

2012 Kansas Statutes

60-245a. Subpoena of nonparty business records. (a) *Definitions.* As used in this section:

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

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

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

(1) *Duties of requesting party.* (A) *Must give notice of intent.* Not less than 14 days before issuance of a nonparty business records subpoena, the requesting party must give notice to all parties of the intent to request the subpoena. A copy of the proposed subpoena must be served on all parties with the notice. If prior to the issuance of the subpoena any party objects to the production of the records sought, the subpoena must not be issued unless ordered by the court.

(B) *Requesting party to provide declaration form.* When the subpoena is issued, it must be accompanied by a form of declaration that complies with paragraph (3), to be completed by the records custodian.

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

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

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

- (i) The declarant or affiant is an authorized custodian of the records and has authority to certify records;
- (ii) the copy is a true copy of all the records described in the subpoena that are in the business' possession, custody or control and whether it is all or part of the requested records; and
- (iii) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

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

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

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

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

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

History: L. 1985, ch. 196, § 1; L. 1997, ch. 173, § 25; L. 2000, ch. 145, § 1; L. 2004, ch. 176, § 1; L. 2010, ch. 135, § 115; July 1.