

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

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.