

HOUSE BILL No. 2114

By Committee on Judiciary

1-23

1 AN ACT concerning civil procedure; relating to the subpoena of nonparty
2 business records; amending K.S.A. 2014 Supp. 60-245a and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2014 Supp. 60-245a is hereby amended to read as
7 follows: 60-245a. (a) *Definitions.* As used in this section:

8 (1) "Business" means any kind of business, profession, occupation,
9 calling or operation of institutions, whether carried on for profit or not.

10 (2) "Business records" means writings or electronically stored
11 information made by personnel or staff of a business, or persons acting
12 under their control, which are memoranda or records of acts, conditions or
13 events made in the regular course of business at or about the time of the
14 act, condition or event recorded.

15 (b) *Subpoena for business records only.* Any party may request
16 production of business records from a nonparty by causing to be issued a
17 nonparty business records subpoena pursuant to this section. The
18 subpoena must inform the person to whom it is directed that the person
19 may serve on the party or attorney designated in the subpoena written
20 objection to production of any or all of the business records designated in
21 the subpoena within the earlier of the time specified for compliance or 14
22 days after the subpoena is served. If such an objection is made, the
23 business records need not be produced unless ordered by the court on
24 motion, with notice to the person to whom the subpoena was directed.

25 (1) *Duties of requesting party.* (A) *Must give notice of intent.* Not less
26 than 14 days before issuance of a nonparty business records subpoena, the
27 requesting party must give notice to all parties *and any person whose*
28 *individual or jointly held personal or business records are requested* of the
29 intent to request the subpoena. A copy of the proposed subpoena must be
30 served on all parties *and any person whose individual or jointly held*
31 *personal or business records are requested* with the notice. If prior to the
32 issuance of the subpoena any party *or any person whose individual or*
33 *jointly held personal or business records are requested* objects to the
34 production of the records sought, the subpoena must not be issued unless
35 ordered by the court.

36 (B) *Requesting party to provide declaration form.* When the subpoena

1 is issued, it must be accompanied by a form of declaration that complies
2 with ~~paragraph~~ subsection (b)(3), to be completed by the records
3 custodian.

4 (C) *Canceling deposition.* If receipt of the records makes the taking
5 of a deposition unnecessary, the requesting party must cancel the
6 deposition and give written notice to the parties of the receipt of the
7 records and the cancellation of the deposition.

8 (2) *Appearance not required; producing records; time to respond.*
9 Unless the personal attendance of a custodian of the business records or
10 the production of original business records is required under subsection
11 (c), it is sufficient compliance with a nonparty business records subpoena
12 if, within the earlier of the time specified for compliance or 14 days after
13 receipt of the subpoena, a custodian of the business records delivers to the
14 party or attorney requesting them, by mail or otherwise, a true and correct
15 copy of all records described in the subpoena and a completed copy of a
16 declaration or an affidavit that complies with ~~paragraph~~ subsection (b)(3)
17 accompanying the records. The custodian must file the declaration or
18 affidavit with the court. If return of the records is desired, the words
19 "return requested" must be inscribed clearly on the envelope or wrapper.

20 (3) *Declaration or affidavit of a custodian of the records.* (A)
21 *Contents of declaration or affidavit accompanying documents produced.*
22 The records described in the subpoena must be accompanied by a
23 declaration pursuant to K.S.A. 53-601, and amendments thereto, or an
24 affidavit, of a custodian of the records, or, when a declarant or affiant lacks
25 knowledge of all the required facts, more than one declaration or affidavit
26 may be made, stating in substance each of the following:

27 (i) The declarant or affiant is an authorized custodian of the records
28 and has authority to certify records;

29 (ii) the copy is a true copy of all the records described in the
30 subpoena that are in the business' possession, custody or control and
31 whether it is all or part of the requested records; and

32 (iii) the records were prepared by the personnel or staff of the
33 business, or persons acting under their control, in the regular course of the
34 business at or about the time of the act, condition or event recorded.

35 (B) *When none of the requested records is produced.* If the business
36 has none of the records described in the subpoena, a custodian of the
37 records of the business must submit a declaration pursuant to K.S.A. 53-
38 601, and amendments thereto, or an affidavit, stating that fact.

39 (C) *Notification required to allow access to and copying of requested*
40 *records. Within seven days after receipt of the requested records, the*
41 *requesting party shall notify every other party and any person whose*
42 *individual or jointly held personal or business records were requested to*
43 *allow access to and copying of such records.*

1 (4) *Costs for copying the records.* The person to whom the subpoena
2 is directed may demand the reasonable costs of copying the records. If the
3 costs are demanded, the records need not be produced until the costs are
4 advanced.

5 (5) *Inspecting the record.* After the copy of the records is delivered, a
6 party desiring to inspect or copy them must give reasonable notice to the
7 parties. If inspection is requested, the notice must state the time and place
8 of inspection. If copies are requested, the reasonable costs of copying the
9 records may be demanded of the requesting party. If the costs are
10 demanded, the copies need not be provided until the costs are advanced.

11 (6) *Disposal or return of records.* Thirty days after termination of the
12 case, records that are not introduced in evidence or required as part of the
13 record may be destroyed, or returned to the records custodian who
14 submitted them if return was requested, after giving notice to the parties.

15 (c) *Subpoena duces tecum for attendance of a custodian and original*
16 *business records; objections.* Any party may require the personal
17 attendance of a business records custodian or the production of original
18 business records in an action in which the business is not a party by
19 causing a subpoena duces tecum to be issued pursuant to K.S.A. 60-245,
20 and amendments thereto.

21 Sec. 2. K.S.A. 2014 Supp. 60-245a is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its
23 publication in the statute book.