

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 334

As Recommended by Senate Committee on
Judiciary

Brief*

SB 334 would enact new law and amend existing law related to the ability of the Attorney General to be fully heard before any Kansas statute or constitutional provision is determined by a Kansas court to be invalid or unconstitutional.

The new section would begin by declaring the public policy of Kansas is that the Attorney General should have notice and the opportunity to be fully heard before any Kansas statute or constitutional provision is determined by the Judicial Branch to be invalid or unconstitutional under the *Kansas Constitution*, the *U.S. Constitution*, or any provision of federal law.

Before declaring or making any such determination, enjoining any statute or constitutional provision for such invalidity, or entering any judgment or order determining or declaring such invalidity, a district court or district court judge, whether acting in judicial or administrative capacity, would have to require:

- In any criminal case, that the State has been given notice of the disputed validity and an opportunity to appear and be heard on the question of validity. The notice would be served by the party disputing validity on the prosecuting attorney representing the State in the case. If the prosecuting attorney fails to respond, the court would be required to

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

notify the Attorney General of such failure and provide the Attorney General with the opportunity to appear and be heard on the question of validity; and

- In any civil case and all other matters, that notice of the disputed validity has been served on the Attorney General by the party disputing validity or by the court, and that the Attorney General has been given an opportunity to appear and be heard on the question of validity.

For matters before the Supreme Court or the Court of Appeals, or a justice or judge of those courts, a party filing a pleading, brief, written motion, or other filing or paper contesting the validity of any statute or constitutional provision would be required to serve the filing on the Attorney General, with a conspicuous notice that the Attorney General is being served pursuant to this provision. The court would be required to ensure the Attorney General has been provided notice and an opportunity to appear before the court determines any statute or constitutional provision is invalid as violating the *Kansas Constitution*, the *U.S. Constitution*, or any other provision of federal law.

If any court, justice, or judge enters a judgment or order or makes a determination or declaration in violation of this section, the Attorney General would be allowed to, within a reasonable time of learning of the violation, apply to the court to set aside or rescind the court's, justice's, or judge's action. The Attorney General would have the later of 30 days from the date of such action or 15 days from the date the Attorney General learned of the action to make such an application. The court would then be required to enter any necessary orders to allow the Attorney General to appear and be heard. The court would be required to set aside the action in question upon a showing it was entered in violation of this section.

The Attorney General would have 21 days from the date of any notice required by this section to appear or intervene,

and if the Attorney General does appear or intervene, the Attorney General would be given such reasonable additional time to be fully heard as the court may order.

The bill states the new section shall not be construed to require the Attorney General to appear or intervene in any action, and the section would not apply in any action or proceeding in which the Attorney General is the party disputing or defending the validity of the statute or constitutional provision.

The bill would amend the rule of civil procedure governing intervention to require a court to permit intervention by the Attorney General when notice to the Attorney General is required by the new section.

Finally, the bill would amend the statute governing parties in an action for a declaratory judgment to require that notice and opportunity to be heard in accordance with the new section be given to the Attorney General if a statute, ordinance, or franchise is alleged to be unconstitutional.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Kansas Attorney General.

In the hearing before the Senate Committee, the Attorney General testified in support of the bill. There was no neutral or opponent testimony.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of the Attorney General estimates the bill would not result in added expenditures for the agency. The Office of Judicial Administration indicates the bill would require additional staff time by judges and clerks to provide notice to the Attorney General, but the Office cannot estimate a specific fiscal effect for the bill. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.