicaid fraud
23 prosecution revolving fund pursuant to this subsection shall be
24 appropriated to the attorney general for use by the attorney general in the
25 investigation and prosecution of medicaid fraud and abuse; or

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

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

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

32 (1) If the law enforcement agency is a state agency, the entire amount
33 shall be deposited in the state treasury and credited to such agency's state
34 forfeiture fund. There is hereby established in the state treasury the
35 following state funds: Kansas bureau of investigation state forfeiture fund,
36 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
37 highway patrol state forfeiture fund, Kansas department of corrections
38 state forfeiture fund and Kansas national guard counter drug state
39 forfeiture fund. Expenditures from the Kansas bureau of investigation state
40 forfeiture fund shall be made upon warrants of the director of accounts and
41 reports issued pursuant to vouchers approved by the attorney general or by
42 a person or persons designated by the attorney general. Expenditures from
43 the Kansas attorney general's state medicaid fraud forfeiture fund shall be

1 made upon warrants of the director of accounts and reports issued pursuant
2 to vouchers approved by the attorney general or by a person or persons
3 designated by the attorney general. Expenditures from the Kansas highway
4 patrol state forfeiture fund shall be made upon warrants of the director of
5 accounts and reports issued pursuant to vouchers approved by the
6 superintendent of the highway patrol or by a person or persons designated
7 by the superintendent. Expenditures from the Kansas department of
8 corrections state forfeiture fund shall be made upon warrants of the
9 director of accounts and reports issued pursuant to vouchers approved by
10 the secretary of the department of corrections or by a person or persons
11 designated by the secretary. Expenditures from the Kansas national guard
12 counter drug state forfeiture fund shall be made upon warrants of the
13 director of accounts and reports issued pursuant to vouchers approved by
14 the adjutant general of Kansas or by a person or persons designated by the
15 adjutant general.

16 (2) If the law enforcement agency is a city or county agency, the
17 entire amount shall be deposited in such city or county treasury and
18 credited to a special law enforcement trust fund.

19 (e) (1) 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 the
25 normal city, county or state appropriation system and shall be used for
26 such special, additional law enforcement purposes specified in subsection
27 (e)(2) as the law enforcement agency head deems appropriate. Neither
28 future forfeitures nor the proceeds from such forfeitures shall be used in
29 planning or adopting a law enforcement agency's budget.

30 (2) Moneys in the funds described in subsection (e)(1) shall be used
31 only for the following special, additional law enforcement purposes:

32 (A) The support of investigations and operations that further the law
33 enforcement agency's goals or missions;

34 (B) the training of investigators, prosecutors and sworn and non-
35 sworn law enforcement personnel in any area that is necessary to perform
36 official law enforcement duties;

37 (C) the costs associated with the purchase, lease, construction,
38 expansion, improvement or operation of law enforcement or detention
39 facilities used or managed by the recipient agency;

40 (D) the costs associated with the purchase, lease, maintenance or
41 operation of law enforcement equipment for use by law enforcement
42 personnel that supports law enforcement activities;

43 (E) the costs associated with the purchase of multi-use equipment and

1 operations used by both law enforcement and non-law enforcement
2 personnel;

3 (F) the costs associated with a contract for a specific service that
4 supports or enhances law enforcement;

5 (G) the costs associated with travel and transportation to perform or
6 in support of law enforcement duties and activities;

7 (H) the costs associated with the purchase of plaques and certificates
8 for law enforcement personnel in recognition of a law enforcement
9 achievement, activity or training;

10 (I) the costs associated with conducting awareness programs by law
11 enforcement agencies;

12 (J) the costs associated with paying a state or local law enforcement
13 agency's matching contribution or share in a state or federal grant program
14 for items other than salaries;

15 (K) cash transfers from one state or local law enforcement agency to
16 another in support of the law enforcement agency's goals or missions; and

17 (L) transfers from a state or local law enforcement agency to a state,
18 county or local governmental agency or community non-profit
19 organization in support of the law enforcement agency's goals or missions.

20 (3) Moneys in the funds described in subsection (c)(1) shall be
21 separated and accounted for in a manner that allows accurate tracking and
22 reporting of deposits and expenditures of the following categories of
23 money:

24 (A) Proceeds from forfeiture credited to the fund pursuant to this
25 section;

26 (B) proceeds from pending forfeiture actions under this act; and

27 (C) proceeds from forfeiture actions under federal law.

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

31 (g) (1) If the law enforcement agency is a state agency, such agency
32 shall compile and submit a forfeiture fund report to the legislature on or
33 before February 1 of each year. Such report shall include, but not be
34 limited to: (A) The fund balance on December 1; and (B) the deposits and
35 expenditures for the previous 12-month period ending December 1.

36 (2) If the law enforcement agency is a city or county agency, such
37 agency shall compile and submit annually a special law enforcement trust
38 fund report to the entity that has budgetary authority over such agency and
39 such report shall specify, for such period, the type and approximate value
40 of the forfeited property received, the amount of any forfeiture proceeds
41 received and how any of those proceeds were expended.

42 (3) The provisions of this subsection shall expire on July 1, 2019
43 *remitted to the state treasurer in accordance with the provisions of K.S.A.*

1 75-4215, and amendments thereto. Upon receipt of each such remittance,
2 the state treasurer shall deposit the entire amount in the state treasury to
3 the credit of the state general fund.

4 Sec. 10. K.S.A. 2022 Supp. 60-4127 is hereby amended to read as
5 follows: 60-4127. (a) ~~On or before July 1, 2019,~~ The Kansas bureau of
6 investigation shall establish the Kansas asset seizure and forfeiture
7 repository. The repository shall gather information concerning each seizure
8 for forfeiture made by a seizing agency pursuant to the Kansas standard
9 asset seizure and forfeiture act including, but not limited to, the following:

10 (1) The name of the seizing agency or the name of the lead agency if
11 part of a multi-jurisdictional task force;

12 (2) the county where the seizure occurred;

13 (3) the date and time the seizure occurred;

14 (4) any applicable agency or district court case numbers for the
15 seizure;

16 (5) a description of the initiating law enforcement activity leading to
17 the seizure;

18 (6) a description of the specific location where the seizure occurred;

19 (7) ~~the conduct or~~ offense giving rise to the forfeiture;

20 (8) a description of the type of property seized and the estimated
21 value;

22 (9) a description of the type of contraband seized and the estimated
23 value;

24 (10) ~~whether the date~~ criminal charges were filed for an offense
25 related to the forfeiture ~~and, if so, the court and case number information~~
26 for the criminal charges *and the date of conviction*;

27 (11) a description of the final disposition of the forfeiture action,
28 including a description of the disposition of any claim or exemption
29 asserted under this act;

30 (12) whether the forfeiture was transferred to the federal government
31 for disposition;

32 (13) the total cost of the forfeiture action, including attorney fees; and

33 (14) the total amount of proceeds from the forfeiture action,
34 specifying the amount ~~received by the seizing agency and the amount~~
35 ~~received by any other agency or person remitted to the treasurer for~~
36 *deposit into the state general fund.*

37 (b) ~~On and after July 1, 2019,~~ The Kansas bureau of investigation
38 shall maintain the repository and an associated public website. ~~On or~~
39 ~~before July 1, 2019,~~ The Kansas bureau of investigation shall promulgate
40 rules and regulations to implement this section.

41 (c) ~~On and after July 1, 2019,~~ Each seizing agency shall report
42 information concerning each seizure for forfeiture to the Kansas asset
43 seizure and forfeiture repository as required by this section and the rules

1 and regulations promulgated pursuant to this section. The prosecuting
2 attorney shall submit information concerning each forfeiture action to the
3 seizing agency within 30 days after the final disposition of the forfeiture.
4 The seizing agency shall submit the required information to the repository
5 within 60 days after the final disposition of the forfeiture.

6 (d) On or before February 1, 2020, and annually on or before
7 February 1 thereafter, each law enforcement agency shall compile and
8 submit a forfeiture fund report to the Kansas asset seizure and forfeiture
9 repository as required by this section and the rules and regulations
10 promulgated pursuant to this section.

11 (1) If the law enforcement agency is a state agency, the report shall
12 include, but not be limited to:

13 (A) The agency's state forfeiture fund balance on January 1 and
14 December 31 of the preceding calendar year; and

15 (B) the total amount of the deposits and a listing, by category, of
16 expenditures from January 1 through December 31 of the preceding
17 calendar year.

18 (2) If the law enforcement agency is a city or county agency, the
19 report shall include, but not be limited to:

20 (A) The agency's special law enforcement trust fund balance on
21 January 1 and December 31 of the preceding calendar year; and

22 (B) the total amount of the deposits and a listing, by category, of
23 expenditures from January 1 through December 31 of the preceding
24 calendar year.

25 (3) The report shall separate and account for:

26 (A) Deposits and expenditures from proceeds from forfeiture credited
27 to the fund pursuant to K.S.A. 60-4117, and amendments thereto;

28 (B) deposits and expenditures from proceeds from forfeiture actions
29 under federal law; and

30 (C) amounts held by the agency related to pending forfeiture actions
31 under the Kansas standard asset seizure and forfeiture act.

32 (e) On March 1, 2020, and annually on March 1 thereafter, the
33 Kansas bureau of investigation shall determine whether each agency's
34 financial report matches the agency's seizing report. If the Kansas bureau
35 of investigation determines that an agency's financial report does not
36 substantially match that agency's seizing report or the agency has not
37 submitted a financial report, the Kansas bureau of investigation shall
38 notify such agency of the difference in reports. Such agency shall correct
39 the reporting error within 30 days. If the reporting error is not corrected
40 within 30 days, the Kansas bureau of investigation shall send such law
41 enforcement agency, and the county or district attorney for the county in
42 which such law enforcement agency is located, a certified letter notifying
43 such agency that it is out of compliance. Upon receipt of such letter, no

1 forfeiture proceedings shall be filed on property seized by such law
2 enforcement agency. When such law enforcement agency has achieved
3 compliance with the reporting requirements, the bureau shall send such
4 law enforcement agency, and the county or district attorney for the county
5 in which such law enforcement agency is located, a certified letter
6 notifying such agency that it is in compliance and forfeiture proceeding
7 filings may continue pursuant to this act. Annually, on or before April 15,
8 the Kansas bureau of investigation shall report to the legislature any law
9 enforcement agencies in the state that have failed to come into compliance
10 with the reporting requirements in subsection (d).

11 Sec. 11. K.S.A. 2022 Supp. 60-4104, 60-4105, 60-4106, 60-4107, 60-
12 4109, 60-4112, 60-4113, 60-4114, 60-4117 and 60-4127 are hereby
13 repealed.

14 Sec. 12. This act shall take effect and be in force from and after its
15 publication in the statute book.