

AN ACT relating to criminal asset forfeiture.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;
 - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;
 - (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;
 - (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;

- (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
- (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;
- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;
 - 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission; and
 - 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense~~[relating to marijuana or salvia]~~;
- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real

and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any *felony offense*~~[violation]~~ of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him or her to have been committed or omitted without his or her knowledge or consent.~~[It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence.]~~ The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that *personal and* real property is forfeitable under this paragraph; and

- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a *felony offense*~~[violation]~~ of this chapter ~~[excluding any misdemeanor offense relating to marijuana, synthetic drugs, or salvia]~~, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be

subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he or she is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 2. KRS 218A.415 is amended to read as follows:

- (1) Personal property subject to forfeiture under this chapter may be seized by any law enforcement agency upon process issued by any judge that is empowered to issue a warrant of arrest or search warrant and in whose jurisdiction the property is located. Seizure of personal property without process may be made if:
- (a) The seizure is incident to an arrest or a search under a search warrant;
 - (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter; *or*
 - (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety[; ~~or~~]
 - ~~{(d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture pursuant to this chapter}.~~
- (2) Property taken or detained under this section ~~{shall not be subject to replevin, but }~~shall be deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the *seized property or*

criminal proceeding triggering seizure of property~~[forfeiture proceedings]~~. Any law enforcement agency seizing property pursuant to this section shall include a detailed list of all items seized in the charging documents of the underlying criminal offense triggering forfeiture. When property is seized under this chapter, the law enforcement agency may:

- (a) Remove the property to a place designated by it; or
 - (b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- (3) Any party whose property has been seized pursuant to this section may move the court with jurisdiction over the seized property or the criminal proceeding triggering the seizure of property to hold a seizure confirmation hearing within seven (7) days of the filing of the motion. In order for a court to confirm the seizure, the Commonwealth must prove by clear and convincing evidence that it is likely to secure a felony conviction for an offense under KRS Chapter 218A and that the property would be subject to forfeiture pursuant to Section 1 of this Act. If the Commonwealth meets the burden imposed by this subsection, the court may order the release of a portion of the seized money or property to pay for the defendant's legal representation in the underlying criminal case triggering forfeiture. If the Commonwealth fails to meet the burden imposed by this subsection, the court shall return the property to the party who challenged the seizure.
- (4) Real property subject to forfeiture may be seized only pursuant to final judgment and order of forfeiture or upon order of the court having jurisdiction over the property. The order may be obtained pursuant to this subsection upon application of the Commonwealth.
- (a) Upon receipt of the application, the court shall immediately enter an order setting a date for hearing on the matter no fewer than five (5) days nor more

than ten (10) days after the filing of the application. At the hearing:

1. The court shall take evidence on the issues of whether the property named in the application is forfeit and seizure is necessary to preserve the property pending final judgment.
 2. The Commonwealth shall have the initial burden of showing the existence of probable cause for forfeiture of the property and the necessity of seizure. On the showing by the Commonwealth, the respondent shall have the burden of showing by a preponderance of the evidence that the property is not subject to forfeiture.
 3. ~~[Evidence at the seizure hearing may not be suppressed on the ground that its acquisition by search or seizure violated constitutional protections applicable in criminal cases relating to unreasonable searches or seizures.]~~
 4. If the court makes a determination in favor of the Commonwealth, it shall enter an order authorizing the seizure of the property.
 - ~~5.~~ The court may, in its discretion, permit the owner of the property to post security equal to the value of the property in lieu of seizure.
- (b) A temporary seizure order pursuant to this section may be entered on application without notice or an opportunity for a hearing if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture and the need to preserve the availability of property through immediate seizure outweighs the hardship that an immediate seizure may cause the owner. The temporary order shall expire ten (10) days after the date on which it is entered or at the time of the hearing provided for in paragraph (a) of this subsection.

➔Section 3. KRS 218A.420 is amended to read as follows:

- (1) All property which is subject to forfeiture under this chapter shall be disposed of in

accordance with this section.

- (2) All controlled substances which are seized and forfeited under this chapter shall be ordered destroyed by the order of the trial court unless there is a legal use for them, in which case they may be sold to a proper buyer as determined by the Cabinet for Health and Family Services by promulgated regulations. Property other than controlled substances may be destroyed on order of the trial court.
- (3) When property other than controlled substances is forfeited under this chapter and not retained for official use, it may be sold for its cash value. Any sale shall be a public sale advertised pursuant to KRS Chapter 424.
- (4) Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows:
 - (a) Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes; and
 - (b) Fifteen percent (15%) shall be paid to the Office of the Attorney General or, in the alternative, the fifteen percent (15%) shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of this section. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

- (5) The Attorney General, after consultation with the Prosecutors Advisory Council, shall promulgate administrative regulations to establish the specific purposes for which these funds shall be expended.

- (6) Each state and local law enforcement agency that is authorized to seize~~[seizes]~~ property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving any forfeited property, adopt policies relating to the seizure, maintenance, storage, and care of property pending forfeiture which are in compliance with or substantially comply with the model policy for seizure of forfeitable assets by law enforcement agencies published by the Department of Criminal Justice Training. However, a state or local law enforcement agency may adopt policies that are more restrictive on the agency than those contained in the model policy and that fairly and uniformly implement the provisions of this chapter.
- (7) Each state or local law enforcement agency that is authorized to seize~~[seizes]~~ property for the purpose of forfeiture under KRS 218A.410 shall, prior to receiving forfeited property, have one (1) or more officers currently employed attend asset-forfeiture training approved by the Kentucky Law Enforcement Council, which shall approve a curriculum of study for asset-forfeiture training.
- (8) (a) Other provisions of this section notwithstanding and subject to the limitations of paragraph (b) of this subsection, any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter may be retained by the seizing agency for official use or sold within its discretion. Proceeds from the sale shall remain with the agency. The moneys shall be utilized for purposes consistent with KRS 218A.405 to 218A.460. The seizing agency shall be required to pay any bona fide perfected security interest on any vehicle so forfeited.
- (b) Any vehicle seized by a law enforcement agency which is forfeited pursuant to this chapter and which has been determined by a state or local law enforcement agency to be contaminated with methamphetamine as defined by KRS 218A.1431 shall not be used, resold, or salvaged for parts, but instead shall be destroyed or salvaged only for scrap metal. Any vehicle which is

forfeited pursuant to this chapter and has only transported prepackaged materials or products, precursors, or any other materials which have not been subjected to extraction either directly or indirectly from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis extraction, shall not be deemed contaminated with methamphetamine under this section.

- (9) When money or property is seized in a joint operation involving more than one (1) law enforcement agency or prosecutorial office, the apportionment of funds to each pursuant to subsection (4) of this section shall be made among the agencies in a manner to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

➔Section 4. KRS 218A.440 is amended to read as follows:

- (1) Each law enforcement agency ***authorized to seize***~~[seizing]~~ money or property pursuant to KRS 218A.415 shall, at the close of each fiscal year, file a statement with the Auditor of Public Accounts, and with the secretary of justice and public safety containing, a detailed ***individual accounting***~~[listing]~~ of all money and property seized in that fiscal year and the disposition ***of all forfeited property or the proceeds from the sale of forfeited property***~~[thereof]~~. The listing shall identify all property so seized.

- (2) Each law enforcement agency authorized to seize money or property pursuant to Section 2 of this Act shall file an annual statement pursuant to this section even if the agency did not seize or forfeit any property pursuant to KRS Chapter 218A.**

- ~~(3)~~~~(2)~~ Any agency failing to report as required by this section shall be liable to the state for the full value of all property and money so seized. The Attorney General

shall institute civil actions for recovery of money or property obtained or retained in violation of KRS 218A.405 to 218A.460.

~~(4)~~~~(3)~~ The Auditor of Public Accounts, the secretary of justice and public safety or the Attorney General may at any time initiate an inquiry to determine that property is being forfeited as required by KRS 218A.405 to 218A.460.