

HOUSE BILL No. 2681

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning firearms; relating to the disposition thereof by law
2 enforcement agencies; requiring all forfeited or seized firearms to be
3 disposed of in accordance with the Kansas code of criminal procedure;
4 amending K.S.A. 22-3904 and 32-1047 and K.S.A. 2021 Supp. 60-
5 4117 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 22-3904 is hereby amended to read as follows: 22-
9 3904. (H)(a) Upon final judgment that any real property is being or has
10 been used as a place where any of the unlawful activities set forth in
11 K.S.A. 22-3901, and amendments thereto, are carried on or permitted to be
12 carried on, the court may order that any house, room, building or other
13 structure located on such real estate be closed and padlocked for a period
14 of not more than two years, subject to modification in the manner provided
15 by K.S.A. 60-910, and amendments thereto, if the court finds that the
16 owner of the property knew or should have known under the
17 circumstances of the maintenance of a common nuisance on the property
18 and did not make a bona fide attempt to abate such nuisance under the
19 circumstances. The court may require, as part of the judgment, that the
20 owner, lessee, tenant or occupant enter into a bond to the state of Kansas,
21 in such amount and with security as the court may require, conditioned
22 that such owner, lessee, tenant or occupant will not within a period of two
23 years use or permit the use of such real estate in violation of law. If any
24 condition of such bond is violated, the whole amount may be recovered as
25 a penalty. In addition, the court may assess a civil penalty not to exceed
26 \$25,000 against any or all defendants, based upon the severity of the
27 nuisance and its duration. Such penalty shall be paid into the county
28 treasury, if recovered by a county or district attorney, and into the city
29 treasury, if recovered by a city attorney.

30 (2)(b) (1) *Except as provided in paragraph (2)*, upon final judgment
31 that any effects, equipment, paraphernalia, fixtures, appliances, musical
32 instruments or other personal property are designed for and have been used
33 in carrying on any of the unlawful activities set forth in K.S.A. 22-3901,
34 and amendments thereto, the court may order that such effects, equipment,
35 paraphernalia, fixtures, appliances, musical instruments and other personal
36 property be publicly destroyed by the sheriff or other law enforcement

1 officer or that such personal property be sold in the manner provided for
2 sales in execution of judgment.

3 (2) *If any of the personal property described in paragraph (1) is a*
4 *firearm, as defined in K.S.A. 2021 Supp. 21-5111, and amendments*
5 *thereto, or ammunition, then the court shall order such firearm or*
6 *ammunition to be disposed of in accordance with K.S.A. 2021 Supp. 22-*
7 *2512, and amendments thereto, except that the proceeds of any sale of*
8 *such firearm or ammunition shall be applied in accordance with this*
9 *section.*

10 ~~(3)~~(c) The proceeds of any sale of personal property pursuant to
11 subsection ~~(2)~~ (b) shall be applied as follows:

12 ~~(a)~~(1) First, to the fees and costs of the abatement or removal of the
13 nuisance and the sale;

14 ~~(b)~~(2) second, to the costs of closing the structure and keeping it
15 closed;

16 ~~(c)~~(3) third, to payment of the costs of the action;

17 ~~(d)~~(4) fourth, to payment of any civil penalty imposed pursuant to this
18 section or any fine imposed for contempt in the proceedings; *and*

19 ~~(e)~~(5) fifth, to the owner of the personal property.

20 ~~(4)~~(d) Subject to the provisions of subsection ~~(3)~~ (c), upon final
21 judgment for the state the court shall adjudge that any defendant who was
22 maintaining the common nuisance pay all costs, including a reasonable
23 fee, fixed by the court, to be paid to the prosecuting attorney. Such costs
24 shall be a lien upon any real property against which an order of abatement
25 is obtained, if the court finds that the owner of such property knew or
26 should have known under the circumstances of the maintenance of the
27 common nuisance on the property and did not make a bona fide attempt to
28 abate such nuisance under the circumstances.

29 ~~(5)~~(e) For purposes of this section, evidence of a bona fide attempt to
30 abate such nuisance by the owner of the property shall include, but not be
31 limited to, the filing of a written report, by such owner or at such owner's
32 direction, to the local law enforcement agency that the property is
33 suspected by the owner of the property of being used in maintaining and
34 carrying on any of the unlawful activities set forth in K.S.A. 22-3901, and
35 amendments thereto.

36 Sec. 2. K.S.A. 32-1047 is hereby amended to read as follows: 32-
37 1047. (a) Subject to the provisions in subsection (b), the department is
38 hereby empowered and directed to seize and possess any wildlife ~~which~~
39 *that* is taken, possessed, sold or transported unlawfully, and any steel trap,
40 snare or other device or equipment used in taking or transporting wildlife
41 unlawfully or during closed season. *Except as provided in subsection (c),*
42 the department is hereby authorized to:

43 (1) Offer the seized item, if the item is unlawfully taken wildlife

1 parts, to the landowner or tenant on whose property the wildlife parts were
2 unlawfully taken, ~~provided if:~~

- 3 (A) The wildlife parts are no longer needed as evidence;
4 (B) the location of the violation can be positively ascertained;
5 (C) there is no dispute between landowners or tenants as to who may
6 receive the wildlife parts;
7 (D) the landowner or tenant did not commit the violation for which
8 the wildlife parts were seized; and
9 (E) the wildlife parts are transferred within two years of adjudication
10 of the violation;

11 (2) sell the seized item, including wildlife parts with a dollar value,
12 and remit the proceeds to the state treasurer in accordance with the
13 provisions of K.S.A. 75-4215, and amendments thereto. ~~If the seized item~~
14 ~~is a firearm that has been forfeited pursuant to K.S.A. 22-2512, and~~
15 ~~amendments thereto, then it may be sold unless: (1) The firearm is~~
16 ~~significantly altered in any manner; or (2) the sale and public possession of~~
17 ~~such firearm is otherwise prohibited by law.~~ Upon receipt of each such
18 remittance, the state treasurer shall deposit the entire amount in the state
19 treasury to the credit of the wildlife fee fund;

20 (3) retain the seized item for educational, scientific or department
21 operational purposes; or

22 (4) destroy the seized item.

23 (b) The department shall give priority to disposing of unlawfully
24 taken wildlife items in accordance with the process provided for in
25 subsection (a)(1).

26 *(c) If the seized item is a firearm or ammunition that has been*
27 *forfeited pursuant to K.S.A. 22-2512, and amendments thereto, then such*
28 *firearm or ammunition shall be disposed of in accordance with K.S.A. 22-*
29 *2512, and amendments thereto, except that the proceeds from any sale of*
30 *such firearm or ammunition shall be remitted in accordance with*
31 *subsection (a)(2).*

32 Sec. 3. K.S.A. 2021 Supp. 60-4117 is hereby amended to read as
33 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
34 thereto: (a) When property is forfeited under this act, the law enforcement
35 agency may:

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

39 (2) destroy or use for investigative or training purposes, any illegal or
40 controlled substances and equipment or other contraband, ~~provided except~~
41 ~~that materials necessary as evidence shall be preserved;~~

42 (3) sell property ~~which~~ that is not required by law to be destroyed and
43 ~~which~~ that is not harmful to the public; or

1 (4) *salvage the property, subject to any lien preserved by the court.*
 2 (b) (1) (A) *Except as provided in paragraph (2), all property, except*
 3 *real property, designated by the seizing agency to be sold shall be sold at*
 4 *public sale to the highest bidder for cash without appraisal. The seizing*
 5 *agency shall first cause notice of the sale to be made by publication at least*
 6 *once in an official county newspaper as defined by K.S.A. 64-101, and*
 7 *amendments thereto. Such notice shall include the time, place, and*
 8 *conditions of the sale and description of the property to be sold. Nothing in*
 9 *this subsection shall prevent a state agency from using the state surplus*
 10 *property system and such system's procedures shall be sufficient to meet*
 11 *the requirements of this subsection.*

12 (B) Real property may be sold pursuant to ~~subsection (a)(3)(A)~~
 13 *paragraph (1)(A), or the seizing agency may contract with a real estate*
 14 *company, licensed in this state, to list, advertise and sell such real property*
 15 *in a commercially reasonable manner.*

16 (C) No employee or public official of any agency involved in the
 17 investigation, seizure or forfeiture of seized property may purchase or
 18 attempt to purchase such property; ~~or~~

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

20 ~~(b)(2) When firearms or ammunition are forfeited under this act, the~~
 21 ~~firearms in the discretion of the seizing agency, shall be destroyed, used~~
 22 ~~within the seizing agency for official purposes, traded to another law~~
 23 ~~enforcement agency for use within such agency or given to the Kansas~~
 24 ~~bureau of investigation for law enforcement, testing, comparison or~~
 25 ~~destruction by the Kansas bureau of investigation forensic laboratory such~~
 26 ~~firearms or ammunition shall be disposed of in accordance with K.S.A.~~
 27 ~~2021 Supp. 22-2512, and amendments thereto, except that the proceeds of~~
 28 ~~any sale of such firearms or ammunition shall be distributed in~~
 29 ~~accordance with this section.~~

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

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

39 (2) thereafter, for payment of all proper expenses of the proceedings
 40 for forfeiture and disposition, including expenses of seizure, inventory,
 41 appraisal, maintenance of custody, preservation of availability, advertising,
 42 service of process, sale and court costs;

43 (3) reasonable attorney fees:

1 (A) If the plaintiff's attorney is a county or district attorney, an
2 assistant, or another governmental agency's attorney, fees shall not exceed
3 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
4 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
5 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
6 deposited in the county or city treasury and credited to the special
7 prosecutor's trust fund. Moneys in such fund shall not be considered a
8 source of revenue to meet normal operating expenditures, including salary
9 enhancement. Such fund shall be expended by the county or district
10 attorney, or other governmental agency's attorney through the normal
11 county or city appropriation system and shall be used for such additional
12 law enforcement and prosecutorial purposes as the county or district
13 attorney or other governmental agency's attorney deems appropriate,
14 including educational purposes. All moneys derived from past or pending
15 forfeitures shall be expended pursuant to this act. The board of county
16 commissioners shall provide adequate funding to the county or district
17 attorney's office to enable such office to enforce this act. Neither future
18 forfeitures nor the proceeds therefrom shall be used in planning or
19 adopting a county or district attorney's budget;

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

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

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

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

39 (1) If the law enforcement agency is a state agency, the entire amount
40 shall be deposited in the state treasury and credited to such agency's state
41 forfeiture fund. There is hereby established in the state treasury the
42 following state funds: Kansas bureau of investigation state forfeiture fund,
43 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas

1 highway patrol state forfeiture fund, Kansas department of corrections
2 state forfeiture fund and Kansas national guard counter drug state
3 forfeiture fund. Expenditures from the Kansas bureau of investigation state
4 forfeiture fund shall be made upon warrants of the director of accounts and
5 reports issued pursuant to vouchers approved by the attorney general or by
6 a person or persons designated by the attorney general. Expenditures from
7 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
8 made upon warrants of the director of accounts and reports issued pursuant
9 to vouchers approved by the attorney general or by a person or persons
10 designated by the attorney general. Expenditures from the Kansas highway
11 patrol state forfeiture fund shall be made upon warrants of the director of
12 accounts and reports issued pursuant to vouchers approved by the
13 superintendent of the highway patrol or by a person or persons designated
14 by the superintendent. Expenditures from the Kansas department of
15 corrections state forfeiture fund shall be made upon warrants of the
16 director of accounts and reports issued pursuant to vouchers approved by
17 the secretary of the department of corrections or by a person or persons
18 designated by the secretary. Expenditures from the Kansas national guard
19 counter drug state forfeiture fund shall be made upon warrants of the
20 director of accounts and reports issued pursuant to vouchers approved by
21 the adjutant general of Kansas or by a person or persons designated by the
22 adjutant general.; *and*

23 (2) if the law enforcement agency is a city or county agency, the
24 entire amount shall be deposited in such city or county treasury and
25 credited to a special law enforcement trust fund.

26 (e) (1) Moneys in the Kansas bureau of investigation state forfeiture
27 fund, Kansas highway patrol state forfeiture fund, Kansas department of
28 corrections state forfeiture fund, the special law enforcement trust funds
29 and the Kansas national guard counter drug state forfeiture fund shall not
30 be considered a source of revenue to meet normal operating expenses.
31 Such funds shall be expended by the agencies or departments through the
32 normal city, county or state appropriation system and shall be used for
33 such special, additional law enforcement purposes specified in subsection
34 (e)(2) as the law enforcement agency head deems appropriate. Neither
35 future forfeitures nor the proceeds from such forfeitures shall be used in
36 planning or adopting a law enforcement agency's budget.

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

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

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

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

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

7 (E) the costs associated with the purchase of multi-use equipment and
8 operations used by both law enforcement and non-law enforcement
9 personnel;

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

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

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

17 (I) the costs associated with conducting awareness programs by law
18 enforcement agencies;

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

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

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

27 (3) Moneys in the funds described in subsection (e)(1) shall be
28 separated and accounted for in a manner that allows accurate tracking and
29 reporting of deposits and expenditures of the following categories of
30 money:

31 (A) Proceeds from forfeiture credited to the fund pursuant to this
32 section;

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

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

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

38 ~~(g) (1) If the law enforcement agency is a state agency, such agency~~
39 ~~shall compile and submit a forfeiture fund report to the legislature on or~~
40 ~~before February 1 of each year. Such report shall include, but not be~~
41 ~~limited to:~~

42 ~~(A) The fund balance on December 1; and~~

43 ~~(B) the deposits and expenditures for the previous 12-month period~~

1 ending December 1.

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

8 ~~(3) The provisions of this subsection shall expire on July 1, 2019.~~

9 Sec. 4. K.S.A. 22-3904 and 32-1047 and K.S.A. 2021 Supp. 60-4117
10 are hereby repealed.

11 Sec. 5. This act shall take effect and be in force from and after its
12 publication in the statute book.