

AN ACT relating to criminal asset forfeiture for controlled substance offenses.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The purpose of Sections 1 to 17 of this Act is to:

- (1) Deter criminal activity by reducing its economic incentives;*
- (2) Increase the pecuniary loss from criminal activity;*
- (3) Protect against the wrongful forfeiture of property; and*
- (4) Ensure that only criminal forfeiture is allowed in this Commonwealth.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) When a person is convicted of a felony offense under KRS Chapter 218A, the court, consistent with this chapter, may order the person to forfeit:

- (a) Any property derived from the commission of the offense;*
- (b) Any property directly traceable to property derived from the commission of the offense;*
- (c) Any property used to facilitate the commission of any offense in violation of this chapter; and*
- (d) Any contraband controlled substances cultivated, manufactured, possessed, transferred, offered for sale, or trafficked in violation of this chapter.*

(2) A court shall not order a person to forfeit the following:

- (a) Real property which qualifies for the homestead exemption pursuant to KRS 132.810;*
- (b) Any personal or real property used in the commission of a misdemeanor offense under this chapter;*
- (c) Any conveyance with a fair market value of less than five thousand dollars (\$5,000);*

- (d) Any conveyance used by a person as a common carrier in the transaction of business as a common carrier unless it is proven by clear and convincing evidence that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
- (e) Any conveyance used in the commission of an offense in violation of this chapter without the owner's knowledge or consent; and
- (f) Any currency worth less than two hundred (\$200) dollars.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Personal property subject to forfeiture may be seized at any time without a court order if:

- (1) The seizure of personal property is incident to a lawful arrest or a search lawfully conducted;
- (2) The personal property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth; or
- (3) The Commonwealth has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the personal property and that the personal property is forfeitable under this chapter.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) At the request of the Commonwealth, a court may issue an ex parte preliminary warrant to attach, seize, or secure personal property for which forfeiture is sought and to provide for its custody. If a preliminary warrant is issued pursuant to this section, the Commonwealth must move to confirm any such temporary seizure using the procedure established in Section 6 of this Act.
- (2) If the Commonwealth fails to move the court to confirm a temporary seizure, the defendant or third party claimant may move the court for such a hearing, or the

court may make a motion for a temporary seizure confirmation hearing sua sponte.

(3) If the Commonwealth seeks to attach, seize, or secure money or other assets held in a bank or credit union under this section, the Commonwealth shall include in its application for a preliminary warrant a motion for a hearing to confirm any temporary seizure within seven (7) days of the issuance of any warrant pursuant to this section.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) When property is seized, the law enforcement officer shall give an itemized receipt to the person possessing the property or, in the absence of any person, leave a receipt in the place where the property was found.

(2) The charging documents of any underlying criminal offense triggering seizure or forfeiture under this chapter shall include an itemized list of all items seized.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Any defendant or third party claimant may file a motion to challenge any seizure by the Commonwealth pursuant to this chapter at any time after property has been seized by the Commonwealth.

(2) If an indictment for a felony offense in this chapter has been filed, a motion for a temporary seizure confirmation hearing shall be filed in the same proceedings. If no felony indictment has been filed, the defendant or third party claimant may file a motion for a temporary seizure confirmation hearing in the Circuit Court of competent jurisdiction. Any motion for a temporary seizure confirmation hearing filed prior to any felony indictment may be consolidated with any later indictment of an underlying felony offense triggering seizure.

(3) The Commonwealth shall move the court to confirm any temporary seizure of

property pursuant to this chapter within thirty (30) days of any seizure under this chapter unless an defendant or third party claimant has filed motion to challenge the seizure.

(4) In its motion to confirm a temporary seizure or in its response to a motion by an interested party, the Commonwealth shall list every item seized, the location where the item was seized, and each item's estimated fair market value.

(5) If the Commonwealth fails to move the court for a temporary seizure hearing within thirty (30) days, the court shall sua sponte order the return of any property pursuant to an unconfirmed seizure.

(6) The court shall only confirm a seizure if the Commonwealth shows by clear and convincing evidence that it will likely secure a conviction for the underlying criminal offense triggering the seizure and that the property seized is likely to be ordered forfeited.

(7) If the court confirms a temporary seizure, it may order the release of funds necessary for the defendant to pay for legal representation in the underlying criminal case triggering seizure or forfeiture.

(8) If the Commonwealth fails to show by clear and convincing evidence that it will likely secure a conviction in the underlying criminal action triggering seizure and that the property seized is likely to be forfeited, the court shall order the Commonwealth to return any seized property and shall pay reasonable attorney fees to any property owner or third party claimant who was a party to a temporary seizure confirmation hearing pursuant to this section.

(9) If the court confirms a temporary seizure by the Commonwealth pursuant to this section, the Commonwealth shall take all reasonable steps to protect the value of seized property until a final order of forfeiture is entered by a court pursuant to Section 2 of this Act.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO

READ AS FOLLOWS:

(1) After the Commonwealth has secured a criminal conviction for an underlying criminal offense which triggers seizure or forfeiture under this chapter, the Commonwealth shall move the court to set a hearing on the final forfeiture of any property subject to forfeiture under Section 2 of this Act. At the hearing, the Commonwealth must prove by clear and convincing evidence that:

(a) The underlying triggering offense is a violation of this chapter subject to forfeiture;

(b) The underlying triggering offense is established by proof of a criminal conviction; and

(c) The property is forfeitable under Section 2 of this Act.

(2) Nothing in this section prevents property from being forfeited by plea agreement approved by the presiding court.

(3) The court may waive the conviction requirement if the Commonwealth shows by clear and convincing evidence that the suspect:

(a) Is deceased;

(b) Has been deported by the United States government; or

(c) Has fled the jurisdiction after being arrested, charged with a crime that includes the forfeiture of property, and released on bail.

(4) Notwithstanding the provisions of this section, the property remains subject to claims by innocent owners, creditors, and other third parties with legitimate property interests pursuant to this chapter.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO

READ AS FOLLOWS:

(1) Seizure of real property shall only occur pursuant to a valid court order. A court may issue an order to seize or secure real property for which forfeiture is sought only after proper notice is given to any property owner.

(2) An owner of real property shall have an opportunity for a contested hearing to determine if the Commonwealth shows by clear and convincing evidence that it is likely to secure a conviction for the underlying criminal action triggering forfeiture and that the property seized is likely to be ordered forfeited.

(3) Nothing in this section prohibits the Commonwealth from seeking a lis pendens or restraining order to hinder the sale or destruction of the real property.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

Upon the Commonwealth's motion following conviction, the court may order the forfeiture of substitute property owned by the defendant up to the value of unreachable property that is beyond the court's jurisdiction or cannot be located through due diligence only if the Commonwealth proves by a clear and convincing evidence that the defendant intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The Commonwealth shall not seek personal money judgments or other remedies not provided for in this chapter.

(2) A defendant shall not be jointly and severally liable for forfeiture awards owed by other defendants. When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis or by any other means the court finds equitable.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) At the time of seizure or entry of a restraining order, the Commonwealth shall acquire provisional title to the seized property. Provisional title authorizes the Commonwealth to hold and protect the property.

(2) Title to the property vests with the Commonwealth when the court renders a final forfeiture verdict and relates back to the time when the Commonwealth acquired provisional title. However, the Commonwealth's title is subject to claims by third parties adjudicated under this chapter.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) At any time following determination of forfeiture by the trier of fact, the defendant may petition the court to determine whether the forfeiture is unconstitutionally excessive under either the state or federal constitution.

(2) The defendant has the burden of establishing that the forfeiture is grossly disproportional to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by the court without a jury.

(3) In determining whether the forfeiture of personal or real property is unconstitutionally excessive, the court shall consider all relevant factors, including but not limited to:

(a) The seriousness of the offense and its impact on the community, including the duration of the activity and the harm caused by the defendant;

(b) The extent to which the defendant participated in the offense;

(c) The extent to which the property was used in committing the offense;

(d) The sentence imposed for committing the crime subject to forfeiture; and

(e) Whether the offense was completed or attempted.

(4) In determining the value of the conveyance or real property subject to forfeiture, the court shall consider all relevant factors, including but not limited to:

(a) The fair market value of the property;

(b) The value of the property to the defendant including hardship to the defendant if the forfeiture is realized; and

(c) The hardship from the loss of a primary residence, motor vehicle, or other

property to the defendant's family members or others if the property is forfeited.

(5) The court shall not consider the value of the conveyance or real property to the Commonwealth in determining whether the forfeiture of a conveyance or real property is constitutionally excessive.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Property encumbered by a bona fide security interest is not subject to forfeiture. A person claiming a security interest shall establish by a preponderance of the evidence the validity of the interest perfected under the laws of the Commonwealth, a lease, or rental agreement.

(2) The prosecuting authority shall summarily return any seized property to the person with a bona fide security interest.

(3) If the person alleges a valid security interest but the state seeks to proceed with the forfeiture against the property, the Commonwealth shall prove by clear and convincing evidence that the person was a consenting party or privy to a violation of this chapter.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) The property of an innocent owner may not be forfeited. The process for determining whether a person is an innocent owner is set out in this section.

(2) A person who has an ownership interest in property subject to forfeiture existing at the time the illegal conduct giving rise to forfeiture occurred and who claims to be an innocent owner bears the burden of proving by a preponderance of the evidence that the person has a legal right, title, or interest in the property seized under this chapter.

(3) If subsection (2) of this section is satisfied and the Commonwealth seeks to

proceed with the forfeiture against the property, the Commonwealth shall prove by clear and convincing evidence that the person was a consenting party or privy to a violation of this chapter.

(4) A person who acquired an ownership interest in property subject to forfeiture after the commission of an offense giving rise to the forfeiture and who claims to be an innocent owner bears the burden of proving by a preponderance of the evidence that the person has legal right, title, or interest in the property seized under this chapter.

(5) If subsection (4) of this section is satisfied and the Commonwealth seeks to proceed with the forfeiture against the property, the Commonwealth shall prove by clear and convincing evidence that at the time the person acquired the property, the person:

(a) Had actual or constructive knowledge that the property was subject to forfeiture; or

(b) Was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(6) If the Commonwealth fails to meet its burden in subsection (3) or (5) of this section, the court shall find that the person is an innocent owner and shall order the Commonwealth to relinquish all claims of title to the property.

(7) A party to forfeiture litigation may appeal the court's decision regarding the seizure, forfeiture, and distribution of property under this chapter.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) At any time when unclaimed property or contraband held for evidentiary purposes is no longer needed for that purpose, the court may order it to be delivered to the State Treasurer within thirty (30) days, or, in the case of contraband, be destroyed pursuant to a court order.

- (2) If the forfeiture is granted, the court may order that the property be delivered to the State Treasurer within thirty (30) days.
- (3) Upon motion, the court may order that a portion of the currency seized or proceeds from public auction be used to pay reasonable nonpersonnel expenses of the seizure, storage, and maintenance of custody of any forfeited items.
- (4) All abandoned property shall be delivered to the State Treasurer within thirty (30) days.
- (5) The State Treasurer shall dispose of all noncurrency forfeited and abandoned property at public auction. The auction proceeds and forfeited currency shall be used to pay:
- (a) All outstanding recorded liens on the forfeited property;
 - (b) In accordance with a court order to pay reasonable nonpersonnel expenses;
 - (c) To provide the law enforcement agency responsible for the seizure with twenty percent (20%) of the total value of any forfeited currency or auction proceeds collected pursuant to this chapter; and
 - (d) To pay twenty percent (20%) of the total value of any forfeited currency or auction proceeds collected pursuant to this chapter the Office of the Attorney General or, in the alternative, the twenty percent (20%) of the total value of any forfeited currency or auction proceeds collected pursuant to this chapter 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.
- (6) Any remaining funds shall be deposited in the general fund.
- (7) The Attorney General, after consultation with the Prosecutors Advisory Council and the Kentucky Law Enforcement Council, shall promulgate administrative regulations to establish the specific purposes for which forfeited funds shall be expended.

(8) Funds derived from forfeited assets which are returned to any law enforcement agency pursuant to subsection (5)(c) of this section may be used to purchase, among other things, body cameras, body armor, and other equipment designed to protect the health and safety of law enforcement officers.

(9) Each state and local law enforcement agency that seizes property for the purpose of forfeiture under Sections 1 to 17 of this Act 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.

(10) Each state or local law enforcement agency that seizes property for the purpose of forfeiture under Section 7 of this Act 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.

(11) No law enforcement agency may retain forfeited or abandoned property for its own use or sell it directly or indirectly to any employee of the agency, to a person related to an employee by blood or marriage, or to another law enforcement agency.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) On an annual basis, each law enforcement agency shall report the following information about seizures and forfeitures completed by the agency under state forfeiture law and federal forfeiture law:

- (a) The total number of seizures of currency;
- (b) The total number of seizures and the number of items in each class of property seized, including vehicles, houses, and other types of property seized;
- (c) The market value of each class of property seized, including currency, vehicles, houses, and other types of property seized;
- (d) The total number of occurrences of each crime underlying forfeitures; and
- (e) A complete accounting of expenditures made from funds derived from property forfeited under Sections 1 to 17 of this Act.
- (2) The Justice and Public Safety Cabinet may require that information not specified in this section also be reported by administrative regulation. The Justice and Public Safety Cabinet shall develop standard forms, processes, and deadlines for electronic data entry for annual submission of forfeiture data by law enforcement agencies.
- (3) Each law enforcement agency shall file with the Justice and Public Safety Cabinet the report required under subsection (1) of this section for the law enforcement agency and the corresponding prosecuting authority. The law enforcement agency shall file separate reports for forfeitures completed under state forfeiture law and federal forfeiture law. A law enforcement agency which did not engage in seizures or forfeitures during the reporting period shall file a report indicating that no seizure or forfeiture occurred during the reporting period. The Justice and Public Safety Cabinet shall compile the submissions and issue an aggregate report of all forfeitures in the state.
- (4) By April 1 of each year, the Justice and Public Safety Cabinet shall make available on its Web site the reports submitted by law enforcement agencies and its aggregate report.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 218A IS CREATED

TO READ AS FOLLOWS:

- (1) The law enforcement agency that holds the property shall return property to the owner within a reasonable period of time not to exceed five (5) days after:**
- (a) The court finds that the owner had a bona fide security interest;**
- (b) The court finds that the owner was an innocent owner;**
- (c) The acquittal of or dismissal of the owner of the criminal charge that is the basis of the forfeiture proceedings;**
- (d) The dismissal of the criminal charge that is the basis of the forfeiture proceedings by Alford plea; or**
- (e) The court, at a seizure confirmation hearing, determines that property is not likely forfeitable under Section 2 of this Act or the court, at a forfeiture hearing, determines that the property is not forfeitable under Section 2 of this Act.**
- (2) The law enforcement agency that holds the property is responsible for any damages, storage fees, and related costs applicable to property returned under subsection (1) of this section.**

➔Section 18. KRS 209.990 is amended to read as follows:

- (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.
- (3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.
- (4) Any person who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.
- (5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.

- (6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.
- (8) If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property [~~as defined in KRS 218A.405~~] within thirty (30) days of an order by the sentencing court to do so, or is thirty (30) days or more delinquent in a court-ordered payment schedule, then the defendant shall be civilly liable to the victim of the offense or the victim's estate for treble damages, plus reasonable attorney fees and court costs. Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's behalf to enforce this section. The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.

➔Section 19. KRS 500.092 is amended to read as follows:

- (1) (a) Notwithstanding KRS 500.090, all personal property which is not used as a permanent residence in this state which is used in connection with or acquired as a result of a violation or attempted violation of any of the statutes set out in subsection (3) of this section shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in Sections 1 to 17 of this Act [~~KRS 218A.405 to 218A.460~~] for property subject to forfeiture under that chapter.
- (b) Notwithstanding KRS 500.090, all real and personal property in this state which is used in connection with or acquired as a result of a violation or attempted violation of KRS 531.310 or 531.320 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as

set out in Sections 1 to 17 of this Act~~[KRS 218A.405 to 218A.460]~~ for property subject to forfeiture under that chapter.

- (2) Administrative regulations promulgated under Section 15 of this Act~~[KRS 218A.420]~~ shall govern expenditures derived from forfeitures under this section to the same extent that they govern expenditures from forfeitures under Sections 1 to 17 of this Act~~[KRS 218A.405 to 218A.460]~~.
- (3) The following offenses may trigger forfeiture of personal property under subsection (1)(a) of this section:
- (a) KRS 17.546;
 - (b) KRS 508.140 and 508.150 involving the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device;
 - (c) KRS 510.155;
 - (d) KRS 530.064(1)(a);
 - (e) KRS 531.030;
 - (f) KRS 531.040
 - (g) KRS 531.310;
 - (h) KRS 531.320;
 - (i) KRS 531.335;
 - (j) KRS 531.340;
 - (k) KRS 531.350;
 - (l) KRS 531.360; and
 - (m) KRS 531.370.

➔Section 20. KRS 529.150 is amended to read as follows:

- (1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in Sections 1 to 17 of this Act~~[KRS 218A.405 to 218A.460]~~, with the exception of the distribution of proceeds, which shall be distributed as required in this section.
- (2) Proceeds from the assets seized and forfeited shall be distributed as follows:
 - (a) Fifty percent (50%) shall be paid to the human trafficking victims fund;
 - (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and
 - (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, 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 KRS 218A.420(9)]~~. 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.

➔Section 21. KRS 218A.240 is amended to read as follows:

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

- (2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, of books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202(7) in any administrative proceeding before the cabinet.
- (3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.
- (4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.
- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter or to forfeit any property subject to forfeiture under **Section 2 of this Act**~~[KRS 218A.410]~~, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
 - (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

- (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
 - (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.
 - (d) Distribution of funds under this section shall be made in the same manner as in Section 15 of this Act [~~KRS 218A.420~~], except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.
- (6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.
- (7) (a) The Cabinet for Health and Family Services shall proactively use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a state licensing board listed in KRS 218A.205 if a report or analysis conducted under this subsection indicates that further investigation about improper, inappropriate or illegal prescribing or dispensing may be necessary by the board. The board shall consider each report and may, after giving due consideration to areas of practice, specialties, board certifications, and appropriate standards of care, request and receive a follow-up report or analysis containing relevant information as to the prescriber or dispenser and

his or her patients.

- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure, the Board of Nursing, the Office of Drug Control Policy, and the Board of Pharmacy, to be used to generate public trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850. The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system. Except as provided in subsection (8) of this section, these trend reports shall not identify an individual prescriber, dispenser, or patient. Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to this paragraph except that the report shall not identify an individual prescriber, dispenser, or patient.
- (8) If the cabinet deems it to be necessary and appropriate, upon the request of a state licensing board listed in KRS 218A.205, the cabinet shall provide the requesting board with the identity of prescribers, dispensers, and patients used to compile a specific trend report.
- (9) Any hospital or other health care facility may petition the cabinet to review data from the electronic system specified in KRS 218A.202 as it relates to employees of that facility to determine if inappropriate prescribing or dispensing practices are occurring. The cabinet may initiate any investigation in such cases as he or she determines is appropriate, and may request the assistance from the hospitals or health care facilities in the investigation.

➔Section 22. KRS 218A.350 is amended to read as follows:

- (1) No person shall sell or transfer any substance, other than a controlled substance, with the representation or upon creation of an impression that the substance which is sold or transferred is a controlled substance.

- (2) No person shall possess for sale or transfer any substance designed in any manner, including but not limited to design of the item or its container, markings, or color, to simulate a controlled substance.
- (3) No person shall possess for sale or transfer any substance, not covered by subsection (2) of this section which is not a controlled substance with the representation or upon the creation of an impression that the substance held for sale or transfer is a controlled substance.
- (4) No person shall manufacture, package, repackage, advertise, or mark any substance, which is not a controlled substance, in such a manner as to resemble a controlled substance, for the purpose of creating the impression that the substance is a controlled substance.
- (5) For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following:
 - (a) Whether the noncontrolled substance was packaged in a manner normally used for the illegal sale of controlled substances;
 - (b) Whether the sale or attempted sale included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance.
 - (c) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled substance.
- (6) In any prosecution brought under this section, it is not a defense to a violation of this section that the defendant believed the noncontrolled substance to actually be a controlled substance.
- (7) (a) Any person who violates any of the provisions of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.

- (b) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under Section 15 of this Act~~[KRS 218A.420]~~.
- (c) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.

➔Section 23. The following KRS sections are repealed:

218A.405 Definitions for KRS 218A.405 to 218A.460.

218A.410 Property subject to forfeiture.

218A.415 Procedure for seizure of property.

218A.420 Procedure for disposal of seized and forfeited property -- Distribution of proceeds -- Administrative regulations on use of funds -- Adoption of policies for seizure of forfeitable assets -- Asset-forfeiture training -- Vehicles -- Joint operations.

218A.425 Valuation of property retained for official use.

218A.440 Statement filed listing property seized -- Investigation of utilization of proceeds.

218A.450 Lien on forfeited property -- Action by trustee -- Release of lien.

218A.460 Jurisdiction -- Ancillary hearing -- Application of forfeiture procedures.